

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

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

Plaintiffs,

v.

DOUG BURGUM, in his official capacity
as Governor of the State of North Dakota;
ALVIN JAEGER, in his official capacity as
Secretary of 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-PDW-CRH

**DEFENDANT-INTERVENORS'
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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**DEFENDANT-INTERVENORS' RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

Defendant-Intervenors ("Tribal Defendants") hereby file this Response In Opposition to Plaintiffs' Motion for a Preliminary Injunction.¹

FACTS AND BACKGROUND

The North Dakota Constitution governs the State's redistricting process and authorizes the creation of legislative districts and subdistricts, stating that the State Legislature "may provide for the election of senators at large and representatives at large or from subdistricts from those districts." N.D. Const. art. IV, § 2; *see also* N.D. Cent. Code Ann. § 54-03-01.5(A)(2).

Legislative redistricting for this cycle began in North Dakota following the 2020 U.S. Census. In 2021, the Legislature created the Legislative Council Redistricting Committee (the "Redistricting Committee"), a subcommittee of the Legislature comprised of eight state House representatives, including the Chairman, and eight state senators, including the Vice Chairman. H.B. 1397, 67th Leg., Reg. Sess. (N.D. 2021). As stated in H.B. 1397, "[t]he [Redistricting Committee] may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the legislative assembly." *Id.*

The Mandan, Hidatsa, and Arikara Nation ("MHA Nation"), also known as the Three Affiliated Tribes, is a federally recognized tribe located on the Fort Berthold

¹ Tribal Defendants intervened solely with respect to Plaintiffs' challenge to District 4 of the State's redistricting plan, and this response in opposition is limited to the same.

Reservation. The Reservation is located within the state of North Dakota, 87 Fed. Reg. 4636, 4639, and is defined as “Indian Country” under 18 U.S.C. § 1151. The Reservation comprises nearly one million acres, with over 400,000 acres held in trust by the federal government for the benefit of the MHA Nation and its members. U.S. Dep’t of the Interior, Indian Affairs, Fort Berthold Agency, <https://www.bia.gov/regional-offices/great-plains/north-dakota/fort-berthold-agency> (last visited Apr. 5, 2022). MHA has nearly 17,000 enrolled members. MHA’s principal governing body consists of a six-member Tribal Business Council and a Tribal Chairman. Three Affiliated Tribes Const. art. III, §§ 1-2. MHA Nation is responsible for promoting and protecting the interests of its members as well its own interests as a sovereign government. *Id.* at art. VI, § 5.

Throughout the redistricting process, the Redistricting Committee received testimony from tribal leaders, tribal members, and experts regarding the need to provide a subdistrict for the MHA Nation. Chairman Mark N. Fox of the MHA Nation testified in person and in writing to the Redistricting Committee. *See* Ex. 1 (Fox Testimony, Sept. 23, 2021), attached to Declaration of Michael Carter.² He testified that the MHA Nation is a community of interest with “a distinct political status that legally distinguishes them from other minority populations.” *Id.* at 2.

Chairman Fox also presented detailed testimony concerning the population deviation of the proposed subdistrict, the benefits to the Nation of a subdistrict *id.*, application of the *Gingles* factors to District 4 and the proposed subdistrict, and his

² The Exhibits referenced herein are the ones attached to the Declaration of Michael Carter, unless otherwise noted.

personal experience of the “[p]roven history of bloc voting” that had prevented Native American candidates from being elected in races decided by the full District 4. Ex. 8 (Fox Testimony, Sept. 29, 2021).

This testimony only reinforced what the Legislature already knew: that the Fort Berthold Reservation is an important political subdivision and community of interest within the State. Indeed, the Legislature recognized and addressed the need to preserve the boundaries of the Fort Berthold Reservation in the 2011 decennial redistricting process, when it split three counties in order to keep the Reservation intact. Ex. 2 at 6 (Redistricting History Memorandum).

Chairman Fox was not the only person to testify in support of subdistricts for District 4. Plaintiff Lisa DeVille, an MHA citizen, also testified before the Redistricting Committee and provided detailed demographic information related to the Nation. Plaintiff DeVille also testified about her personal experience with bloc voting in District 4. Ex. 3 (DeVille Testimony). The Executive Director of North Dakota Native Vote, who is a descendant of the MHA people, also testified in support of subdistricts, advocating for the Committee “to adopt single-member House districts to prevent the dilution of Native American votes. Tribes and tribal members in North Dakota have had to fight for the right to vote, whether by defeating voter I.D. laws, opposing district lines that dilute the Native American vote, or by demanding on reservation polling locations.” Ex. 4 (Donaghy Testimony). She asked that the Committee ensure everyone’s vote matters by creating districts whereby “existing boundaries are respected, and communities of interest are represented.” *Id.*

The Redistricting Committee was also trained on impermissible racial gerrymandering and traditional redistricting principles, including preservation of political subdivision boundaries and communities of interest. Ex. 2 at 10 (Redistricting History Memorandum); Ex. 5 at 14, 17, 18 (Legislative Council Presentation, Aug. 2021); Ex. 6 at 23-25, 36-39 (NCSL Presentation). The training covered the particulars of the law, including United States Supreme Court decisions *Shaw v. Reno*, 509 U.S. 630 (1993), Ex. 2 at 9 (Redistricting History Memorandum), Ex. 5 at 17 (Legislative Council Presentation, Aug. 2021); Ex. 6 at 23, (NCSL Presentation); and *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), Ex. 5 at 14 (Legislative Council Presentation, Aug. 2021). The Committee was even given a flowchart to use to determine whether its districts would survive an Equal Protection claim Ex. 6 at 24 (NCSL Presentation). In fact, the training provided in September 2021 addressed the exact issues raised in this case – when it is appropriate to divide multi-member districts into single-member subdistricts, the requirements of the Fourteenth Amendment, what constitutes a compelling state interest, how to comply with the Voting Rights Act, how to remedy past discrimination, when a remedy is sufficiently narrowly tailored, and what the *Gingles* preconditions and Senate Factors are. Ex. 7 (Legislative Council Presentation, Sept. 2021).

On November 11, 2021, Governor Burgum signed House Bill 1504 into law. The enacted plan created two House subdistricts within District 4. The boundaries of House District 4A mirror the boundaries of the Fort Berthold Reservation, which is home to the MHA Nation.

Plaintiffs filed this action on February 16, 2022, alleging that race was the predominant criteria in the drawing of House Subdistrict 4A, and that Subdistrict 4A violates the Fourteenth Amendment. Compl. ¶¶ 4, 49, ECF 1. On March 4, 2022, Plaintiffs filed a Motion for Preliminary Injunction. Mot. for Prelim. Inj., ECF 12. On March 18, 2022, the Court entered the parties' stipulated briefing schedule for the preliminary injunction. Order, ECF 15. The motion will be fully briefed on April 14, 2022.

On March 30, 2022, Tribal Defendants filed a Motion to Intervene to defend the Legislature's enactment of House District 4A. Mot. to Intervene, ECF 16. The Court granted intervention on April 4, 2022. Order, ECF 17.

The first election held under the challenged plan is the June 14, 2022 primary election.³ The candidate filing period for the June primary opened on January 1, 2022 and closes on April 8, 2022.⁴ Absentee voting for the June primary begins on May 5, 2022.⁵

LEGAL STANDARD

"[A] preliminary injunction is 'an extraordinary remedy never awarded as of right.'" *Benisek v. Lamone*, 138 S. Ct 1942, 1943 (2018). "[T]he burden of establishing the propriety of an injunction is on the movant." *Roudachevski v. All-American Care Ctrs., Inc.*, 648 F.3d 701, 705 (8th Cir. 2011). Plaintiffs must clearly show (1) a substantial probability they will succeed on the merits at trial, (2) that they will suffer irreparable injury absent

³ See North Dakota Secretary of State, *North Dakota Election Calendar*, <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=13&ptlPKID=3>.

⁴ See *id.*

⁵ See North Dakota Secretary of State, *Voter Important Dates*, <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=104&ptlPKID=7#content-start>.

the injunction that outweighs the harm to other interested parties if the relief is granted, and (3) that issuing the injunction is in the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). Plaintiffs have failed to meet this high burden to warrant the extraordinary remedy of a preliminary injunction. Therefore, Tribal Defendants oppose, and request that this Court deny, the motion for preliminary injunction.

ARGUMENT

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

A. Race Was Not the Predominant Factor in Drawing Subdistrict 4A.

To establish a racial gerrymandering claim, a plaintiff must first “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.” *Miller v. Johnson*, 515 U. S. 900, 916 (1995). Thus, a plaintiff must show that “the legislature ‘subordinated’ other factors – compactness, respect for political subdivisions, partisan advantage, what have you – to ‘racial considerations.’” *Id.* “[A] legislature’s compliance with ‘traditional districting principles such as compactness, contiguity, and respect for political subdivisions’ may well suffice to refute a claim of racial gerrymandering.” *Id.* at 919. “Where traditional districting principles such as . . . respect for political subdivisions or communities with actual shared interests have not been subordinated to race, there is no equal protection violation.” *Harvell v. Blytheville Sch. Dist. No. 5*, 126 F.3d 1038, 1041 (8th Cir. 1997). “There is a distinction between ‘being aware of racial considerations and being

motivated by them,' and the awareness of race does not mean that it predominated in the redistricting process." *Id.* (citing *Miller*, 515 U.S. at 916). Because District 4 was drawn to comply with the traditional redistricting principles of respect for political boundaries and maintaining communities of interest, rather than based on race, Plaintiffs are not likely to succeed on their racial gerrymandering claim.

First, Subdistrict 4A was drawn specifically to follow the boundaries of the MHA Nation, a political subdivision within North Dakota. MHA Nation is a sovereign tribal government whose members enjoy a distinct political status that includes the right to vote in tribal elections and participate in certain tribally and federally operated programs. The boundaries of the Fort Berthold Reservation are political boundaries that distinguish the reservation from counties and other political boundaries within the State. *See United States v. Cooley*, 141 S. Ct. 1638, 1642, 210 L. Ed. 2d 1 (2021) ("Long ago we described Indian tribes as 'distinct, independent political communities' exercising sovereign authority."). Respecting political boundaries is a traditional redistricting principle, and is not based on race. The Legislature's decision to create a subdistrict that precisely follows the Reservation boundaries complies directly with this redistricting principle.

Second, Subdistrict 4A was drawn to preserve the MHA Nation as a community of interest. Maintaining communities of interest is a traditional districting principle that legislators were advised to consider at the time they drew the maps. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006); *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006); Ex. 2 at 10 (Redistricting History Memorandum). The MHA people share economic, cultural, language demographic and social interests that are distinct from the

surrounding populations. The Missouri River is of critical importance to the three tribes in the MHA Nation in terms of subsistence, transportation, economy, and culture. U.S. Dep't of Int., Office of the Solicitor, M-37073, Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River Within the Boundaries of the Fort Berthold Reservation (North Dakota) (2022). While the River is central to the three Tribes' shared cultural, language, and social interests, the Nation's location on the Bakken oil formation gives rise to common economic interests. Drawing the MHA Nation into a single House District ensures that this distinct community of interest is preserved and not subsumed by the broader population of District 4.

As Native American people, MHA members also have a unique relationship to the United States government that unifies them as a community. *Rosebud Sioux Tribe v. United States*, 450 F. Supp. 3d 986, 998 (D.S.D. 2020) ("This stems from the 'unique relationship' between Indians and the federal government, a relationship that is reflected in hundreds of cases and is further made obvious by the fact that one bulging volume of the U.S. Code pertains only to Indians.") (quoting *White v. Califano*, 581 F.2d 697, 697 (8th Cir. 1978)).

The limited evidence Plaintiffs have provided does not establish that race predominated in the drawing of Subdistrict 4A. *See Cooper v. Harris*, 137 S. Ct. 1455, 1487 (2017) (explaining that in a racial gerrymandering claim, a challenger's "evidentiary burden is a demanding one" and federal courts "must be very cautious about imputing a racial motive to a State's redistricting plan."). They offer as support for this claim only that the Legislature heard testimony that the Subdistrict 4A was necessary to comply with the Voting Rights Act ("VRA"), Mot. at 8, n.8; that Representatives were reluctant to draw

boundaries based on race, *id.* at 8 n.9; that the need to keep reservations whole was considered an important criterion in deciding on district boundaries, *id.* at 9 n. 11; and that the challenged subdistrict was indeed drawn to preserve the boundaries of the Fort Berthold Reservation, *id.* at 9. Plaintiffs also fault the Legislature for failing to sufficiently analyze the racial demographics and voting patterns of voters within House District 4. *See id.* at 3-4. This evidence is not sufficient to show that race predominated in the drawing of Subdistrict 4A. Indeed, it is far more consistent with a finding that the Legislature decided to draw Subdistrict 4A to preserve the political boundaries of the Fort Berthold Reservation and preserve the MHA Nation as a community of interest, while eschewing a single-minded reliance on race.

Plaintiffs' reliance on *Shaw v. Hunt* and *Miller* is similarly misplaced. Mot. at 9-10. In *Shaw*, the Court found that the challenged district might be a racial gerrymander in part because its boundaries were "highly irregular and geographically non-compact by any objective standard that can be conceived." 517 U.S. 899, 905-06 (1996). Likewise, in *Miller*, the challenged district had "narrow land bridges to incorporate within the district outlying appendages containing nearly 80% of the district's total population." 515 U.S. at 917. Here, Subdistrict 4A is compact and contiguous, Ex. 8 (Fox Testimony, Sept. 29, 2021), and its population deviation is minimal. Ex. 1 at 1 (Fox Testimony, Sept. 23, 2021). Further, the Committee received extensive training and testimony about, and itself discussed, the very redistricting considerations at issue here including political cohesiveness, bloc voting, and racial gerrymandering. *See, e.g.*, Ex. 2 at 9-10 (Redistricting History Memorandum).

The record, when analyzed in full, simply does not support Plaintiffs' contentions. Plaintiffs take a few, off-handed remarks by individual representatives out of context and assert that those remarks are enough to carry their heavy burden in establishing that race was the predominate motivating factor in the Legislature's decision to implement Subdistrict 4A. The Committee's choice instead to draw a compact subdistrict following reservation boundaries demonstrates that its primary concern was the need to preserve the Reservation as a community of interest and as a political subdivision. Race was not a predominate factor.

B. Subdistrict 4A Is Necessary to Comply with The VRA.

Even if Plaintiffs could show that race predominated in drawing House District 4A, the District withstands strict scrutiny because it was narrowly tailored to serve the compelling government interest in complying with Section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301.

Compliance with Section 2 of the VRA is a compelling government interest. *Cooper*, 137 S. Ct. at 1464. "When a State invokes the VRA to justify race-based districting, it must show (to meet the 'narrow tailoring' requirement) that it had 'good reasons' for concluding that [the VRA] required its action." *Id.*, citing *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1274 (2015). A state must show it had good reason to believe each of the three *Gingles* preconditions applies with respect to the challenged district. *Bush v. Vera*, 517 U.S. 952, 978 (1996). "This standard . . . does not demand that a State's actions *actually* be necessary to achieve a compelling state interest in order to be constitutionally valid . . . [as] legislators may have a strong basis in evidence to use racial

classifications in order to comply with [the VRA] . . . even if a court does not find that the actions were *necessary* for . . . compliance.” *Alabama Legislative Black Caucus*, 575 U.S. at 278 (internal citations omitted) (emphasis added).

Here, the Legislature had before it extensive and reliable information demonstrating that each of these preconditions was indeed met with respect to the population of Fort Berthold. First, in trainings provided to the Redistricting Committee on August 26, 2021 and on September 22, 2021, experts discussed *Thornburg v. Gingles*, the requirements of Section 2, and how members of the Committee could identify when the *Gingles* conditions were present. Ex. 5 at 15-17 (Legislative Council Presentation, Aug. 2021); Ex. 7 at 5, 7 (Legislative Council Presentation, Sept. 2021). The September training noted that the Voting Rights Act may under some circumstances require the creation of single-member districts, but cautioned that the Committee must “[l]ook to the *Gingles* Preconditions” to determine “if there is direct evidence the votes of members of a racial minority would be diluted without a majority-minority district.” Ex. 7 at 5, 8 (Legislative Council Presentation, Sept. 2021).

After receiving these trainings but before deciding to propose a map including the Fort Berthold subdistrict to the full legislature, the Redistricting Committee heard and considered information that clearly established the presence of each of the three *Gingles* preconditions. *See* Ex. 1 (Fox Testimony, Sept. 23, 2021); Ex. 8 (Fox Testimony, Sept. 29, 2021); Ex. 3 (DeVille Testimony); Ex. 9 (Gion Testimony); Ex. 2 (Redistricting History Memorandum); Ex. 5 (Legislative Council Presentation, Aug. 2021); Ex. 6 (NCSL Presentation); Ex. 7 (Legislative Council Presentation, Sept. 2021).

Chairman Fox provided testimony to the Committee on two separate occasions in which he detailed the *Gingles* preconditions' application to a potential MHA subdistrict. On September 23, 2021, Chairman Fox explained to the Committee that the "legislature could easily draw a new single-member House district in our area that would have a Native Citizen Voting Age Population of 67%." Ex. 1 at 2 (Fox Testimony, Sept. 23, 2021). He also submitted a map of the proposed subdistricts and accompanying table illustrating this point. *Id.* In his September 29, 2021 testimony, Chairman Fox further underscored that "the Committee is aware already from the 2020 Census that the number of tribal members on the Fort Berthold Reservation is sufficiently numerous and compact to form a majority in a single-member district, and that a sub-district following the lines of the reservation would form a perfectly populated sub-district." Ex. 8 at 1 (Fox Testimony, Sept. 29, 2021). As such, the Committee received and considered evidence demonstrating that a subdistrict containing the MHA reservation would comply with the first *Gingles* prong. *See Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) ("First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.").

Chairman Fox also provided testimony regarding the presence of racially polarized and bloc voting in District 4 as a whole. Ex. 8 (Fox Testimony, Sept. 29, 2021). He explained that there was "ample evidence of voting history in District 4 to show that tribal member candidates and tribal member candidates of choice are routinely outvoted by the majority vote in the district." *Id.* He cited his own experience in running for a school board position within District 4, as well as that of two other MHA members who

had run for office, received widespread support from precincts within Fort Berthold, but lost their elections due to bloc voting by non-Native voters living outside the reservation. *Id.* The Committee also heard similar testimony from other witnesses. *See* Ex. 3 (DeVille Testimony); Ex. 4 (Donaghy Testimony). This testimony provided the legislature with “good reason” to find that a subdistrict was necessary to comply with the VRA. *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018).

Indeed, expert analysis of the demographics and voting patterns in Legislative District 4 clearly confirm the testimony that was offered to the Committee during the redistricting process. *See* Declaration of Loren Collingwood, Ex. 10 (Collingwood Report). The expert report of Dr. Loren Collingwood demonstrates that Native and non-Native voters in District 4 vote cohesively within their respective racial groups and consistently support different candidates. *See* Ex. 10 at 8-11 (Collingwood Report). In the races analyzed, Native voters supported the Native candidate of choice at rates ranging from 72.4 to 97.8 percent, with support generally over 80 percent. *Id.* Similarly, non-Natives opposed the Native candidate of choice at rates ranging from 60 to 88.2 percent, with opposition generally over 70 percent. *Id.* Further, “whites vote[d] as a bloc to block Native Americans from electing their candidates of choice at the full District 4 in 27 of the 27 contests” examined, spanning 2014 to 2020. *Id.* at 14-17.

Dr. Collingwood’s analysis also confirms Chairman Fox’s testimony that a subdistrict containing the Fort Berthold Reservation would be a performing majority-minority district from which Native voters could elect a candidate of choice. *See id.* at 14-17. While the Native-preferred candidate is expected to lose in the combined District 4 in

each race analyzed in Dr. Collingwood's report, the Native candidate of choice is expected to prevail in all but one of the races in Subdistrict 4A. *Id.*

The substantive testimony regarding Subdistrict 4A, together with Dr. Collingwood's report, establish that not only did the members of the Redistricting Committee have sufficient basis to conclude that the VRA requires the creation of Subdistrict 4A, but that the failure to draw such a subdistrict would in fact violate the VRA. As such, assuming Defendants could prove that race predominated, the use of race would nonetheless withstand strict scrutiny because it served the Legislature's compelling interest of complying with the VRA. And regardless of the legislature's intent in creating HD4, Plaintiffs are not entitled to a remedy that itself violates federal law by diluting Native votes and denies them the opportunity to elect candidates of their choice.

II. PLAINTIFFS WILL NOT BE IRREPARABLY HARMED ABSENT INJUNCTIVE RELIEF.

Even if a plaintiff establishes a likelihood of success on the merits, "a preliminary injunction does not follow as a matter of course." *Benisek*, 138 S. Ct. at 1944. "The threshold inquiry [for preliminary injunctive relief] is whether the movant has shown the threat of irreparable injury." *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987). Plaintiffs have failed to show they will be irreparably harmed for two reasons.

First, Plaintiffs' delay in bringing this action and in seeking preliminary relief indicates they will not be irreparably harmed if the HD4 subdistricts remain in place during the pendency of this litigation. "Without question, '[a] long delay by plaintiff after learning of the threatened harm . . . may be taken as an indication that the harm would

not be serious enough to justify a preliminary injunction.’” *Adventist Health Sys./SunBelt, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 17 F.4th 793, 805 (8th Cir. 2021) (citing *Wright & Miller*, 11A Fed. Prac. & Proc., § 2948.1 & n.13 (3d ed. 2013)); *see also Hubbard Feeds, Inc., v. Animal Feed Supplement, Inc.*, 182 F.3d 598 (8th Cir. 1999) (citing *Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968 (2d Cir. 1995)). Rather, “a party requesting a preliminary injunction must generally show reasonable diligence.” *Benisek*, 138 S. Ct. at 1944. Indeed, even where there might otherwise be a presumption of irreparable harm, such a presumption is “inoperative if the plaintiff has either delayed in bringing suit or in moving for preliminary injunctive relief.” *Tough Traveler*, 60 F.3d at 968.

Plaintiffs here have done both. The challenged subdistricts were signed into law on November 11, 2022, *see* Compl. ¶ 1, ECF 1, but Plaintiffs waited over two months to bring this action, *see id.* (filed February 16, 2022). Plaintiffs then delayed another two weeks before seeking preliminary relief. Mot. for Prelim. Inj., ECF 12 (filed March 4, 2022). The first election held under the new map is the June 14, 2022 primary election.⁶ The candidate filing period for the June primary opened on January 1, 2022 and closes tomorrow, on April 8, 2022.⁷ Plaintiffs’ motion will not even be fully briefed until April 14, 2022—six days after the candidate filing period closes and just three weeks before absentee voting begins.⁸ *See* Order, ECF 15 (adopting stipulated briefing schedule). In

⁶ *See* North Dakota Secretary of State, *North Dakota Election Calendar*, <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=13&ptlPKID=3>.

⁷ *See id.*

⁸ Absentee voting for the June primary election begins on May 5, 2022. *See* North Dakota Secretary of State, *Voter Important Dates*,

other words, Plaintiffs' delay has left them insufficient time to obtain the relief they seek. Indeed, as one court in this district previously noted, "the federal courts are unanimous in their judgment that it is highly important to preserve the status quo when elections are fast approaching." *Spirit Lake Tribe v. Jaeger*, No. 1:18-cv-222, 2018 WL 5722665, at *1 (D.N.D. Nov. 1, 2018) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006)). Plaintiffs' delay in seeking preliminary relief therefore belies their assertion of irreparable harm.⁹ *Adventist Health*, 17 F.4th at 806; *see also id.* (finding that where information necessary to bring claim was available to plaintiffs "well in advance," delay in seeking preliminary relief until mere weeks before implementation of the challenged procedure "refuted [] allegations of irreparable harm.").

Second, Plaintiffs have not shown that they will actually be injured absent injunctive relief. The only irreparable injury alleged by Plaintiffs is the purported "depriv[ation] of multimember representation in the North Dakota House of Representatives." Mot. at 14-15, ECF 12. Plaintiffs do not claim any other irreparable harm that would arise absent injunctive relief. *See id.* But Defendants are not entitled to multimember representation under North Dakota law. Rather, House subdistricts are

<https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=104&ptlPKID=7#content-start>.

⁹ Nor is there any apparent justification that might excuse Plaintiffs' delay. Plaintiffs' claim relies entirely on public evidence and allegations related to the legislature's actions in enacting the map, all of which was available to Plaintiffs at the time the map was enacted last November. *See, e.g.*, Mot. at 2-4, 8-9, 14, ECF 12 (laying out the factual evidence in support of Plaintiffs' request for preliminary relief and relying entirely on publicly available legislative evidence from November 2021 and earlier).

explicitly authorized by both the North Dakota Constitution and by statute. *See* N.D. Const. art. IV, § 2; N.D. Cent. Code Ann. § 54-03-01.5(A)(2) (“Representatives may be elected at large or from subdistricts.”). Thus, to the extent Plaintiffs claim a constitutional injury arising out of the deprivation of multimember representation, they have failed to challenge the constitutional and statutory provisions that give rise to that injury. Nor *could* they challenge North Dakota’s authorization of subdistricts. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) (holding that state officials are immune from federal court challenges to state laws). Indeed, Plaintiffs’ suit is in essence an effort to bootstrap a challenge to North Dakota state law authorizing subdistricts into a federal claim. Because Plaintiffs are not entitled to an injunction prohibiting “the deprivation of multimember representation in the North Dakota House of Representatives.” Mot. at 14-15, ECF 12, they have failed to show they will be irreparably harmed absent an injunction against the challenged subdistricts.

III. THE PUBLIC INTEREST AND THE BALANCE OF THE EQUITIES WEIGH AGAINST PLAINTIFFS

“A State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Because “[c]ourt orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls,” *Purcell*, 549 U.S. at 4, the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). Recent Supreme Court

decisions provide additional insight into when it is appropriate for courts to intervene in the redistricting process. In an opinion issued on March 23, 2022 the Supreme Court held that there was sufficient time to implement a remedial map because the next election was not until August 9, 2022, leaving over four months for the map to be adopted and implemented. *Wisconsin Legislature v. Wisconsin Elections Comm’n*, No. 21A471, 2022 WL 851720, slip op. at 2 (Mar. 23, 2022). By contrast, in February the Court stayed implementation of a remedial map where the primary election was set to begin less than seven weeks later. *Merrill v. Milligan*, 142 S. Ct. 879 (2022). Here, the primary election is set to begin just three weeks after Plaintiffs’ Reply will be filed—placing this case on a substantially shorter timeline than even *Merrill*. It is beyond dispute that enjoining the legislative map less than three weeks before voting begins would cause substantial disruption to the electoral process. As such, the public interest and the balance of the equities weigh against an injunction here.

CONCLUSION

Subdistrict 4A was drawn based on considerations of traditional redistricting principles including respect for political boundaries and communities of interest, not race. To the extent race was a consideration in the drawing of Subdistrict 4A, the use of race was narrowly tailored to the State’s compelling interest in complying with the Voting Rights Act, and thus did not violate the Equal Protection clause. Furthermore, Plaintiffs’ delay in filing both their Complaint and this Motion demonstrates that they will not be irreparably harmed absent injunctive relief, and the public interest and balance of the equities weigh against enjoining the use of the challenged districts given

that the June primary is already underway. Intervenor-Defendants respectfully request that this Court deny Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted this 7th day of April, 2022.

/s/ Matthew Campbell

Matthew Campbell
NM No. 138207, CO No. 40808
mcampbell@narf.org
Michael S. Carter
OK No. 31961
carter@narf.org
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80301
Telephone: (303) 447-8760 (main)
Fax: (303) 443-7776
Attorneys for Defendant-Intervenors

Mark P. Gaber
DC Bar No. 988077
mgaber@campaignlegal.org
Molly E. Danahy
DC Bar No. 1643411
mdanahy@campaignlegal.org
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
Telephone: (202) 736-2200 (main)
Attorneys for Defendant-Intervenors

Bryan Sells
GA No. 635562
bryan@bryansellslaw.com
THE LAW OFFICE OF BRYAN L.
SELLS, LLC
Post Office Box 5493
Atlanta, GA 31107-0493
Telephone: (404) 480-4212 (voice and fax)
Attorney for Defendant-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on April 07, 2022, the document titled RESPONSE BY
DEFENDANT-INTERVENORS TO PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION was electronically filed with the Clerk of the Court through ECF.

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

David R. Phillips (#06116)
Special Assistant Attorney General
300 West Century Ave
Bismarck, ND 58502
dphillips@bgwattorneys.com

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

Matthew A. Sagsveen
Assistant Attorney General
500 North 9th Street
Bismarck, ND 585501
masagsve@nd.gov

/s/ Matthew Campbell
Matthew Campbell
NM No. 138207, CO No. 40808
mcampbell@narf.org

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

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

Plaintiffs,

v.

DOUG BURGUM, in his official capacity
as Governor of the State of North Dakota;
ALVIN JAEGER, in his official capacity as
Secretary of 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-PDW-CRH

**DEFENDANT-INTERVENORS'
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

DECLARATION OF MICHAEL S. CARTER

I, Michael S. Carter, declare as follows:

1. I am an attorney for Defendant-Intervenors in the above-captioned case. I submit this declaration in connection with Defendant-Intervenors' Response in Opposition to Plaintiffs' Motion for Preliminary Injunction.
2. Exhibit 1 to this declaration is a true and correct copy of the Testimony of Mark N. Fox to Redistricting Committee, Sept. 23, 2021 (Fox Testimony, Sept. 23, 2021).

3. Exhibit 2 to this declaration is a true and correct copy of the Memo Re:
Redistricting History, Aug. 26, 2021 (Redistricting History Memorandum).
4. Exhibit 3 to this declaration is a true and correct copy of the Testimony of Lisa
DeVille (DeVille Testimony).
5. Exhibit 4 to this declaration is a true and correct copy of Testimony of N.
Donaghy, Sept. 15, 2021 (Donaghy Testimony).
6. Exhibit 5 to this declaration is a true and correct copy of the Aug. 26, 2021
Presentation by LC (Legislative Council Presentation, Aug. 2021).
7. Exhibit 6 to this declaration is a true and correct copy of the Aug. 26, 2021
Presentation (NCSL Presentation).
8. Exhibit 7 to this declaration is a true and correct copy of the Sept. 22, 2021
Presentation (Legislative Council Presentation, Sept. 2021).
9. Exhibit 8 to this declaration is a true and correct copy of the Sept. 29, 2021 MHA
Testimony (Fox Testimony, Sept. 29, 2021).
10. Exhibit 9 to this declaration is a true and correct copy of the Testimony of R.
Gion, Aug. 26, 2021 (Gion Testimony).

Dated this 7th day of April, 2022.

/s/ Michael S. Carter

Michael S. Carter

OK No. 31961

carter@narf.org

NATIVE AMERICAN RIGHTS FUND

1506 Broadway

Boulder, CO 80301

Telephone: (303) 447-8760 (main)

Fax: (303) 443-7776

Attorney for Defendant-Intervenors

EXHIBIT 1



MANDAN, HIDATSA & ARIKARA NATION

**Three Affiliated Tribes * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council**

**Office of the Chairman
Mark N. Fox**

**67th Legislative Assembly
Redistricting Committee
September 23, 2021**

Testimony of Mark N. Fox, Chairman Tribal Business Council

Chairman Devlin and members of the Redistricting Committee, my name is Mark Fox, I am the Chairman of the Tribal Business Council of the Mandan, Hidatsa and Arikara Nation (MHA Nation) also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation (FBIR). I appreciate the opportunity to submit testimony on behalf of the MHA Nation.

Currently, FBIR is located within North Dakota District 4. District 4 consists of portions of the following six counties: McKenzie, Dunn, Mountrail, McLean, Mercer, and Ward. District 4 elects two members to the State House (at-large), and one member to the State Senate. The 2020 Census shows that the District 4 population and FBIR population increased between 2010 and 2020 to 16,794 and 8,350, respectively.

As a result of the overall 15.8% increase in North Dakota population from 672,591 residents to 779,094 residents, the ideal population for two member districts in North Dakota in 2021 is 16,576 and about 8,288 for a single-member house district. The MHA Nation urges the legislature to split the one at-large State House district to two single-member State House districts in District 4.

If single-member house districts were implemented within District 4, then House districts would have an ideal population of about 8,288. All of District 4 is currently about 38.6% Native American. The 2020 Native Voting Age Population (18 and over) is 33.9%.

Block voting is a concern for us. It has historically occurred in the state and has negatively impacted native voting and diminished native opportunities to serve in the legislature and participate in state and local elections. The current district lends itself to block voting.

This can be remedied by splitting the district into two single districts, thereby leveling the playing field for candidates. We understand that a split district is no guarantee that a tribal member would be elected, we are confident however that it will increase the representation of our issues and concerns to the legislative body.

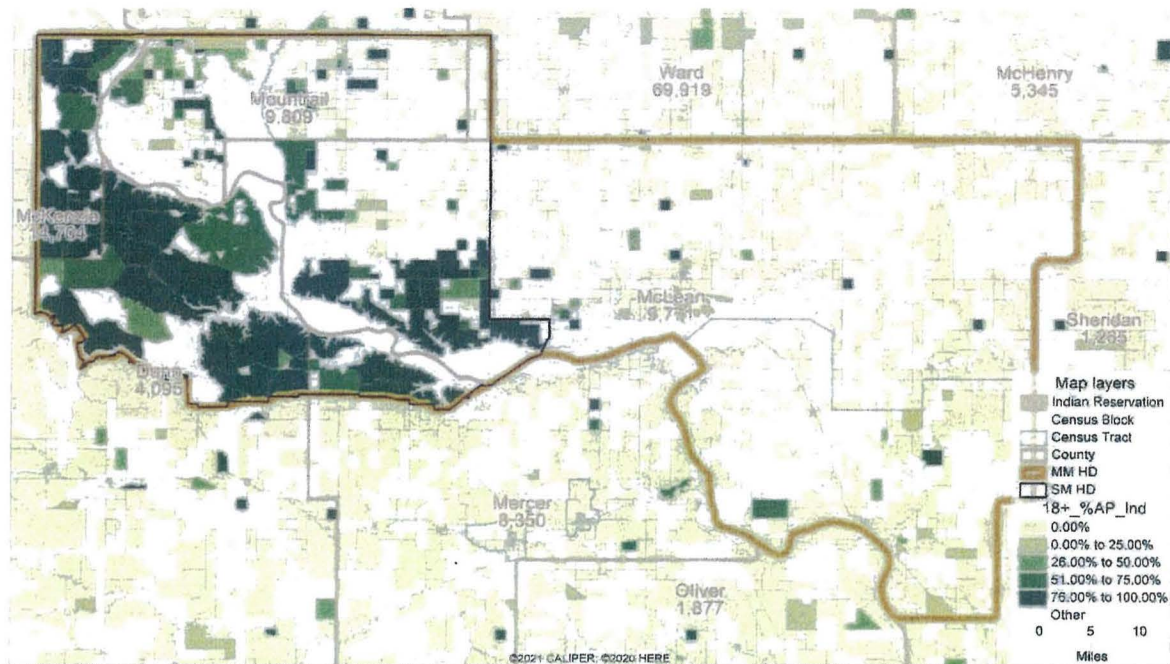
The legislature could easily draw a new single-member House district in our area that would have a Native Citizen Voting Age Population of 67% (*See Attached Proposed Map*). Using such a single-member district would give MHA a much better opportunity to elect a House representative of MHA's choice than under the current at-large system.

Second, the MHA Nation and its communities are a community of interest and should remain in a single legislative district. Splitting the reservation and our communities into multiple districts would dilute the ability of tribal members to elect the representative of their choice. I understand that certain legislators have stated that they will not split up, or crack, reservations into different districts. We can appreciate that position and respectfully request that our communities not be split as we have shared interests and deserve the same representation.

Third, tribal members who are also state citizens that are not only uniquely distinguished as minorities, but are part of a distinct political status that legally distinguishes them from other minority populations.

During the 1990s, the Parshall school district located on FBIR addressed similar concerns with block voting and addressed the issue by splitting the formerly at-large district. This allowed the election of two tribal members on the school board for the first time. The outcome has been beneficial for all of us. We were able to bridge the gap of communication and work together for the benefit of our children and families. I see the development of a single district for FBIR as another opportunity to enhance our communication and work together for a common goal of improving our communities and the lives of the people whom we represent. We ask for this Committee to support us in establishing a single district for the MHA Nation. We appreciate your support. Thank you.

Three Affiliated Tribes of the MHA Nation Proposed Sub-District



District	4 - Sub District	4A - Full District
Population	8353	17065
Deviation	65	489
% Deviation	0.007843	0.0295
18+_Pop	5712	12567
% 18+_Pop	0.683826	0.73642
NH18+_Wht	1462	7921
% NH18+_Wht	0.255952	0.630302
18+_AP_Ind	3838	4044
% 18+_AP_Ind	0.671919	0.321795

EXHIBIT 2



North Dakota Legislative Council

Prepared for the Redistricting Committee
LC# 23.9105.01000
August 2021

LEGISLATIVE REDISTRICTING - BACKGROUND MEMORANDUM

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

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

REDISTRICTING IN NORTH DAKOTA North Dakota Law

Constitutional Provisions

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

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

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

Statutory Provisions

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

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

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

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

Redistricting History in North Dakota

1931-62

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

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

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

1963

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

1965

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

1971

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

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

1973-75

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

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

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

1981

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

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

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

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

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

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

1991-95

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

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

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

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

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

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

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

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

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

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

2001

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

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

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

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

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

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

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

2011

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

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

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

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

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

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

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

FEDERAL LAW

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

Population Equality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Partisan Gerrymandering

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

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

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

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

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

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

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

Multimember Districts and Racial or Language Minorities

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

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

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

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

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

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

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

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

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

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

POSSIBLE ISSUES TO ADDRESS

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

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

EXHIBIT 3

September 28, 2021

North Dakota Legislative Redistricting Committee

Testimony of Lisa DeVille

Mandaree, ND

Mandan, Hidatsa, Arikara Nation

Chairman Devlin and members of the legislative redistricting committee,

Dosha, my name is Lisa DeVille and I am a citizen of the Mandan, Hidatsa, and Arikara Nation in Fort Berthold. I grew up in Mandaree where I and my family are lifelong residents of our ancestral lands. Thank you for the opportunity to testify today.

The Mandan, Hidatsa, and Arikara Nation is a federally recognized tribe in the state of North Dakota, located in the counties of Dunn, Mountrail, McKenzie, Mercer, Ward and McLean. The Mandan, Hidatsa, and Arikara Nation is a sovereign nation governed by its Tribal Business Council. We have an enrollment of nearly 17,000 members. Under the 2020 Census, the population of the reservation was 8,350. The total population in North Dakota increased overall between 2010 and 2020 from 672,591 residents to 779,094, representing a 15.8% increase. The Native American population outpaced the state, and grew by 29.7% in the last decade. The Fort Berthold Reservation is within North Dakota State District 4, which elects two members to the State House (at-large), and one member to the Senate.

Currently, District 4 is represented by three Republicans: Senator Jordan Kannianen, Representative Clayton Fegley, and Representative Terry B. Jones. Prior to the 2016 election, the District had a Democratic senator and one Democratic representative for several years. In 2020 I challenged Senator Kannianen and unfortunately was not able to be elected even though portions of the district on the reservation strongly supported myself and House of Representatives candidate Thomasina Mandan.

Every decade new district lines are drawn that give each of our votes equal weight, each of our voice's equal stature, and each of our communities equal resources. Voters pick our leaders, and our leaders should not pick their voters. To determine how we will be represented and how funds for schools, hospitals, and other essential services will be allocated we need legislators that work with tribal citizens as well as government.

Representation at state, county, and federal level is not all about oil and gas. We Native American/Indigenous people have our own voice. The Non-Native American have been speaking for us since they landed here.

Recently, I gave a short comment on redistricting during the ND and MHA Tribal relations meeting. I support implementation of subdistricts. We need to be at the table when decisions are made that impact our lives and possibly the lives of future generations. There should be no assumption that ND knows what is best for us Indigenous people when our culture, tradition, and beliefs are different and often not taken into account when decisions are made.

Again, we need to be at the table and we need fair representation in North Dakota.
Maacagiraac-Thank you for this opportunity to speak to you.

EXHIBIT 4



North Dakota Native Vote
PO Box 226
Bismarck, North Dakota
58502
info@ndnativevote.org

9/15/2021

North Dakota Legislative Redistricting Committee

Testimony of Nicole Donaghy North Dakota Native Vote, Executive Director

Chairman Devlin and members of the Redistricting Committee,

My name is Nicole Donaghy, I'm a citizen of the Standing Rock Nation and a descendant of the Turtle Mountain Band of Chippewa and the Mandan, Hidatsa, and Arikara people. I live in Lincoln, North Dakota and I'm the Executive Director of North Dakota Native Vote.

North Dakota Native Vote is a non-profit, non-partisan grassroots organization that initially formed in response to the 2018 US Supreme Court decision to uphold the voter identification law that had the potential to disproportionately adversely affect over 5,000 Native voters in North Dakota. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota.

I joined North Dakota Native Vote in 2018 because the imbalance of power in our state was very apparent to me after being a community organizer for years. I've worked on education issues, protection of land, air, and water, and now civic engagement. I soon realized that the issues that I was working on often stem from a lack of inclusion and representation in the decision making processes.

In North Dakota, the Native American population grew by 29.7% in the last decade, it is North Dakota Native Vote's ask that the Committee take into consideration the perspectives of each of the Tribes as well as tribal members in the redistricting process.

We are asking the Committee to adopt single-member House districts to prevent the dilution of Native American votes. Tribes and tribal members in North Dakota have had to fight for the right to vote, whether by defeating voter I.D. laws, opposing district lines that dilute the Native American vote, or by demanding on reservation polling locations. As we have seen in our early beginning as an organization, tribal citizens in North Dakota have been overburdened by policy that is created by decision makers with little input from their tribal constituents. At-large voting systems, like the current one used for the North Dakota State House, violate the Voting Rights Act when they dilute minority voting power by preventing tribal members from electing the candidate of their choice.

Our State Constitution in Article IV subsection 2, paragraph 2 states "The legislative assembly may... provide for the election of senators at large and representatives at large or from subdistricts from those districts." North Dakota Century Code 54-03-01.5 Legislative subsection 2 also

EXHIBIT 5

Redistricting Overview

Redistricting Committee
August 2021

Redistricting Plan Directive

House Bill No. 1397 (2021)

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

Requirements of the Constitution of North Dakota

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

Requirements of the Constitution of North Dakota

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

Requirements of the Constitution of North Dakota

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

Requirements of the North Dakota Century Code

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

Requirements of the North Dakota Century Code

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

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

Requirements of the North Dakota Century Code

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

Redistricting History in North Dakota

1931-62

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

1963-75

- Nearly constant state of litigation.

1981

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

Redistricting History in North Dakota

1991

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

2001

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

2011

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

Federal Law

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

Federal Law – Population Equality

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

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

Federal Law – Population Equality

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

Federal Law – Partisan Gerrymandering

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

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

Federal Law – Multimember Districts and Racial or Language Minorities

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

Federal Law – Multimember Districts and Racial or Language Minorities

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

A minority group challenging a redistricting plan must prove:

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

Federal Law – Multimember Districts and Racial or Language Minorities

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

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

Common types of gerrymandering include:

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

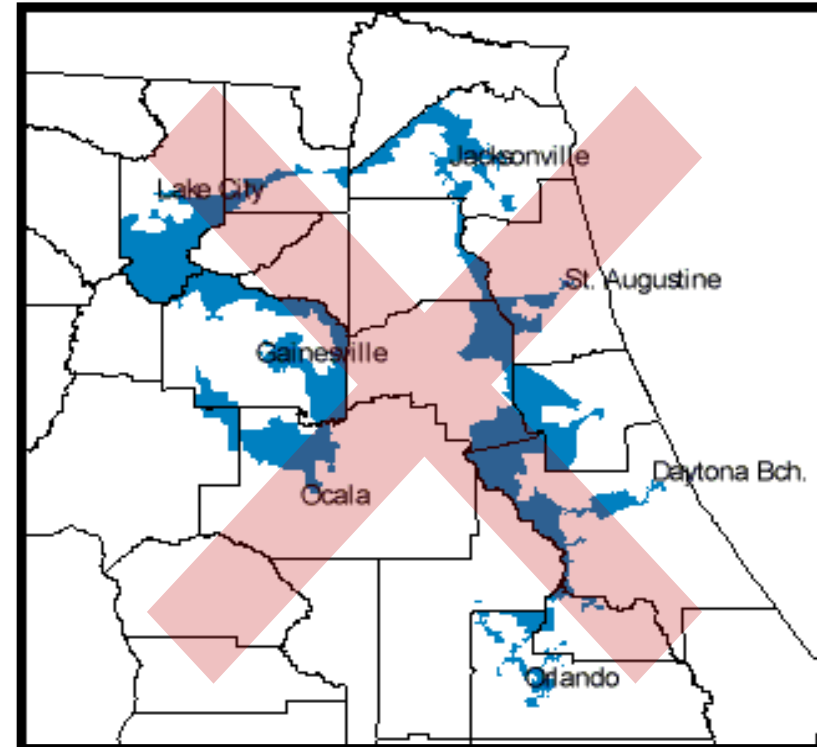
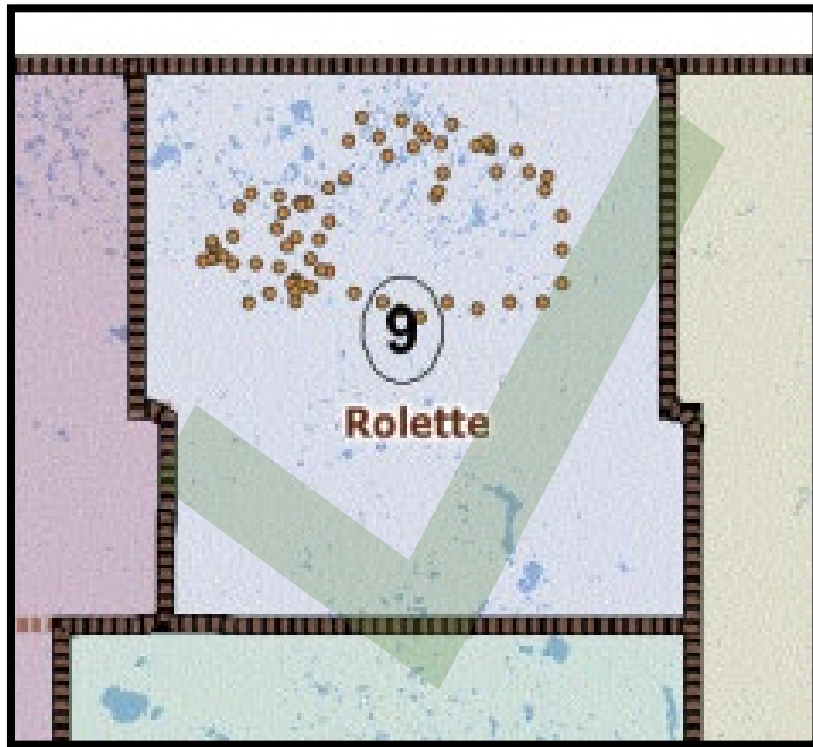
Federal Law – Traditional Districting Principles

Items identified as traditional districting principles include:

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

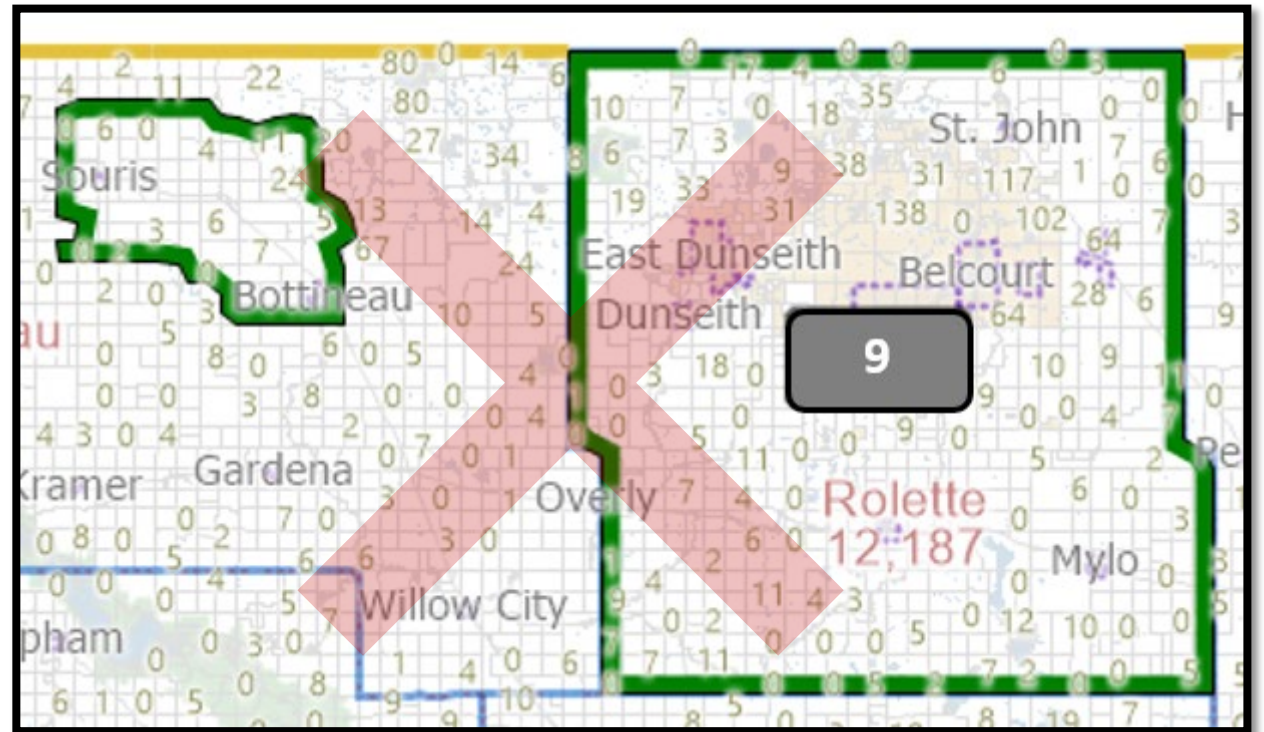
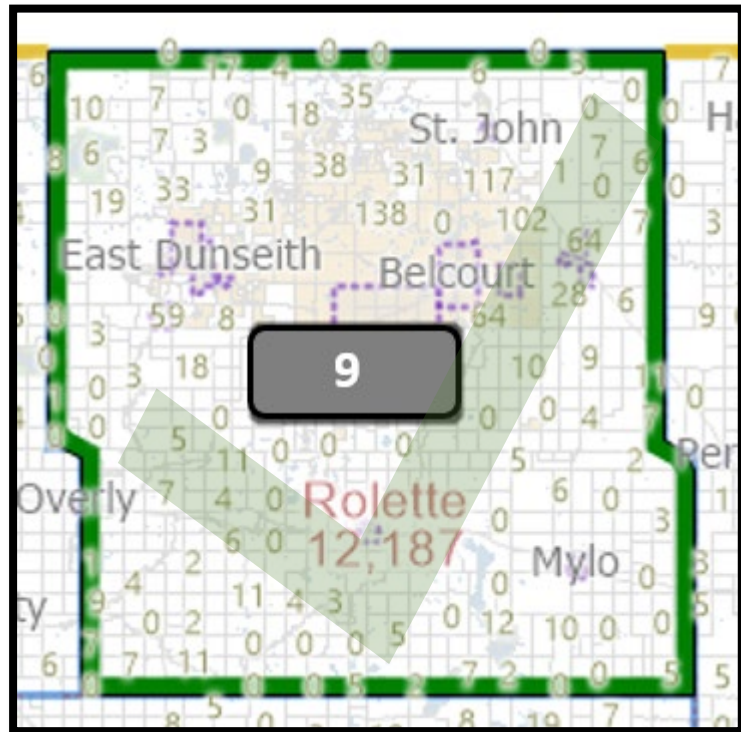
1. Compactness

Districts must be geographically compact.



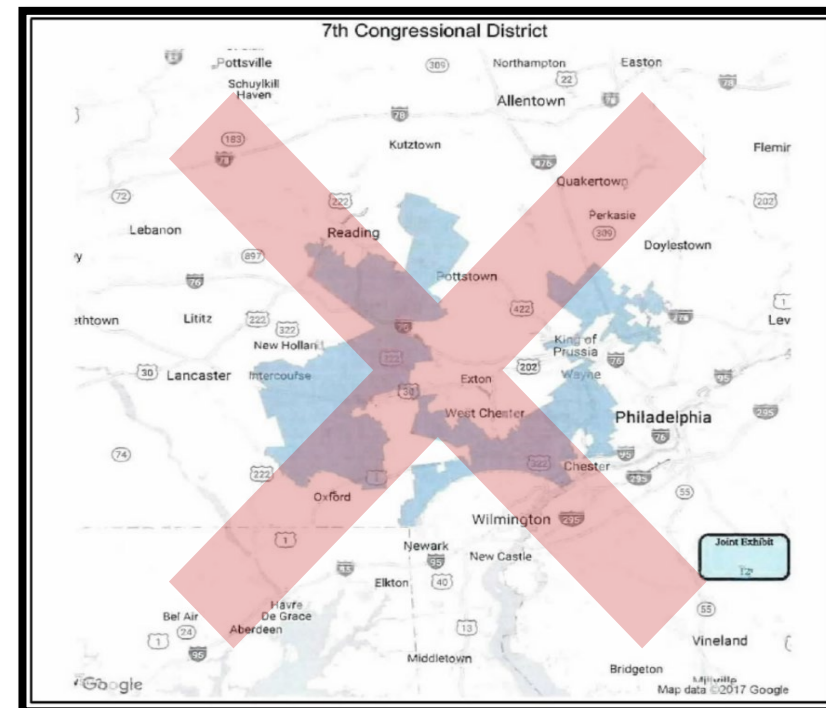
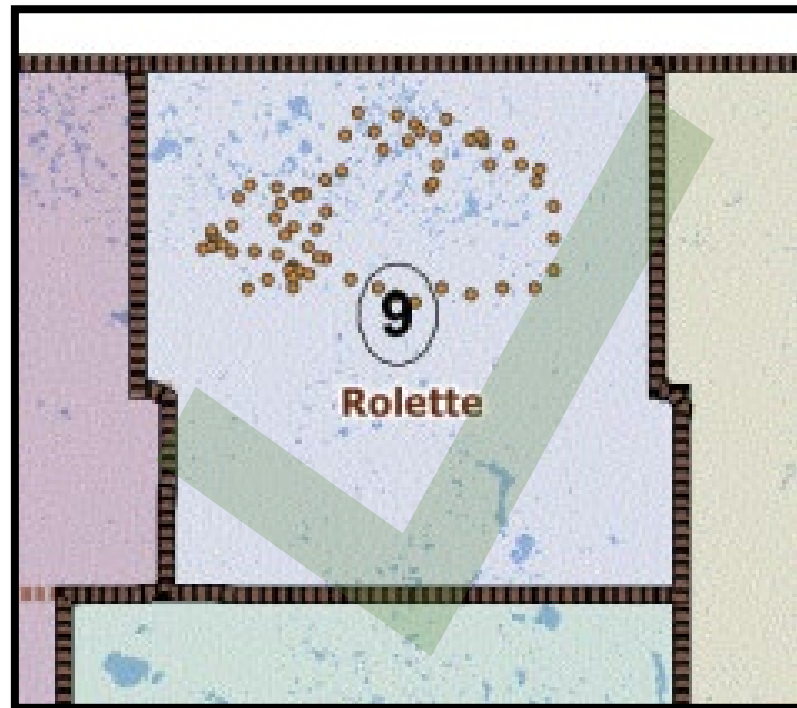
2. Contiguity

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



3. Preservation of Political Subdivision Boundaries

Avoid excessively splitting political subdivision boundaries.



4. Preservation of Communities of Interest

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

5. Preservation of Cores of Prior Districts

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

6. Protection of Incumbents

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

Issues to Address

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

EXHIBIT 6



Redistricting Presentation to the North Dakota Legislature

Ben Williams

Program Principal, Elections and Redistricting, NCSL

August 26, 2021



Strengthening
the legislative
institution.

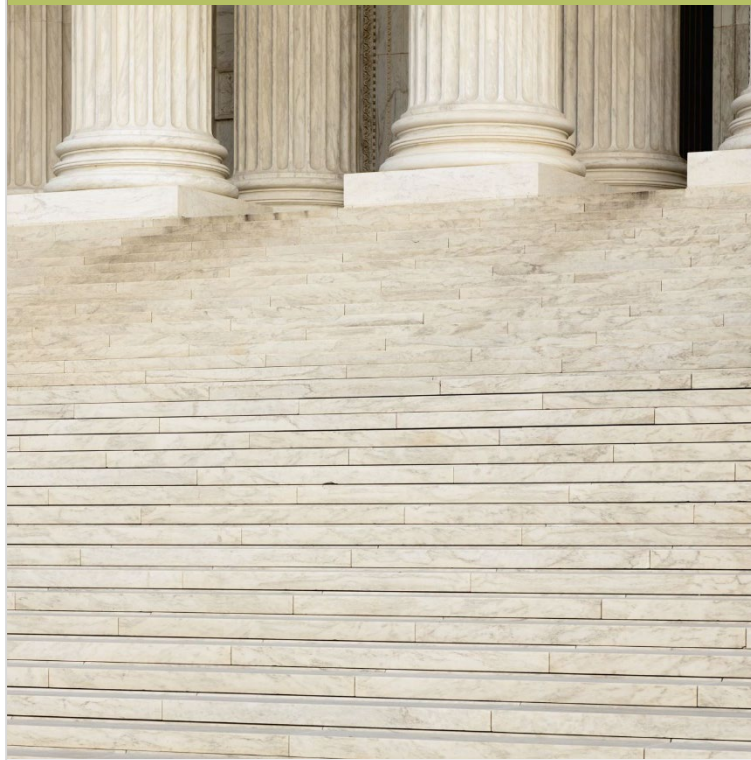
Serving 7,383
legislators and
25,000 staff.

Today's Outline

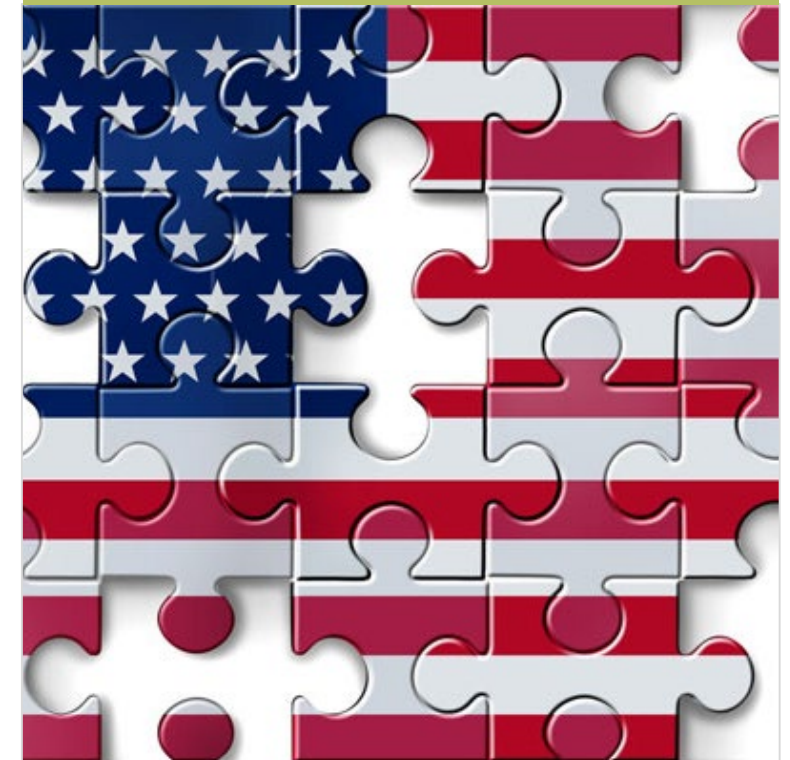
Fundamentals & Census

United States®
Census
2020

Legal Doctrines



Criteria/Principles



Why We Redistrict



Fundamentals: Who is a person?



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

Fundamentals: Who Draws Legislative Districts

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

- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission



Fundamentals: Who Draws Congressional Districts

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

- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission
- At-large district



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



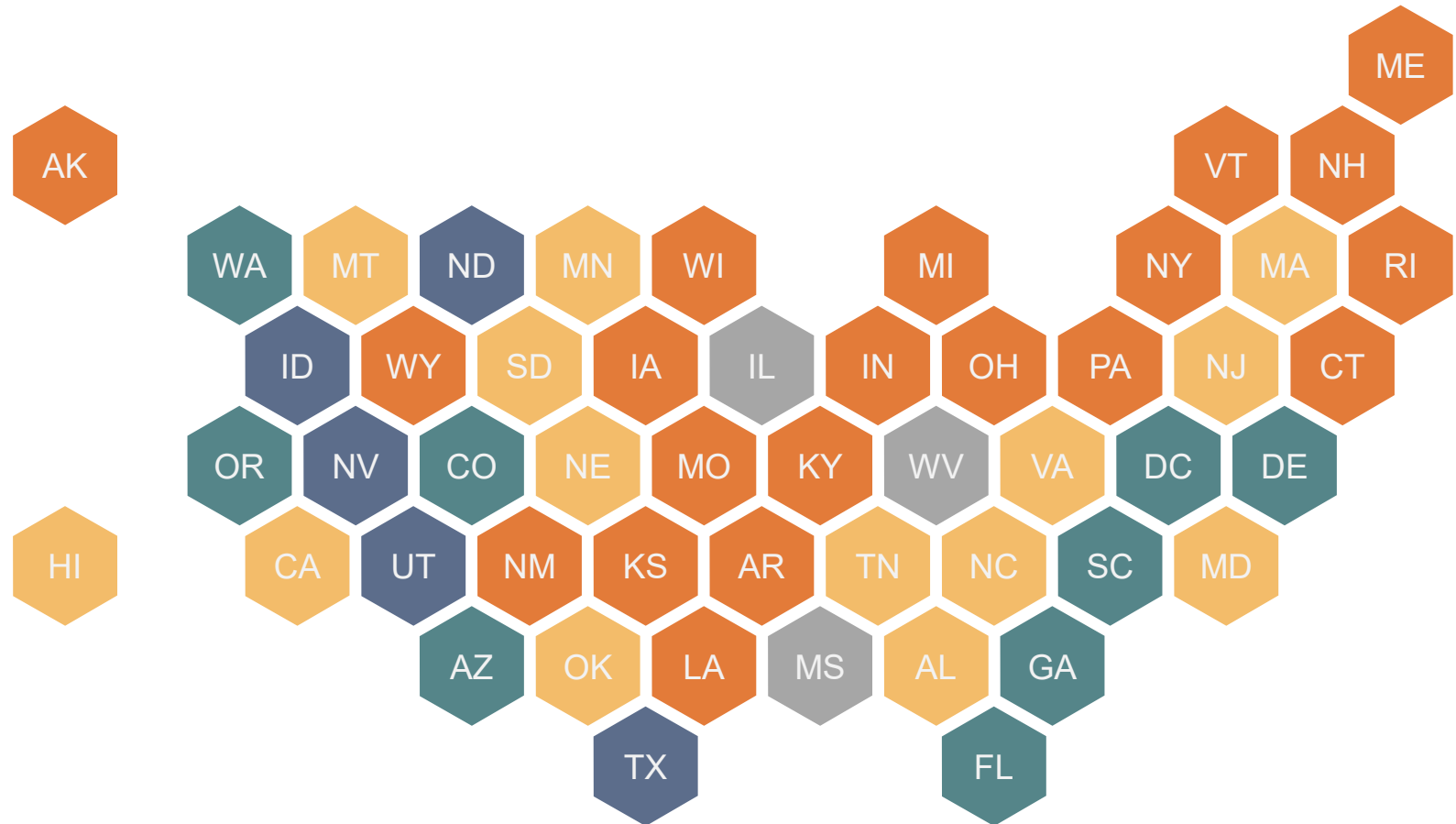
2020 Census Takeaways

2020 Census Results

Population Changes by State

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

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

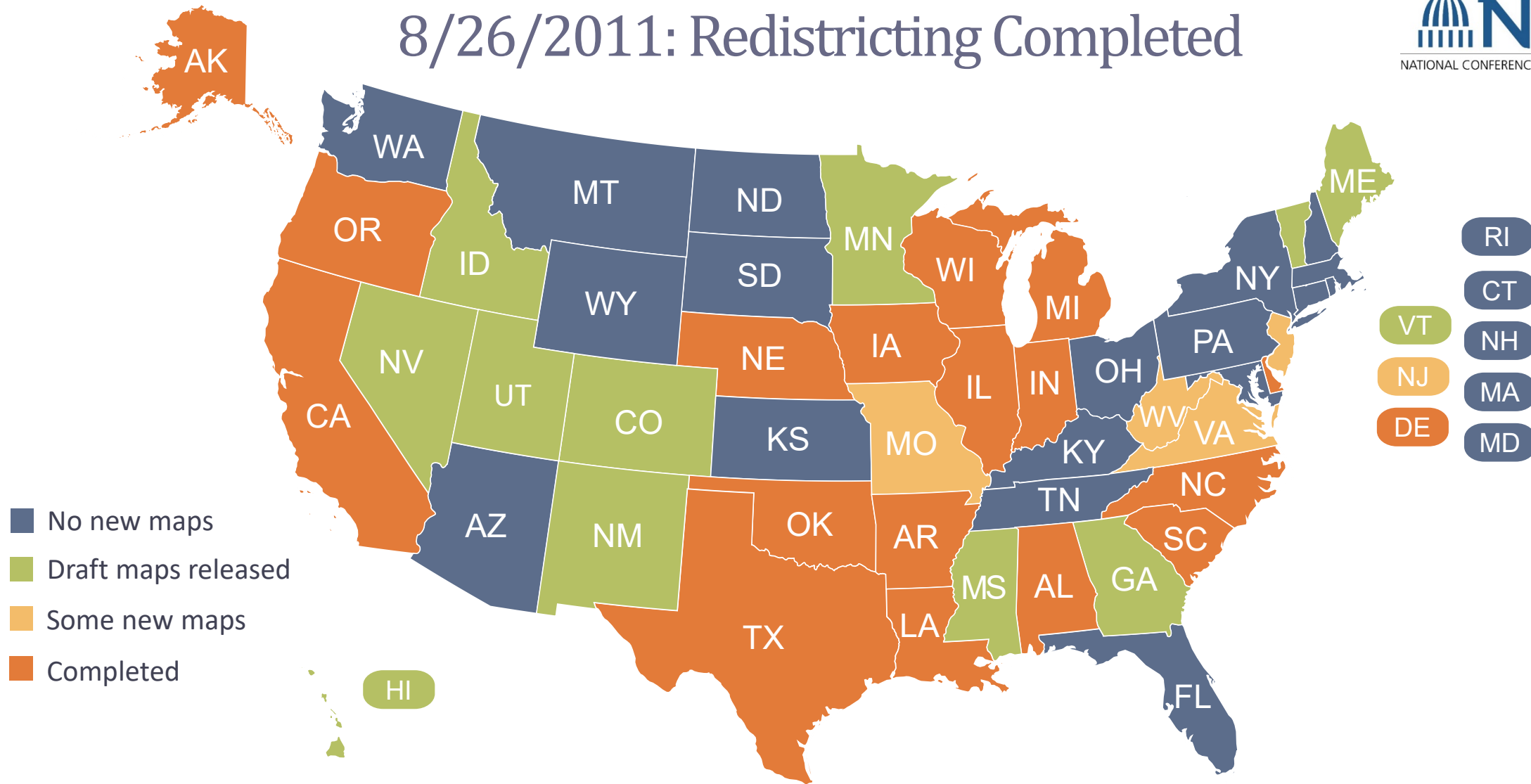


- The pandemic
- Fires
- Floods
- Policy changes



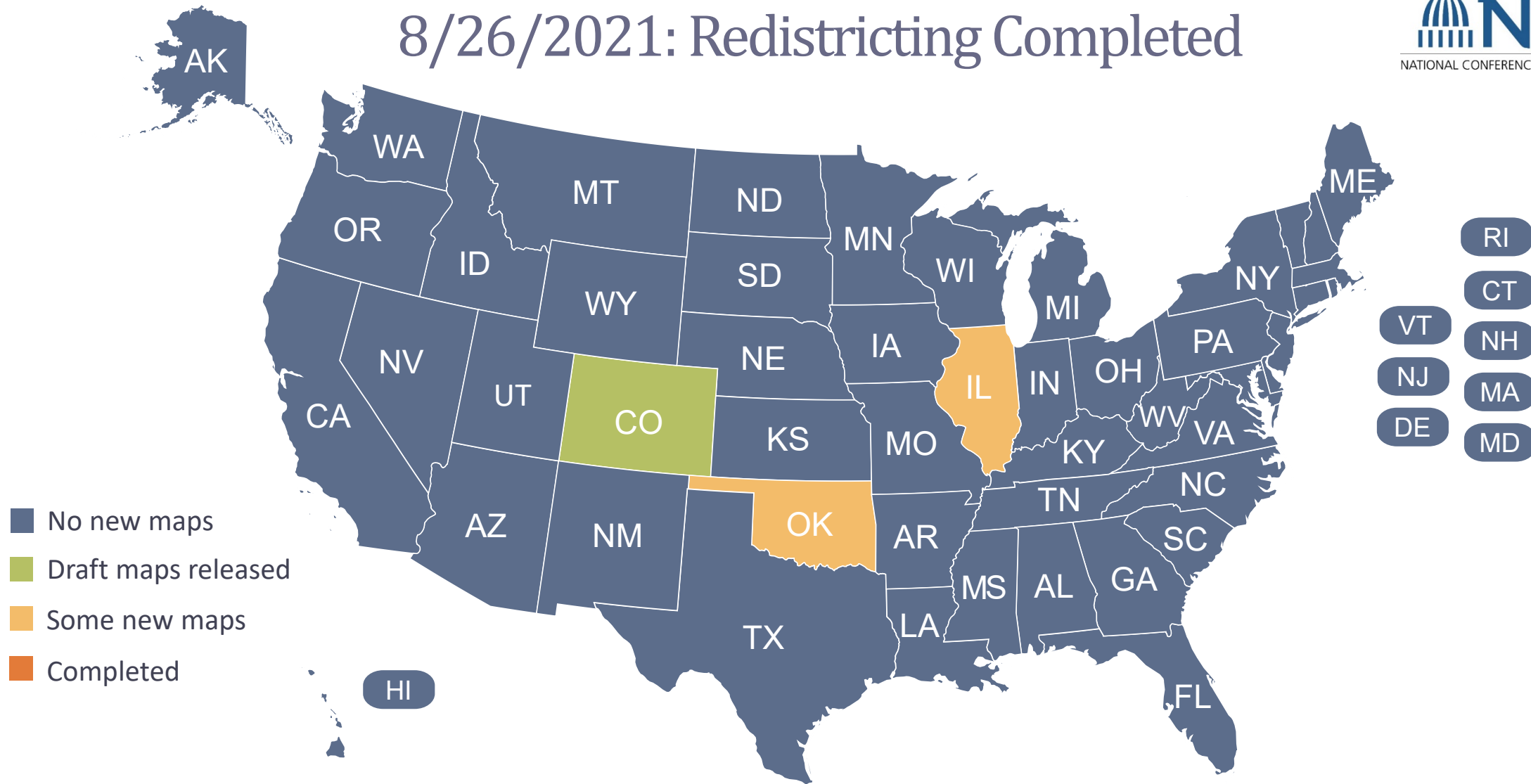
Delays

8/26/2011: Redistricting Completed



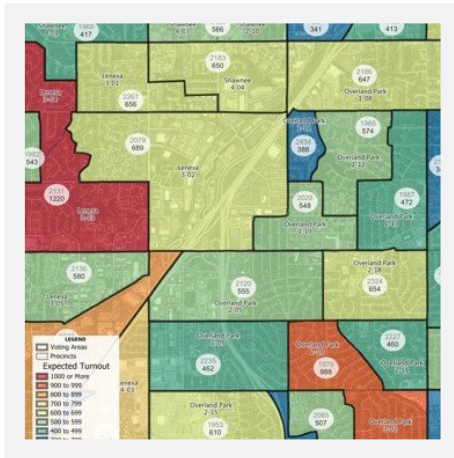
Source: All About Redistricting; Ballotpedia

8/26/2021: Redistricting Completed



The Problem With Delays: Less Time to Redistrict

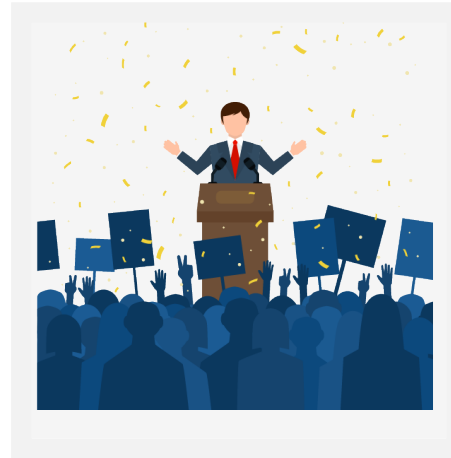
It isn't just drawing new maps



Processing



Filing Deadlines



Residency

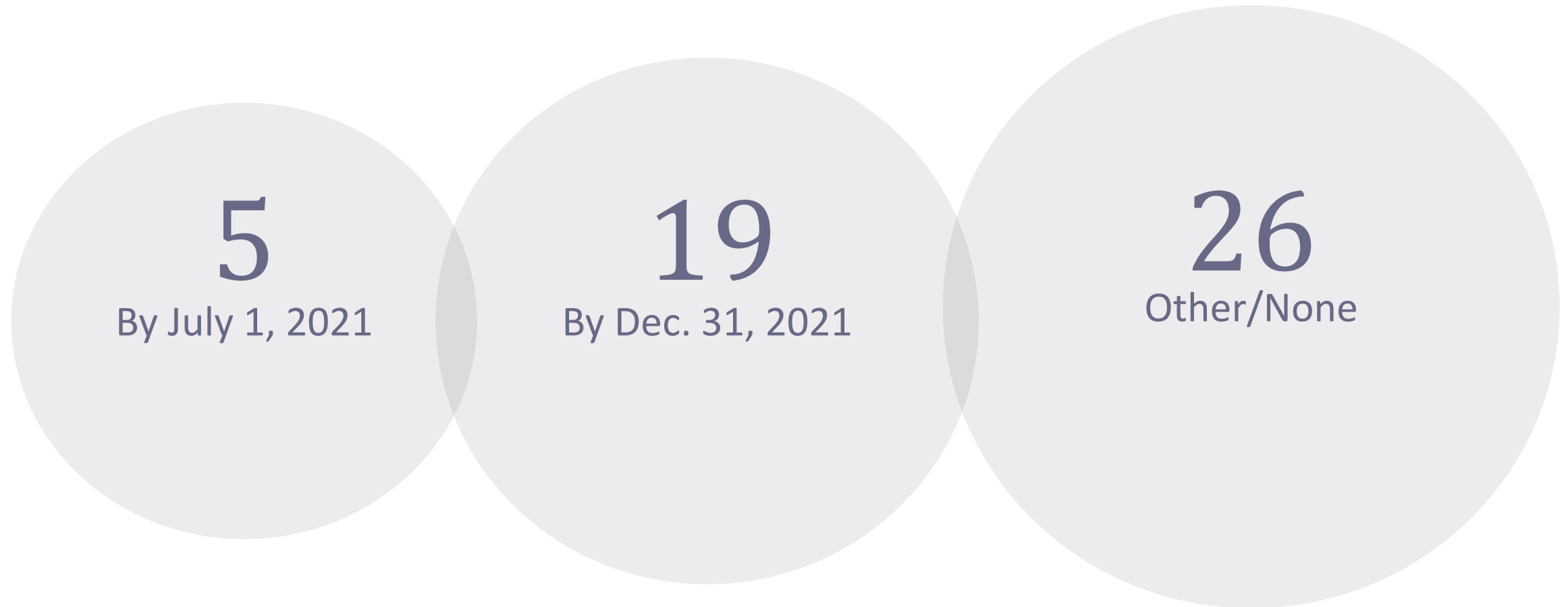


Local Prep



Primaries

State Redistricting Deadlines by Date



Disclosure avoidance

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

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



Data Suppression

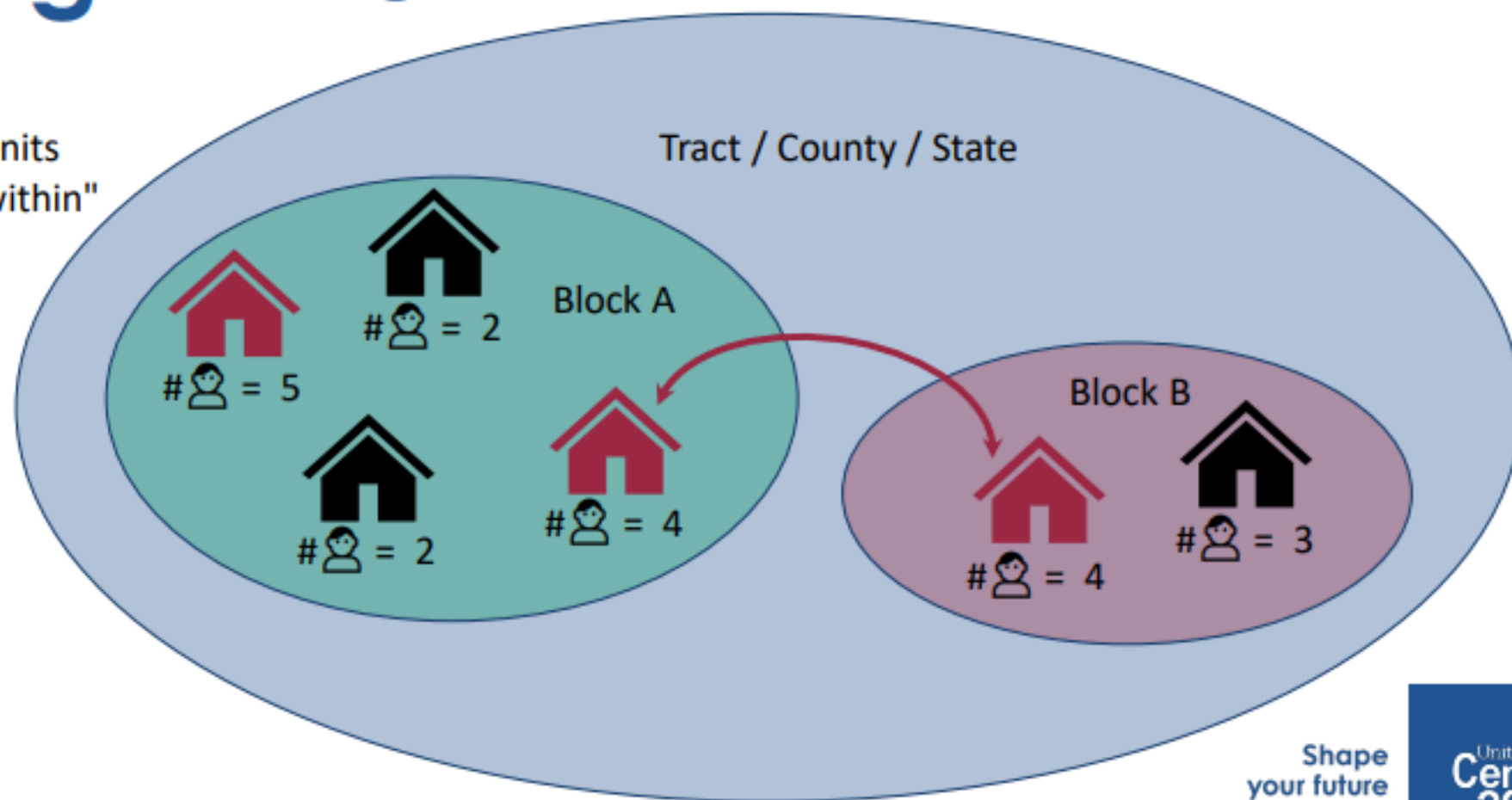
Fake Census Block Populations				
8	18	13	2	15
42	1	3	16	18
4	14	15	6	3
24	18	6	1	3
14	4	8	2	3

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

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

Swapping Primer

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



Noise

Inserting error to increase uncertainty.

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



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

Using differential privacy to protect data means...

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

Legal Doctrines

Federal and State



United States Constitution



Federal Statutes



State Constitutions



State Statutes/Common Law



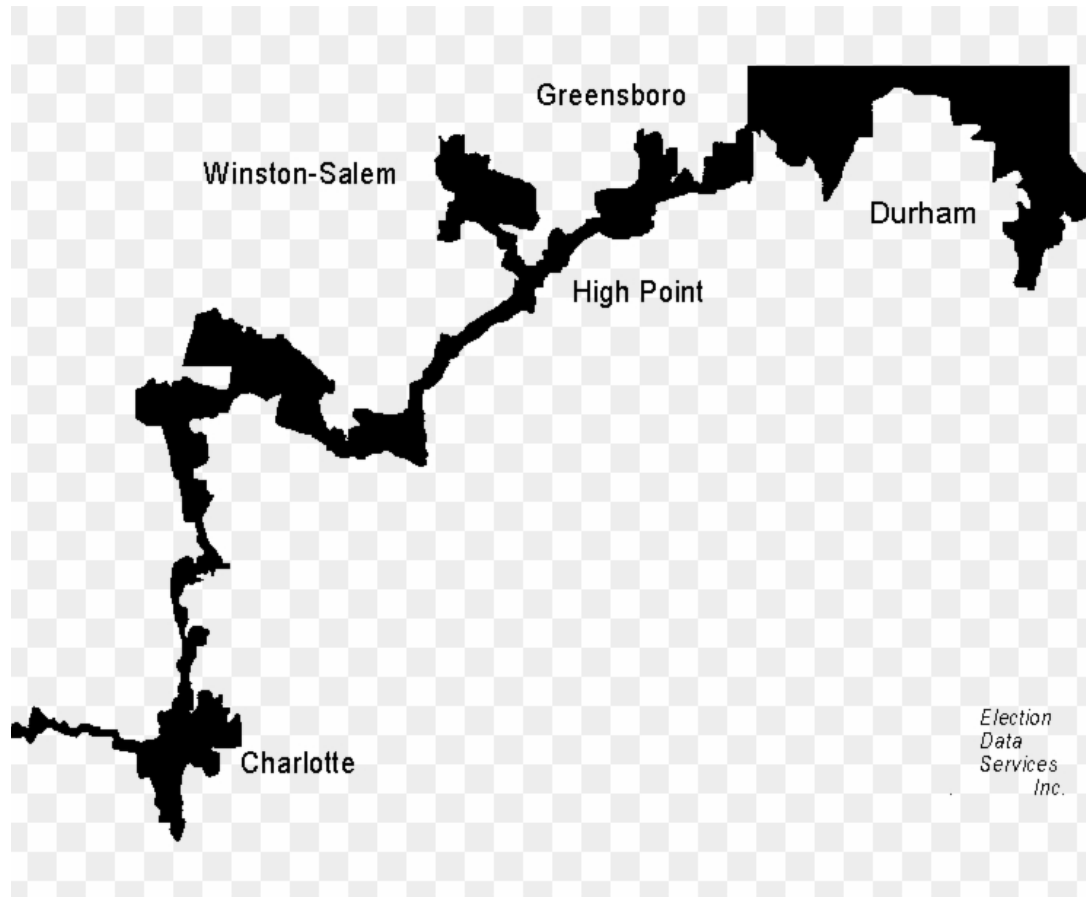
Guidelines

US Constitution: One Person, One Vote



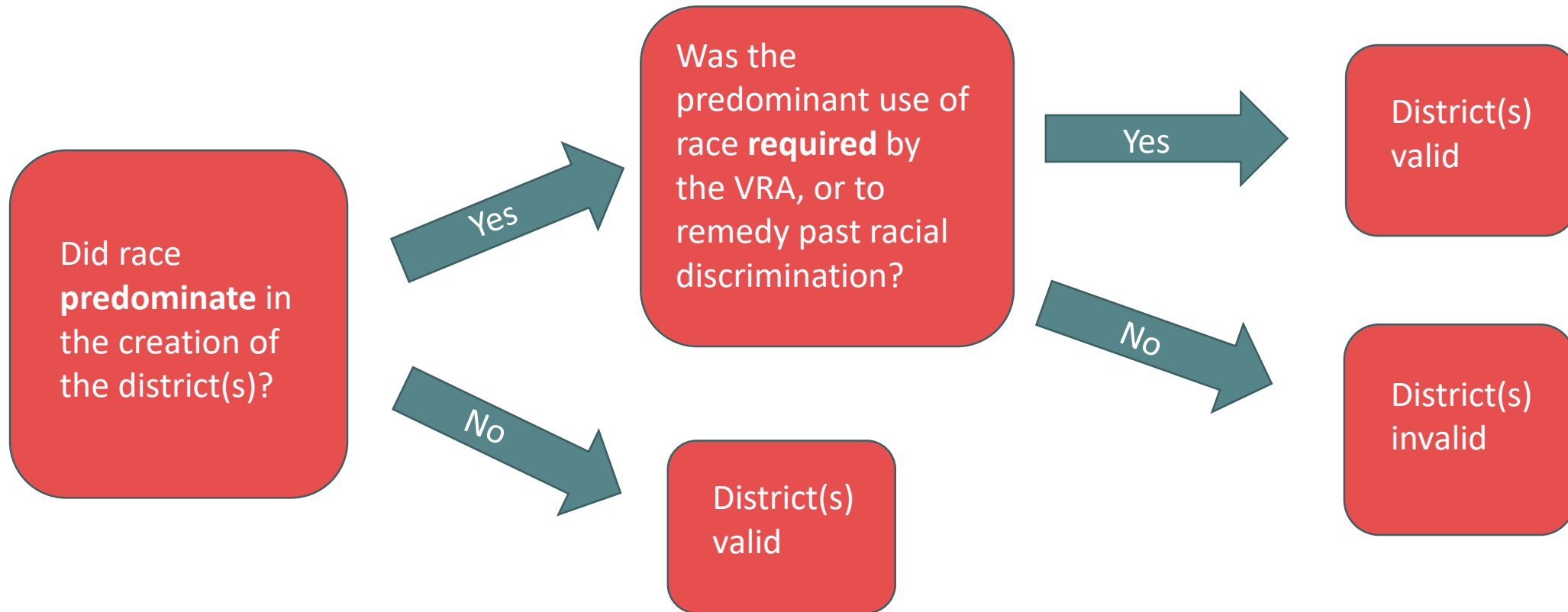
- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
 - Congressional Districts: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

US Constitution: Racial Gerrymandering



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

US Constitution: Racial Gerrymandering



US Constitution: Partisan Gerrymandering



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

Voting Rights Act of 1965



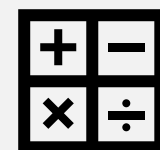
Section 2

Private and Federal
Cause of Action



Section 3

The “Bail-In” Remedy for
Violating Federal Law



Section 4

The Preclearance
Coverage Formula



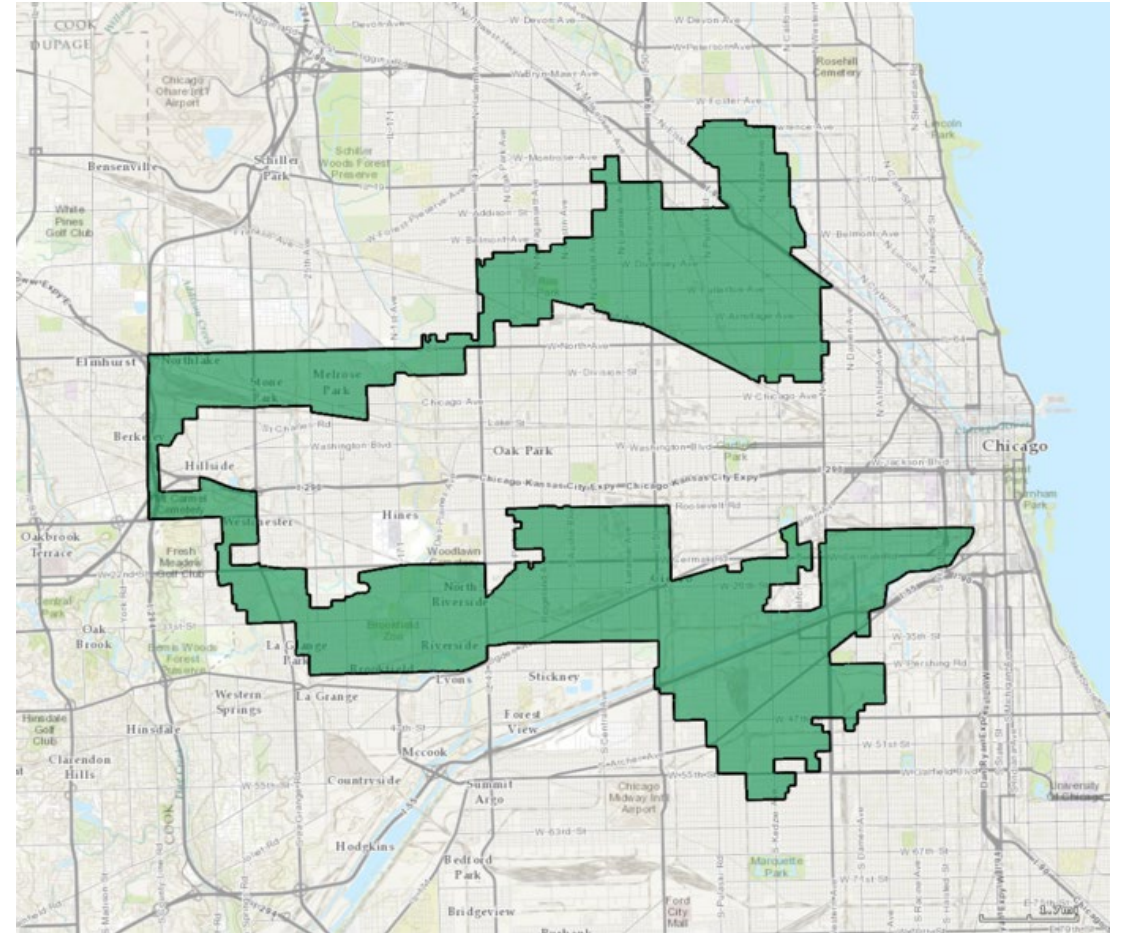
Section 5

The Preclearance
Regime

Key Sections of the VRA

Section 2: Overview

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



Section 2: When Applies

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

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

Senate Factors

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

Key Distinction: Vote Denial vs. Vote Dilution

Vote Denial (Elections)

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

Vote Dilution (Redistricting)

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

Section 3: “Bail-In”

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



Sections 4 and 5

SUPREME COURT OF THE UNITED STATES

Syllabus

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

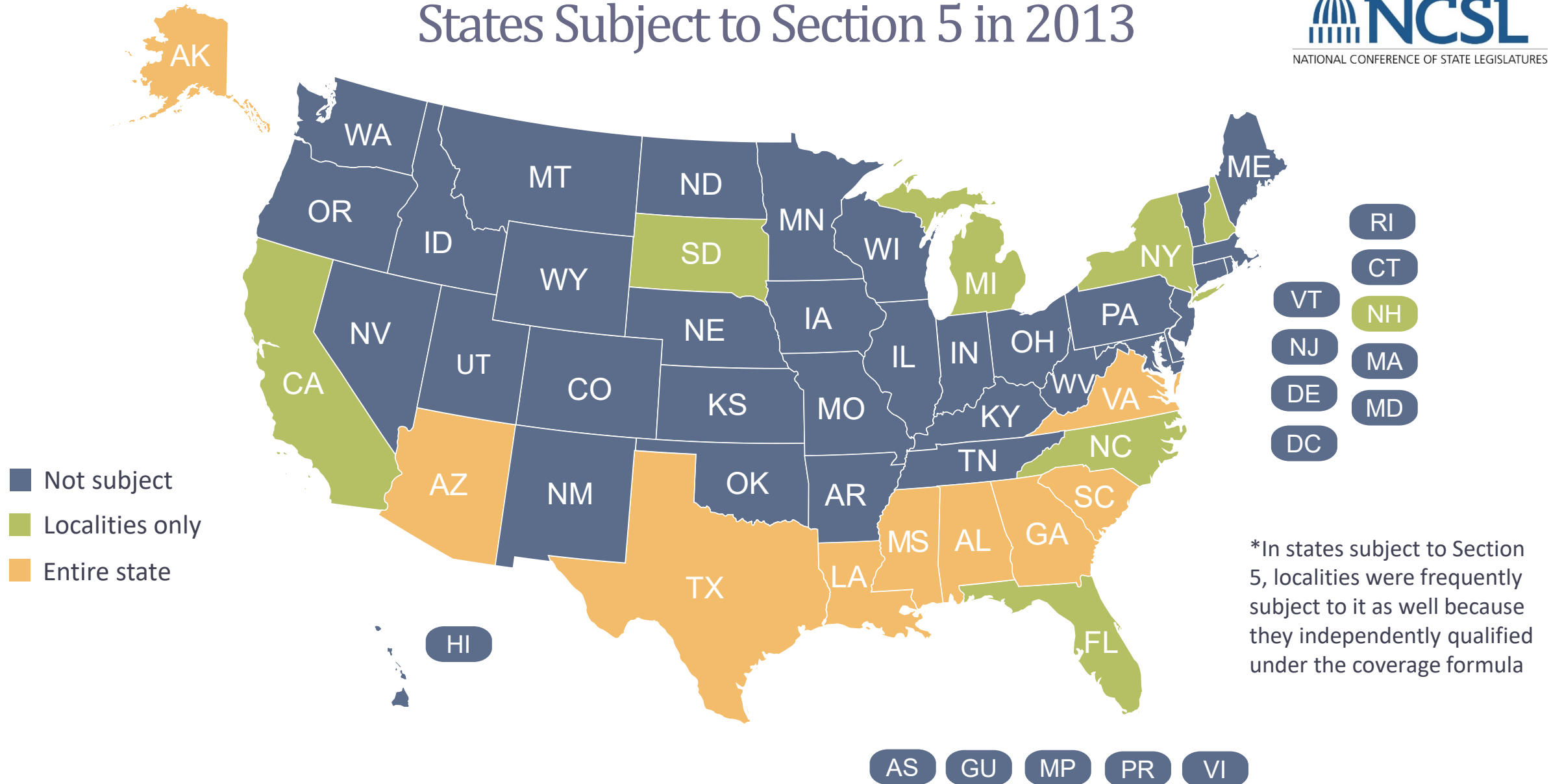
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

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

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



States Subject to Section 5 in 2013



State Constitutions: Free and Equal Elections Clauses

POLITICO



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

Supreme Court won't block new Pennsylvania congressional map

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

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

Criteria/Principles

Federal Statute: Single-Member Districts

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

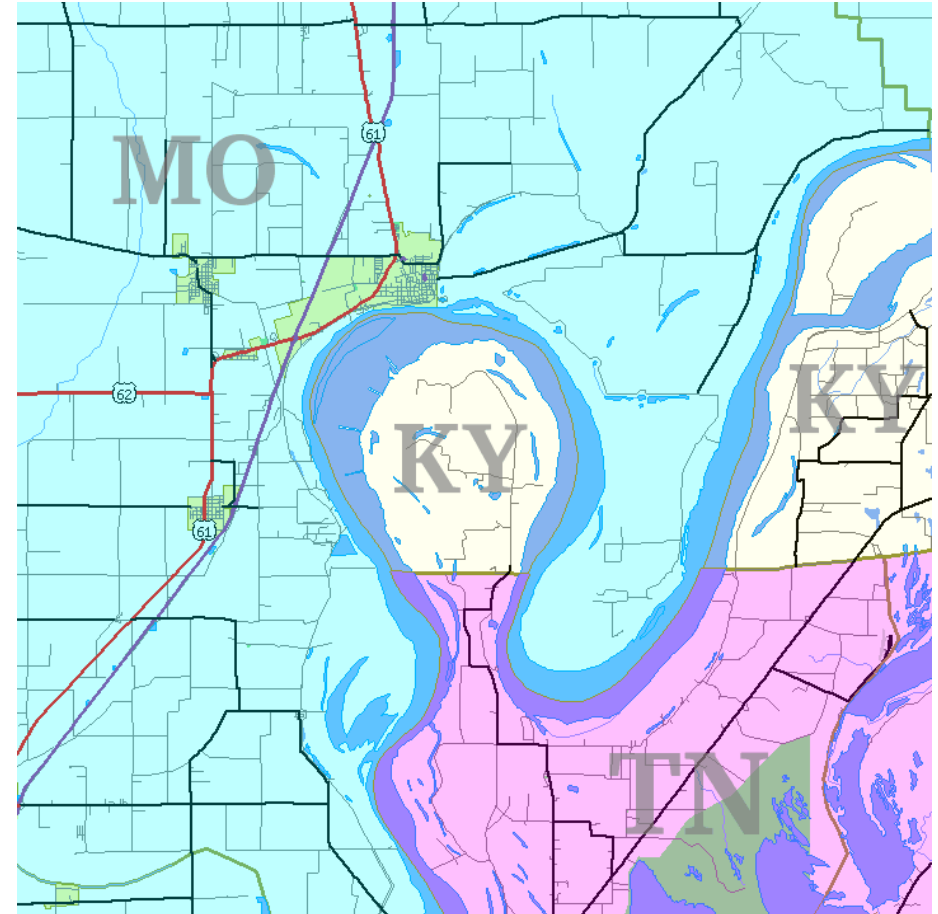
*Criteria/Principles: Compactness

- Common traditional principle (40 states)
- Two common ways to measure:
 - Polsby-Popper : $\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$
 - Reock : $\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$



*Criteria/Principles: Contiguity

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



Criteria/Principles: Preserving Political Subdivisions

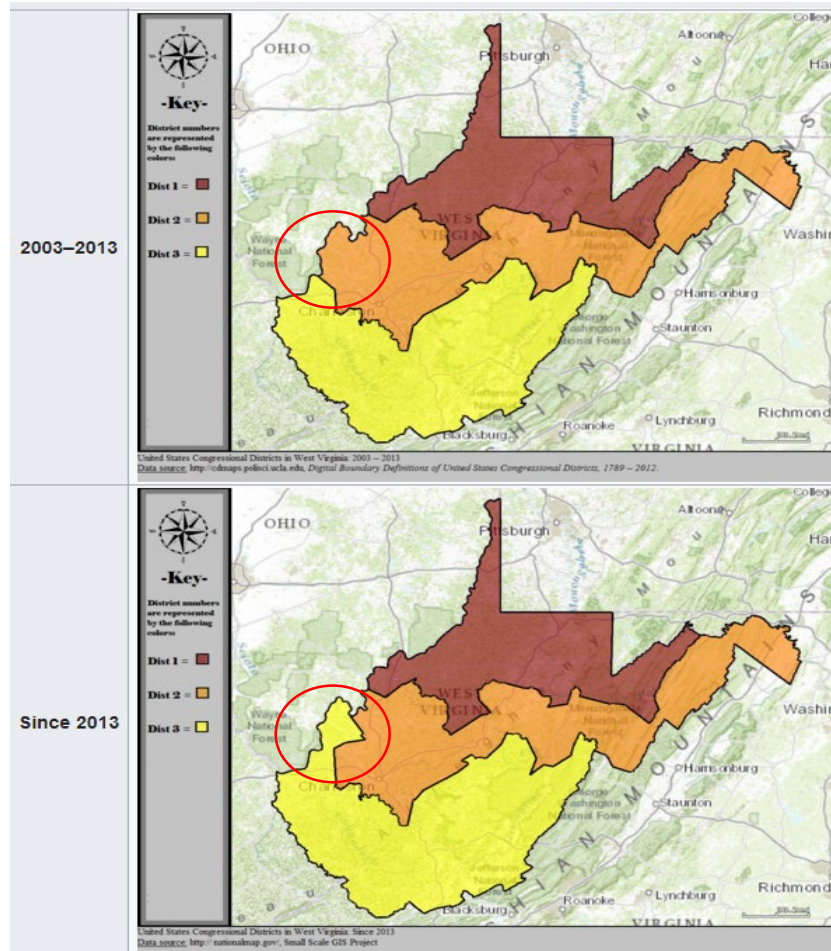
General Application

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

Specific Application: Counties

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

Criteria/Principles: Preserving Cores of Prior Districts



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

Other criteria NCSL tracks

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

All of this could change via litigation...

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

Stay Connected

- Learn about NCSL training
- Subscribe to policy newsletters
- Read State Legislatures magazine
- Bookmark the NCSL Blog
- Listen to “Our American States” podcast
- Attend a meeting or training
- Follow @NCSLorg on social media





Ben Williams

Program Principal, Elections and Redistricting

Reach out anytime!

Email

ben.williams@ncsl.org

Phone

303.856.1648

EXHIBIT 7

Legal Considerations for Subdistricting

Redistricting Committee
September 2021

Subdistricting Multi-Member Districts into Subdistricts

- Multi-member districts are not inherently unlawful but may raise issues under federal law.
- Redistricting bodies may use multi-member or single-member districts for several reasons.
- Federal law provides additional considerations for districting decisions involving race as a factor.
- Subdistricts must comply with the one-person, one-vote principle so the populations in subdistricts must be approximately equal.

Fourteenth Amendment

- Generally, race may not be the "predominant factor" in the creation of a particular district.
- However:
 - Race may be the predominant factor if the district is "narrowly tailored" to achieve a "compelling state interest;" and
 - Race may be one factor out of multiple factors considered in the creation of a particular district.

Compelling State Interest

- Courts have said compelling state interests include:
 - Complying with Section 2 of the federal Voting Rights Act; and
 - Remedying past discrimination.

Compelling State Interest: Complying with the Voting Rights Act

- Complying with the Voting Rights Act can be a compelling state interest if there is direct evidence the votes of members of a racial minority would be diluted without a majority-minority district.
- Look to the Gingles Preconditions, which are covered in an upcoming slide, to help with this analysis.

Compelling State Interest: Remediating Past Discrimination

To show a compelling state interest in remediating past discrimination:

- The state must identify the past discrimination, which may have been public or private, with some specificity, and
- The redistricting body must have had a "strong basis in evidence" to conclude remedial action was necessary before engaging in the remedy.

Narrowly Tailored

- The remedy needs to correct the identified problem without going too far.
- To show a plan is narrowly tailored to complying with the Voting Rights Act, the state needs to show it "has good reason to think that all the Gingles preconditions were met..."
 - If the Gingles preconditions were met, courts then may consider the Senate Factors.

Gingles Preconditions

- The minority group is sufficiently numerous and compact to form a majority in a single-member district.
- The minority group is "politically cohesive" (i.e., tends to vote similarly).
- The majority group votes as a block (i.e., tends to vote similarly) so the minority group's candidate of choice usually is defeated.

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Election procedures that diluted the minority vote
- Minority exclusion from the candidate slating process
- Effects of discrimination in health, education, and employment
- Subtle or overt racial appeals in campaigns
- Lack of elected officials' responsiveness to needs of minority
- Extent of minority success being elected to public office

Questions?

EXHIBIT 8



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

**67th Legislative Assembly
Redistricting Committee
September 29, 2021**

Testimony of Chairman Mark Fox

Chairman Devlin and members of the Redistricting Committee, I am Mark Fox, Chairman of the Tribal Business Council of the Mandan, Hidatsa, and Arikara Nation. I am respectfully submitting this written testimony as follow-up to the in-person testimony I provided to the Committee on September 23, 2021. During my testimony on September 23rd, I advocated for the creation of a single-member (or sub-district) for the State House district that encompasses the Fort Berthold Reservation. I am resubmitting the proposed district map for District 4, which includes a proposed sub-district line for a single-member House district that would provide the MHA Nation, its members, and the surrounding communities of interest with the best opportunity to elect the representative of their choice.

The proposed sub-district follows the boundaries of the Fort Berthold Reservation; the creation of such a majority-minority sub-district is required under Section 2 of the Voting Rights Act. Section 2, as interpreted by the United States Supreme Court in *Thornburg v. Gingles*, 470 U.S. 30 (1986), requires the establishment of a majority-minority district when: 1) the minority group “is sufficiently numerous and compact to form a majority in a single-member district; 2)

the minority group is “politically cohesive; and 3) the “majority votes sufficiently as a bloc to . . . defeat the minority’s preferred candidate.”

Based on the Committee’s prior discussion, the Committee is aware already from the 2020 Census that the number of tribal members on the Fort Berthold Reservation is sufficiently numerous and compact to form a majority in a single-member district, and that a sub-district following the lines of the reservation would form a perfectly populated sub-district. There is also ample evidence of voting history in District 4 to show that tribal member candidates and tribal member candidates of choice are routinely outvoted by the majority vote in the district.

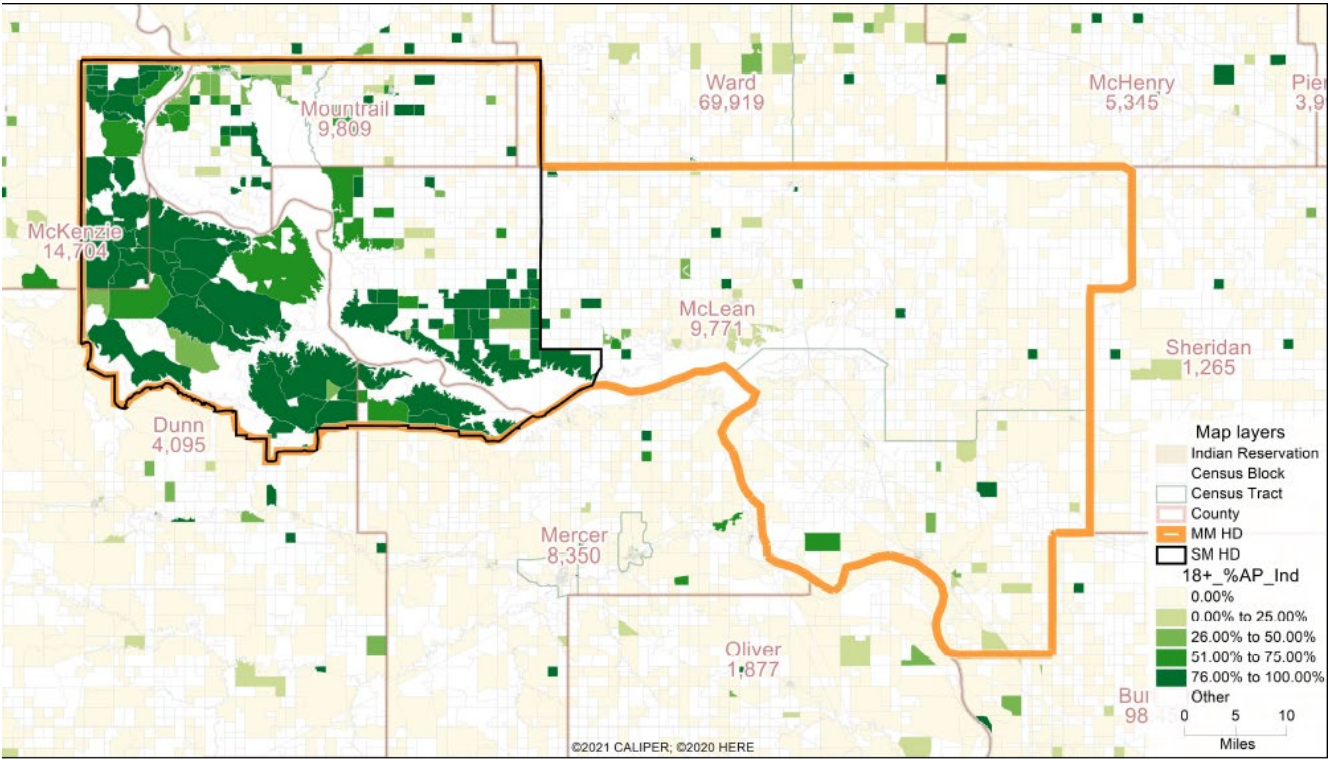
Proven history of bloc voting occurred on the Fort Berthold Reservation in the City of Parshall, e.g., Parshall School Board in 1990. I shared in prior testimony my personal experience when I sought election to the Parshall School Board that nearly five hundred votes were cast, in stark contrast to average voter turnout of less than one hundred when non-native candidates were on the ballot. Additional examples include two other tribal members running for the State House in 2020 and 2016, respectively. Both candidates, Thomasina Mandan and Cesar Alvarez easily won the precincts on the reservation but lost in the overall election. If single member districts were utilized, it is likely both of those candidates would have won. The MHA Nation seeks this Committee’s support of Section 2 of the Voting Rights Act in creating a sub-district for District 4 that includes the Fort Berthold Reservation.

Below is the proposed district and sub-district map. The proposed sub-district contains a Native American VAP of over 67%. The creation of such a district would improve the representation of the MHA Nation’s members within the state, and the adoption of this proposed sub-district would satisfy the Legislature’s requirements under the Voting Rights Act. I strongly

encourage the Committee and the Legislature to follow the law and adopt this proposed sub-district.

Thank you for your consideration of this additional testimony.

MHA Proposed District and Sub-District Map



District	4 - Sub District	4A - Full District
Population	8353	17065
Deviation	65	489
% Deviation	0.007843	0.0295
18+_Pop	5712	12567
% 18+_Pop	0.683826	0.73642
NH18+_Wht	1462	7921
% NH18+_Wht	0.255952	0.630302
18+_AP_Ind	3838	4044
% 18+_AP_Ind	0.671919	0.321795

EXHIBIT 9



Redistricting Committee Testimony - Thursday, August 26, 2021

To: Chairman Devlin and members of the Redistricting Committee:

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

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

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

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

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

Sincerely,

Rick Gion (lobbyist #
Director, North Dakota Voters First
rick@northdakotavotersfirst.org

EXHIBIT 10

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

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

Plaintiffs,

v.

DOUG BURGUM, in his official capacity
as Governor of the State of North Dakota;
ALVIN JAEGER, in his official capacity as
Secretary of 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-PDW-CRH

**DECLARATION OF LOREN
COLLINGWOOD, PH.D.**

I, Loren Collingwood, declare as follows:

1. 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*, 39 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 personal knowledge of the facts set forth in this declaration and could and would competently testify to these facts if asked to do so.

2. Attached as Exhibit A is a true and correct copy of a document titled "Expert Report of Loren Collingwood." I prepared this report for the Intervenor Defendants in this action.

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

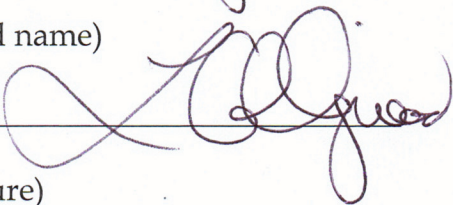
Signed on the 7 day of April, 2022 at

Albuquerque, NM, 87122.

(city or other location, and state) (country)

Loren Collingwood

(printed name)



(signature)

Respectfully submitted this 7th day of April, 2022.

/s/ Michael S. Carter

Michael S. Carter

OK No. 31961

carter@narf.org

Matthew Campbell

NM No. 138207, CO No. 40808

mcampbell@narf.org

NATIVE AMERICAN RIGHTS FUND

1506 Broadway

Boulder, CO 80301

Telephone: (303) 447-8760 (main)

Fax: (303) 443-7776

Attorneys for Defendant-Intervenors

Mark P. Gaber

DC Bar No. 988077

mgaber@campaignlegal.org

Molly E. Danahy

DC Bar No. 1643411

mdanahy@campaignlegal.org

CAMPAIGN LEGAL CENTER

1101 14th St. NW, Ste. 400

Washington, DC 20005

Telephone: (202) 736-2200 (main)

Attorneys for Defendant-Intervenors

Bryan Sells

GA No. 635562

bryan@bryansellsllaw.com

THE LAW OFFICE OF BRYAN L.

SELLS, LLC

Post Office Box 5493

Atlanta, GA 31107-0493

Telephone: (404) 480-4212 (voice and fax)

Attorney for Defendant-Intervenors

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2022-04-07

Executive Summary

In this report, I examine past election results in North Dakota's recently enacted Legislative District 4. I do this to determine if voting is racially polarized—i.e., if Native American voters generally prefer one set of candidates, and white voters generally prefer a different set of candidates. In conducting this analysis, I analyzed 27 general elections from 2014 to 2020, and used the Ecological Inference (EI) statistical method to evaluate if racially polarized voting (RPV) exists. RPV is present in every election contest.

I also conducted electoral performance analyses in the following jurisdictions: The newly adopted full District 4, as well as Subdistricts 4A and 4B. An electoral performance analysis reconstructs previous election results based on new district boundaries to assess whether a Native or white preferred candidate is most likely to win in a given jurisdictions under consideration (i.e., the newly adopted legislative map).

Overall, the accumulated evidence leads me to conclude the following:

- Racially polarized voting (RPV) is present in the areas comprising the newly adopted Legislative District 4. This is particularly clear in the 2016 elections featuring three Native American candidates.
- I used a well-known statistical method to assess RPV, which consistently demonstrated racially polarized voting patterns between Native Americans and non-Hispanic white voters.
- Native American voters cohesively prefer the same candidates for political office in the newly adopted Legislative District 4. White voters cohesively prefer a different set of candidates for political office.
- In my reconstituted electoral performance analysis, Native American-preferred candidates lose every single race in the full District 4 for a block rate of 100%; but win handily in the newly adopted Legislative Sub-District 4A (26 of 27 contests) for a block rate of 3.7%. However, Native American-preferred candidates lose 27 of 27 contests in the newly adopted Legislative Sub-District 4B for a block rate of 100%.

My opinions are based on the following data sources: Statewide North Dakota general elections from 2014-2020; American Community Survey (ACS) Citizen Voting Age Population (CVAP) data, and North Dakota Legislative Districts shape files.

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*, 39 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 was 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 am contracted with Roswell, NM Independent School District to draw 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. 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 for plaintiff in *LULAC Texas, et al. v. John Scott, et al.*, having filed one report in that case. I am the racially polarized voting 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, and submitted written testimony. I am the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, having filed a report in that case and submitted written testimony. I am the racially polarized voting expert for plaintiff in *Johnson, et al., v. WEC, et al.*, No. 2021AP1450-OA, having filed three reports in that case and submitted written testimony. I am the racially polarized voting expert for plaintiff in *Faith Rivera, et al. v. Scott Schwab and Michael Abbott No. 2022-CV-000089*. I have filed a report in that case and provided testimony. In each instance courts have accepted my opinion. In this case I am compensated at a rate of \$325/hour.

Racially Polarized Voting

Racially polarized voting (RPV) occurs when one racial group (i.e., Native American voters) consistently votes for one candidate or set of candidates, and another racial group (i.e., non-Hispanic white voters) regularly votes for another candidate or set of candidates. I analyze multiple elections across four election years to determine whether a pattern of RPV is present in a given geography and/or political jurisdiction (i.e., statewide, Legislative District 4, etc.). In an election contest between two candidates, RPV is present when a majority of voters belonging to one racial/ethnic group vote for one candidate and a

majority of voters who belong to another racial/ethnic group prefer the other candidate. The favored candidate of a given racial group is called a “candidate of choice.” However, if a majority of voters (i.e., 50%+1) of one racial group back a particular candidate and so do a majority of voters from another racial group, then RPV is not present in that contest.

Racially polarized voting does not mean voters are racist or intend to discriminate. In situations where RPV is clearly present, however, majority voters may often be able to block minority voters from electing candidates of choice by voting as a broadly unified bloc against minority voters’ preferred candidate.

I examine RPV in the context of North Dakota statewide general elections – subsetting to voting districts located inside of the newly enacted District 4. I look at general election contests because polarization and hence blocking in North Dakota is most likely in general elections.

Ecological Inference

To determine if RPV exists, experts must generally infer individual level voting behavior from aggregate data – a problem called ecological inference. We turn to aggregate data because most of the time we do not have publicly available survey data on all election contests and in particular geographic areas where we want to see if RPV is present. In general, we want to know how groups of voters (i.e., Native Americans or non-Hispanic whites) voted in a particular election when all we have to analyze are precinct vote returns and the demographic composition of the people who live in those precincts.

Experts have at their disposal several methods to analyze RPV: homogeneous precinct analysis (i.e., taking the vote average across high density white precincts vs. high density Black precincts), ecological regression (ER), ecological inference (EI), and ecological inference Rows by Columns, which is designed specifically for the multi-candidate, multi-racial group environment, though all of these methods can be used to assess whether RPV is present in diverse election environments involving multiple candidates and multiple groups. In this report I rely primarily on the ecological inference (EI) method to assess whether voting is racially polarized. I also focus my attention on the two top of the ticket candidates in each contest.

The R software package, eiCompare (Collingwood et al. 2020), builds upon packages eiPack (Lau, Moore, and Kellermann 2020) and ei (King and Roberts 2016) to streamline RPV analysis, and includes all of these aforementioned statistical methods. In this report I include ecological inference estimates accounting for variation in turnout by race. That is, I divide candidate vote by citizen voting age population and include an estimate for no vote. I then calculate vote choice estimates by race for only people estimated to have voted. In this way, the method differences out non-voters and accounts for variation in turnout by race.

The rest of the report presents my results: 1) A list of the elections analyzed; 2) District 4 RPV analysis; 3) District 4, 4A and 4B electoral performance analysis.

List of Elections Analyzed

Table 1 presents the analyzed elections. Native American candidates have an asterisk after their name. Overall, there are 27 elections. In the full District 4, I analyze 27 elections across four election cycles finding RPV in each contest.

Table 1. List of contests analyzed, between 2014-2020. Native American candidates have an asterisk after their name.

Year	Contest	Dem Candidate	GOP Candidate	Native Prefer	D4 RPV	D4 Native-Prefer Win	D4A Native-Prefer Win	D4B Native-Prefer Win
2020	President	Biden	Trump	Biden	YES	No	Yes	No
2020	U.S. House	Raknerud	Armstrong	Rakenrud	YES	No	Yes	No
2020	Governor	Lenz	Burgum	Lenz	YES	No	Yes	No
2020	Auditor	Hart	Gallion	Hart	YES	No	Yes	No
2020	Treasurer	Haugen	Beadle	Haugen	YES	No	Yes	No
2020	Public Services Commissioner	Buchmann	Kroshus	Buchmann	YES	No	Yes	No
2018	U.S. Senate	Heitkamp	Cramer	Heitkamp	YES	No	Yes	No
2018	U.S. House	Schneider	Armstrong	Schneider	YES	No	Yes	No
2018	Secretary of State	Boschee	Jaeger (I)	Boshee	YES	No	Yes	No
2018	Attorney General	Thompson	Stenhjem	Thompson	YES	No	Yes	No
2018	Agriculture Commissioner	Dotzenrod	Goehring	Dotzenrod	YES	No	Yes	No
2018	Public Services Commissioner	Brandt	Christmann	Brandt	YES	No	Yes	No
2018	Public Services Commissioner 2yr	Buchmann	Kroshus	Buchmann	YES	No	Yes	No
2018	Tax Commissioner	Oversen	Rauschenberger	Oversen	YES	No	Yes	No
2016	President	Clinton	Trump	Clinton	YES	No	Yes	No
2016	U.S. Senate	Glassheim	Hoeven	Glassheim	YES	No	No	No
2016	U.S. House	Iron Eyes*	Cramer	Iron Eyes	YES	No	Yes	No
2016	Governor	Nelson	Burgum	Nelson	YES	No	Yes	No
2016	Insurance	Buffalo*	Godfread	Buffalo	YES	No	Yes	No
2016	Public Services Commissioner	Hunte Beaubrun*	Fedorchak	Hunte Beaubrun	YES	No	Yes	No
2014	Attorney General	Kraus	Stenhjem	Kraus	YES	No	Yes	No
2014	Agriculture Commissioner	Taylor	Goehring	Taylor	YES	No	Yes	No
2014	Public Service Commissioner 2yr	Axness	Fedorchak	Axness	YES	No	Yes	No
2014	Public Service Commissioner	Reisenauer	Kalk	Reisenauer	YES	No	Yes	No
2014	Secretary of State	Fairfield	Jaeger	Fairfield	YES	No	Yes	No
2014	Tax Commissioner	Astrup	Rauschenberger	Astrup	YES	No	Yes	No
2014	U.S. House	Sinner	Cramer	Sinner	YES	No	Yes	No

Racially Polarized Voting District 4

To conduct the analysis, I gathered precinct election returns for candidates running in each statewide contest either from the redistricting data hub¹ or the North Dakota Secretary of

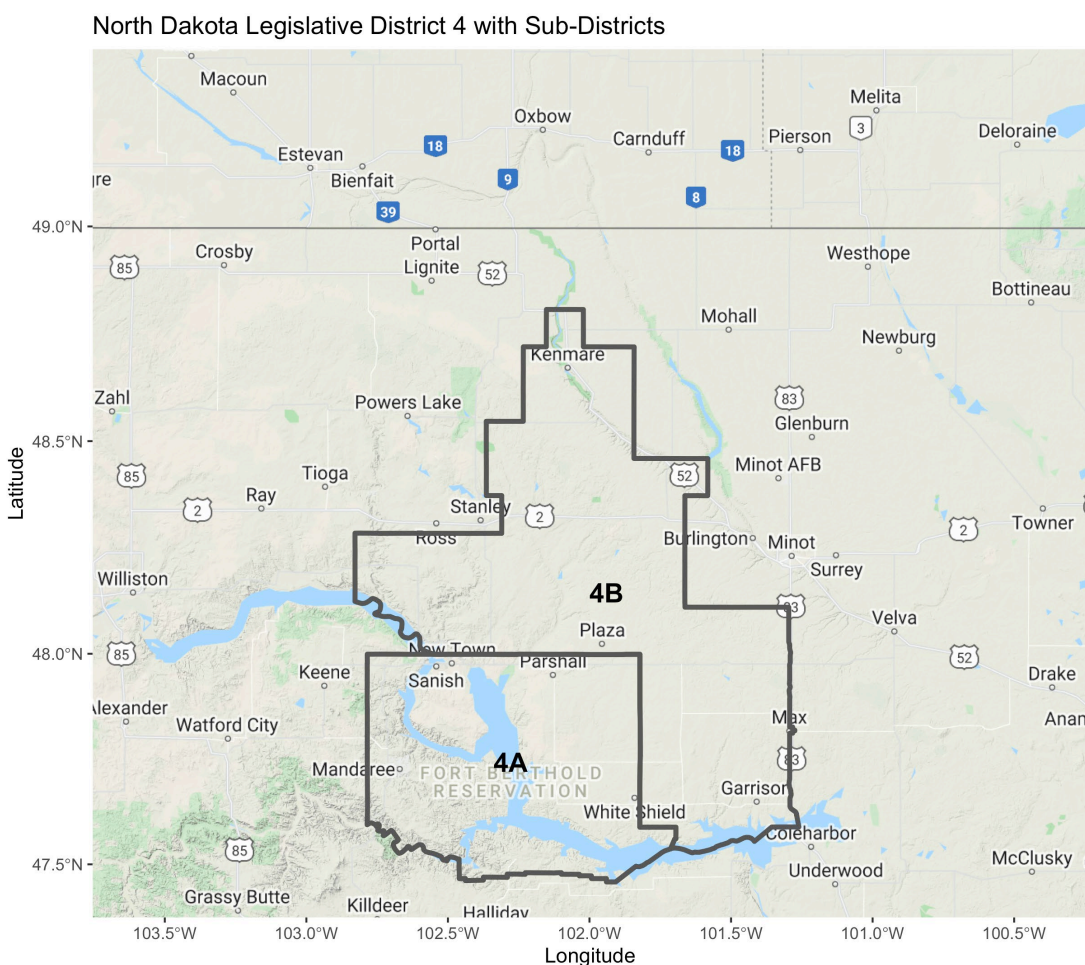
¹ <https://redistrictingdatahub.org/state/north-dakota/>

State, which provides precinct vote returns.² While the redistricting data hub data come formatted in precincts/VTDs and in GIS shape files, not all contests are always available. In the case where I downloaded data from the Secretary of State website I joined the data with VTD shape files based on common precinct names.

Next, I downloaded American Community Survey (ACS) 5-year Census block group files from the U.S. Census. The ACS contains questions about citizenship and has specific columns for citizen voting age population (CVAP).³ I conducted a spatial aerial interpolation between the two units (precinct and block group) – which is a common procedure for placing populations from one set of polygons (block group) into another (precincts) with different boundary lines (Bivand, Pebesma, and Gomez-Rubio 2013). Thus, I now have datasets that contain both candidate votes and racial demographics. Next, I subset the full statewide data to just the precincts found in the new District 4, which is presented in Figure 1.

² See <https://results.sos.nd.gov/ResultsSW.aspx?text=All&type=SW&map=CTY&eid=292> for 2016 example.

³ e.g.: <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap/2015-2019-CVAP.html>

Figure 1. District 4 under new North Dakota map.

The last step is to develop the inputs to the ecological inference model. I convert the now precinct racial estimates to a percent, generating a percent Native American by dividing the estimated number of CVAP Native American individuals by the total number of CVAP individuals in a precinct. To generate my estimate of percent white I subtract the Native American percent from 1. While this bins all non-Native individuals together, the overwhelming share of non-natives in North Dakota are white. I convert candidate choice to a percent by dividing candidate vote by CVAP. I then calculate vote choice estimates by race for people estimated to have voted. In this way, the method differences out non-voters and accounts for variation in turnout by race.

I do not conduct an RPV analysis in Sub-Districts 4A and 4B because 1) there are relatively few precincts in each subdistrict, and 2) Sub-District 4A has a large share of Native Americans, whereas 4B does not, so locating homogeneous precincts of both racial groups in both subdistricts is challenging. Instead, I rely on the overall District 4 RPV results to assess candidate preference in the general region. However, I do conduct performance

analysis in the subdistricts to evaluate whether white votes block Native American candidates and Native-preferred candidates.

Figure 2 presents the racially polarized voting results for the 2020 contests. The figure begins with two rows for the presidential vote – the first row is Trump estimate by Native and non-Native (white). The second row is the Biden estimate by Native and non-Native (white). The key to determining whether RPV is present (at least in a two-candidate contest) is to show that white support for Candidate A is below the 50% line, and Native support for Candidate B is above the 50% line. In District 4, I estimate that 81.3% of whites backed Trump, while just 18.2% of Native Americans backed Biden. Meanwhile, 81.8% of Native Americans back Biden, while just 18.7% of whites do. The results are essentially replicated in every single contest and provide overwhelming evidence of RPV.

Figure 2. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2020 general election.

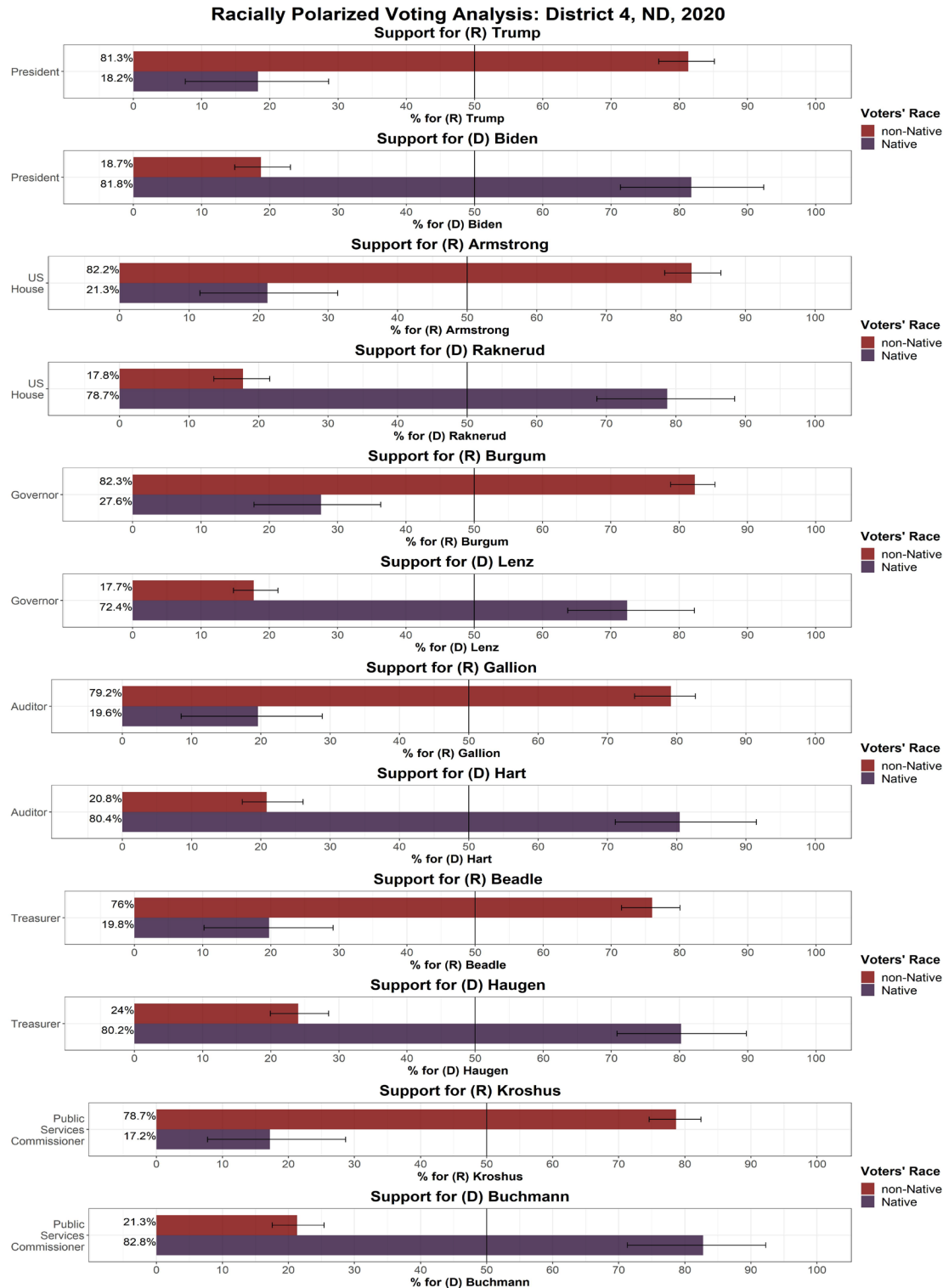


Figure 3 presents the racially polarized voting results for the 2018 contests.

Figure 3. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2018 general election.

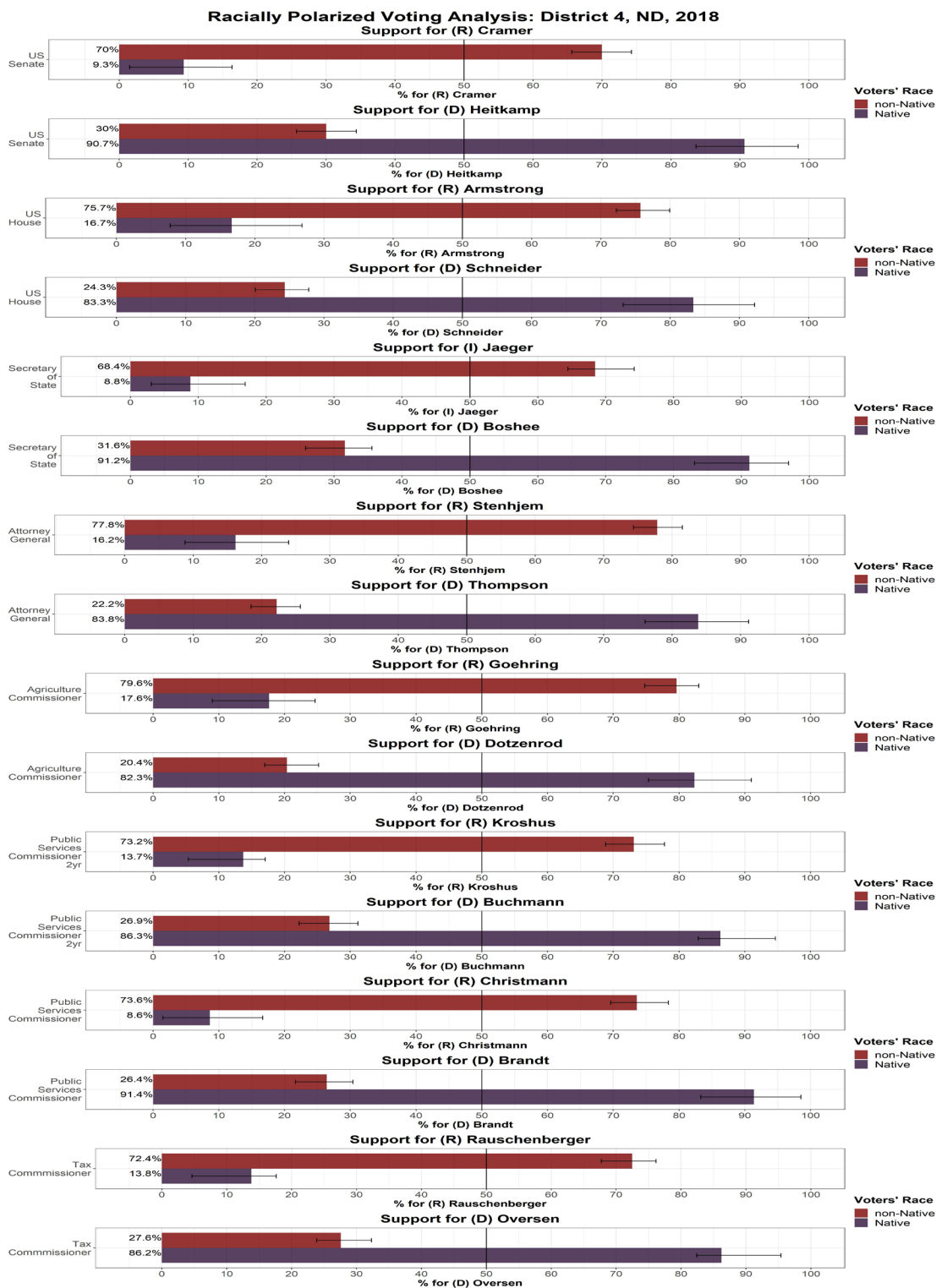


Figure 4 presents the racially polarized voting results for the 2016 contests.

Figure 4. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2016 general election.

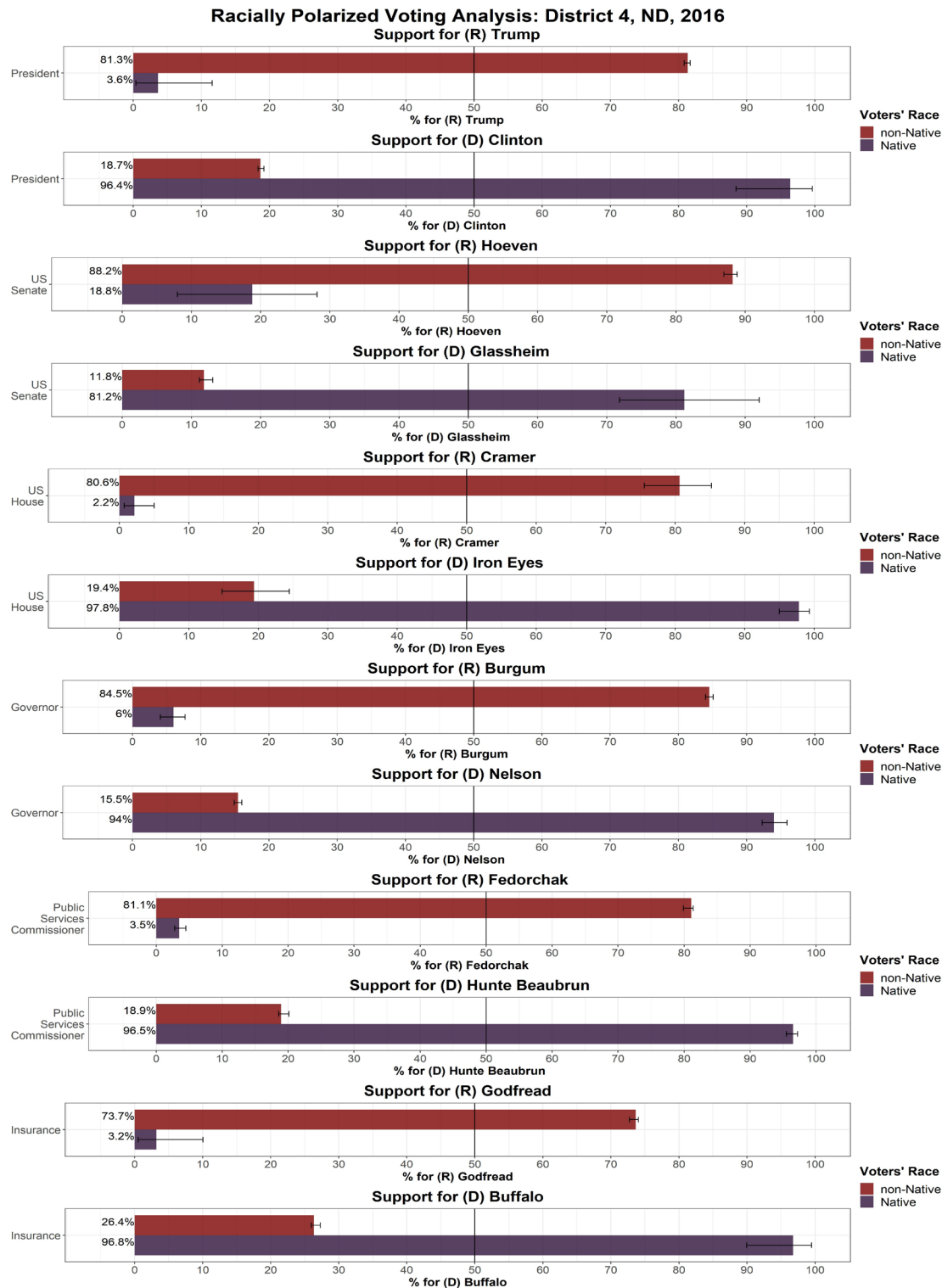
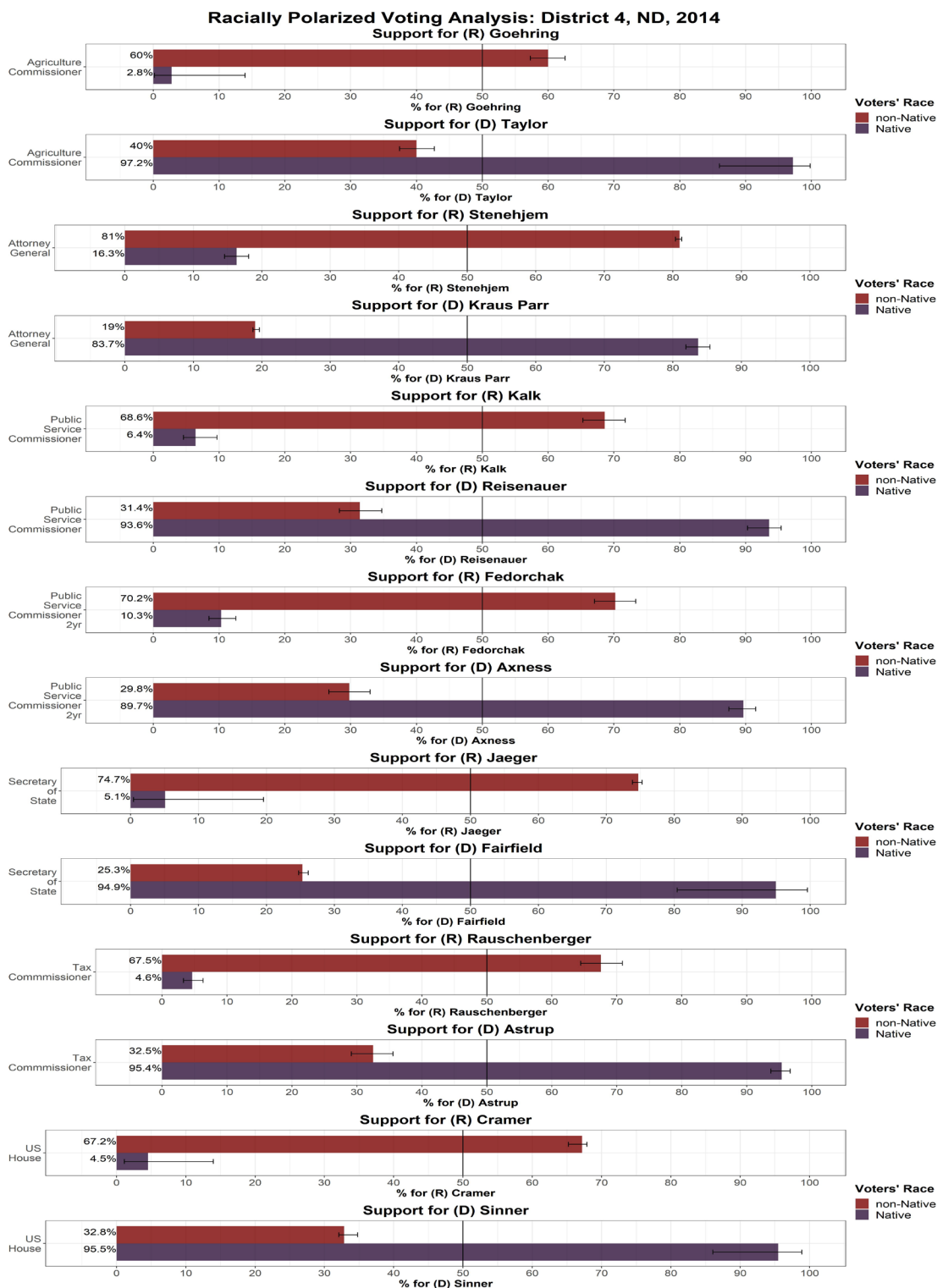


Figure 5 presents the racially polarized voting results for the 2014 contests.

Figure 5. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2014 general election.

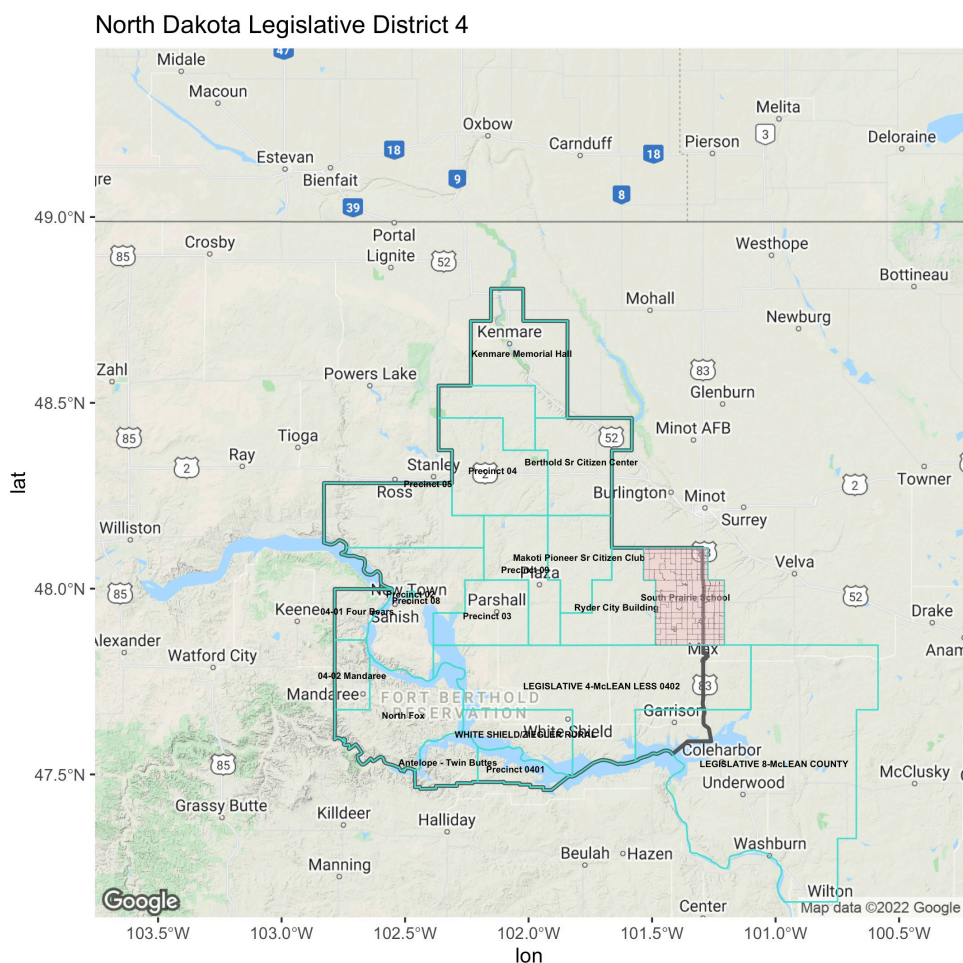


Performance Analysis District 4

To conduct the performance analysis, I take an additional step with regard to split precincts. For the full District 4, there are 3 precincts split across D4 and neighboring districts (i.e., District 8). These include South Prairie School (76.5% geographically in the district), LEGISLATIVE 4-McLEAN LESS 0402 (86.5% geographically inside the district), and LEGISLATIVE 8-McLEAN COUNTY (7.4% geographically in the district). There are also several split precincts between D4A and D4B.

To account for these splits in my electoral performance analysis, I overlaid the precinct polygon shape file with the 2020 block polygon shape file and join population-level data including voting age population (VAP). Because blocks are fully nested inside precincts in this instance, I can make adjustments to precinct vote totals by weighting votes by total voting age population. In precincts that split between districts I take blocks on the one side of the District 4 boundary to estimate the share of the VAP that is inside/outside of the district. Figure 6 illustrates the idea. The part of the pink precinct to the left of the district boundary is included in D4, the part to the right is not.

Figure 6. Example of South Prairie School split precinct between District 4 and neighboring district, with Census blocks shaded pink.



One way to address this issue may be to turn to geographic distribution instead of population distribution. For example, a precinct might be geographically split 50-50 between District 4 and District 8. If there are 100 votes in the precinct, I could assign 50 votes to the part of the precinct in the district, and divide all candidate votes in half. If Trump had received 70 of the precinct's initial 100 votes, and Biden 30, I would assign Trump 35 votes (70×0.5) and Biden 15 (30×0.5) totaling 50 votes.

However, another method when data are available is to take account of where the population lives within the precinct by using blocks – a much smaller and more compact geographic unit. Each block contains a tally for voting age population (VAP); therefore I can sum the VAP for all blocks for the part of the precinct falling inside of District 4, and for the part of the precinct outside of D4. This method more adequately accounts for population distribution within the precinct instead of relying on geographic area alone. It could be the case that 70% of the VAP resides in the part of the precinct falling into D4, and 30% in a neighboring district. So instead of multiplying the initial 100 votes by 0.5, for District 4, I multiply the precinct's initial 100 votes by 0.7. In this scenario, Trump would receive 49 of the 70 votes and Biden 21 votes. While the candidate vote share ratio might be the same the Trump net differential moves from plus 20 (35-15) to plus 28 (49-21).

Having accounted for the three split precincts, I combine those vote estimates with the 16 precincts fully inside D4. For each contest, I then sum votes for candidate 1 and candidate 2, respectively, and divide by total votes cast. I conduct the same procedure for the two subdistricts.

Figure 7 presents the 2020 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 6 of 6 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 6 of 6 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 6 of 6 contests for a block rate of 100%.

Figure 7. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2020 elections.

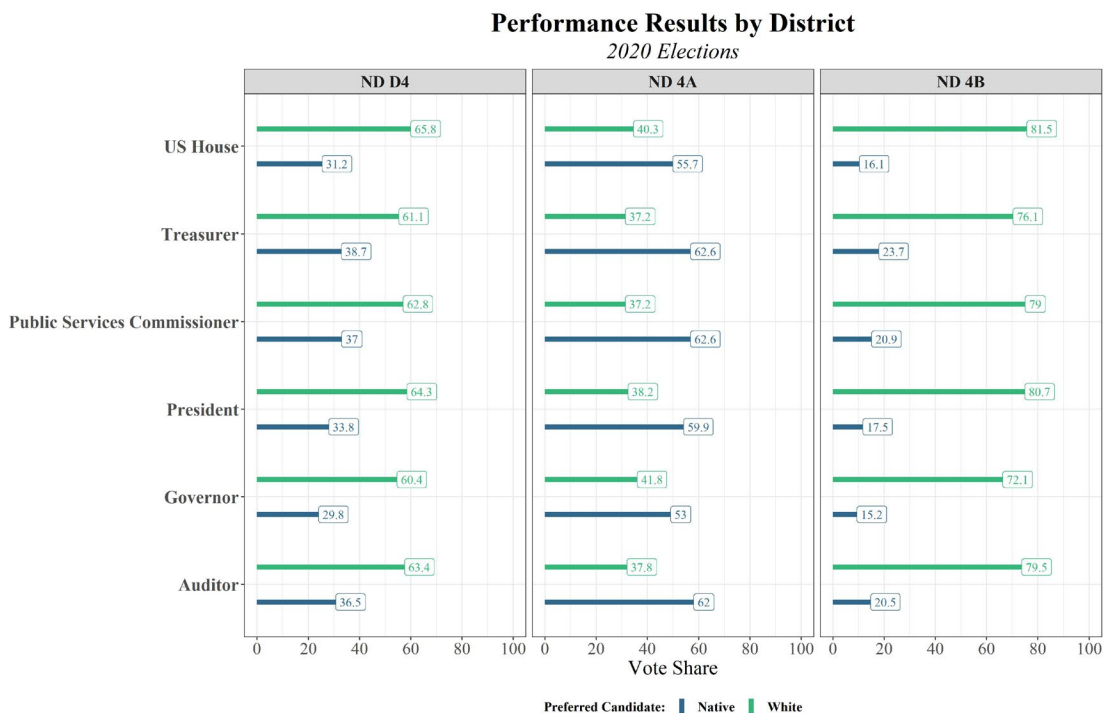


Figure 8 presents the 2018 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 8 of 8 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 8 of 8 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 8 of 8 contests for a block rate of 100%.

Figure 8. Performance analysis assessment in statewide contests subset to the new District 4, 4A, and 4B boundaries, 2018 elections.

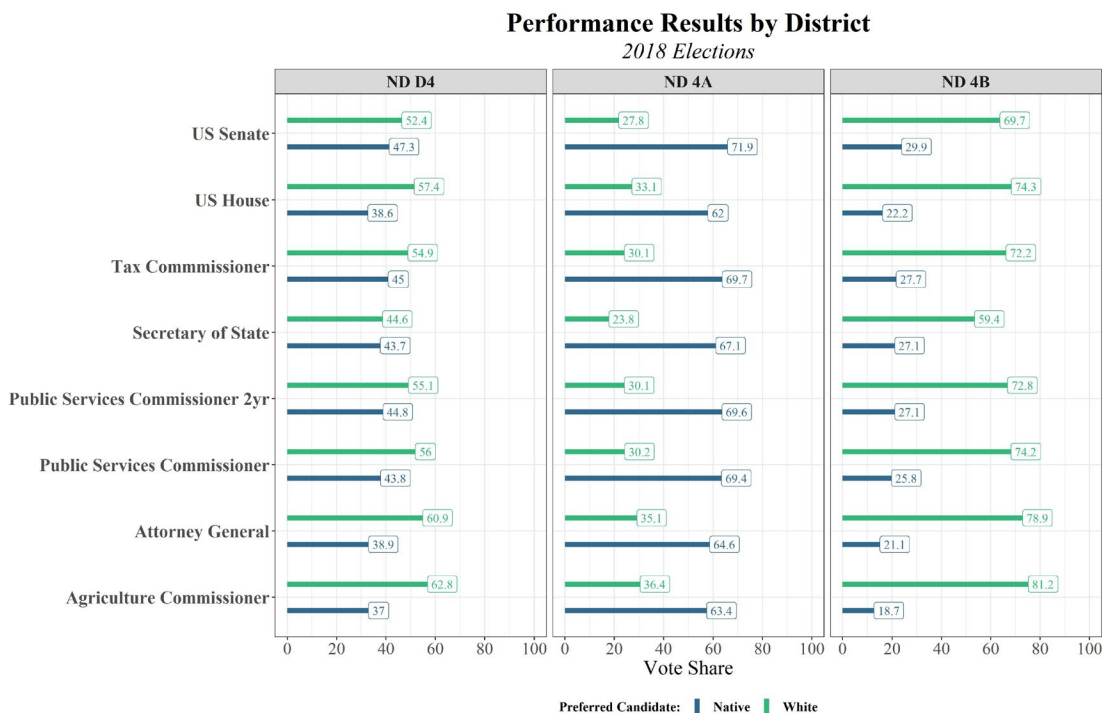


Figure 9 presents the 2016 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 6 of 7 contests for a block rate of 14%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%.

Figure 9. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2016 elections.

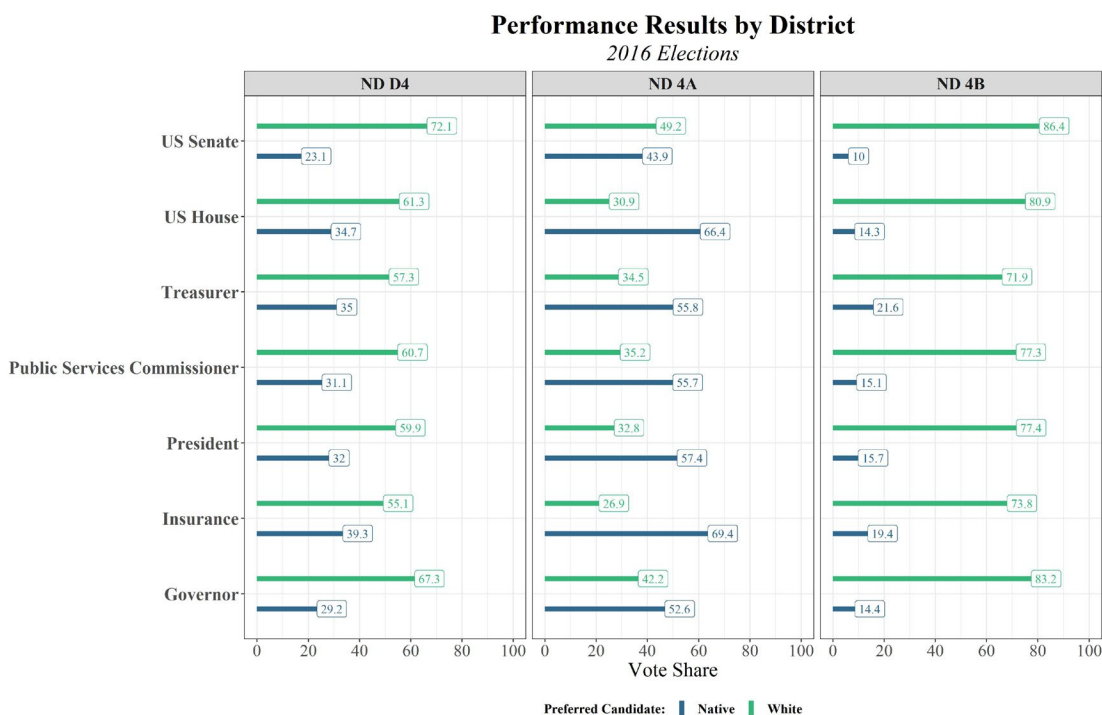
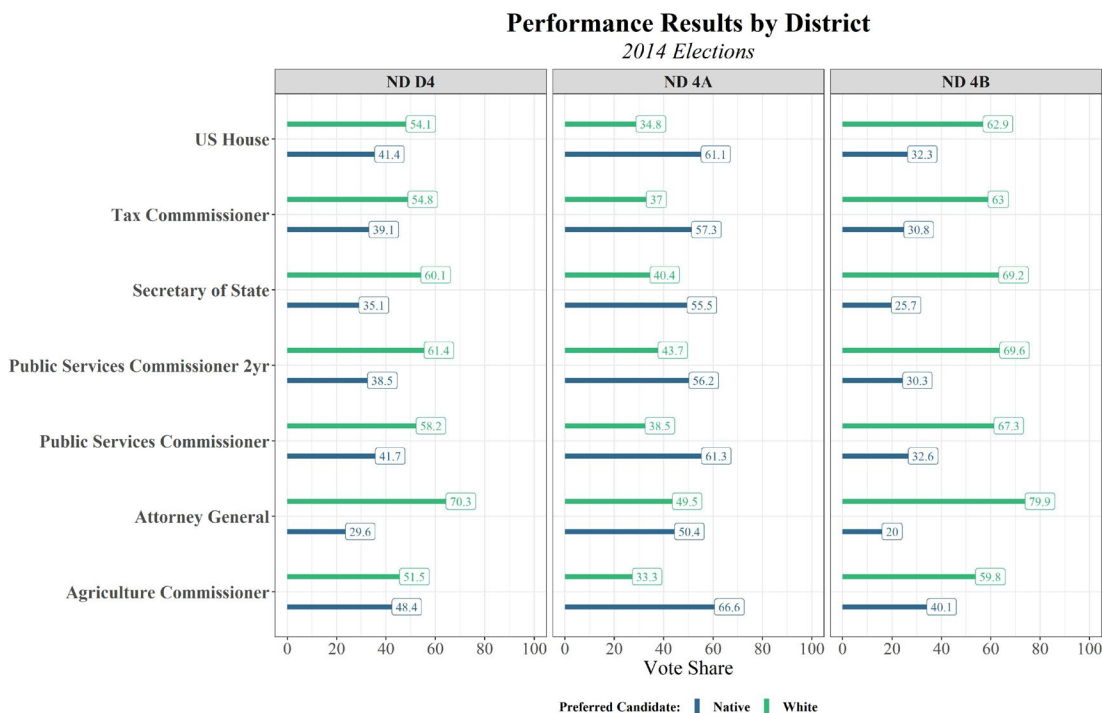


Figure 10 presents the 2014 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 7 of 7 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%.

Figure 10. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2014 elections.



Conclusion

In conclusion, without any doubt, racially polarized voting between Native American voters and non-Hispanic whites is present in North Dakota's recently enacted District 4. RPV is especially clear in elections featuring Native American candidates – but is present across every single election I analyzed across four election years (2014, 2016, 2018, and 2020). Thus, the Gingles II threshold is clearly met. A Gingles III analysis reveals that whites vote as a bloc to block Native Americans from electing candidates of choice at the full District 4 level in 27 of 27 contests. Narrowing in on the new Sub-Districts 4A and 4B, Native-preferred candidates win 96% of the time in 4A. However, in Sub-District 4B, Native-preferred candidates win 0% of the time meaning that they are very likely to lose contests in that subdistrict. Therefore, Gingles III is present in Sub-District 4B, in District 4 overall, but not in Sub-District 4A. Thus, the state in this instance has correctly heeded the Voting Rights Act Section 2 requirements.

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Loren Collingwood

University of New Mexico
Department of Political Science
1 University of New Mexico
Albuquerque, NM 87131

Office: (951) 827-5590
Email: 1collingwood@unm.edu
website: <http://www.collingwoodresearch.com>

Employment

Associate Professor, University of New Mexico, 2020 - Present
Associate Professor, University of California, Riverside 2019 - 2020
Assistant Professor, University of California, Riverside 2012 - 2019
Assistant Analyst, Greenberg Quinlan Rosner, Washington DC 2005-2007
Field Associate, Greenberg Quinlan Rosner, Washington DC 2003-2005

Education

Ph.D., Political Science, University of Washington 2007 - 2012
Committee: Matt Barreto (chair), Chris Parker, Luis Fraga, Chris Adolph, Peter Hoff
M.A., Political Science, University of Washington, 2009
B.A., Psychology, California State University, Chico, 1998 - 2002
Minor: Political Science
Honors: *Cum Laude*, NCAA Scholar-Athlete in soccer

Research Fields

American Politics, Political Behavior, Methods, Race and Ethnic Politics, Immigration

Books

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31. Hickel, Flavio, Rudy Alamillo, Kassra Oskooii, and **Loren Collingwood**. 2020. "When American Identity Trumps Latinx Identity: Explaining Support for Restrictive Immigration Policies." *Public Opinion Quarterly*. 84(4), 860-891.

Featured in Academic Times

30. Walker, Hannah, **Loren Collingwood**, and Tehama Lopez Bunyasi. 2020. "White Response to Black Death: A Racialized Theory of White Attitudes About Gun Control." *DuBois Review: Social Science Research on Race*. 17(1): 165-188.

29. Filindra, Alexandra, **Loren Collingwood**, and Noah Kaplan. 2020. "Anxiety and Social Violence: The Emotional Underpinnings of Support for Gun Control." *Social Science Quarterly*. 101: 2101-2120.
28. McGuire, William, Benjamin Gonzalez O'Brien, Katherine Baird, Benjamin Corbett, and **Loren Collingwood**. 2020. "Does Distance Matter? Evaluating the Impact of Drop Boxes on Voter Turnout." *Social Science Quarterly*. 101: 1789-1809.
27. Reny, Tyler, Ali Valenzuela, and **Loren Collingwood**. 2020. "'No, You're Playing the Race Card': Testing the Effects of Anti-Black, Anti-Latino, and Anti-Immigrant Appeals in the Post-Obama Era." *Political Psychology*. 41(2): 283-302.

Featured in VOX The Weeds Podcast

26. **Collingwood, Loren**, Benjamin Gonzalez O'Brien, and Joe Tafoya. 2020. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." *Journal of Race and Ethnic Politics*. 5(1): 92-129.
25. **Collingwood, Loren** and Benjamin Gonzalez. 2019. "Covert Cross-Racial Mobilization, Black Activism, and Political Participation Pre-Voting Rights Act." *Florida Historical Quarterly* 97(4) Spring.
24. Gonzalez O'Brien, Ben, Elizabeth Hurst, Justin Reedy, and **Loren Collingwood**. 2019. "Framing Refuge: Media, Framing, and Sanctuary Cities." *Mass Communication and Society*. 22(6), 756-778.
23. DeMora, Stephanie, **Loren Collingwood**, and Adriana Ninci. 2019. "The Role of Super Interest Groups in Public Policy Diffusion." *Policy and Politics*. 47(4): 513-541.
22. **Collingwood, Loren**, Stephen Omar El-Khatib, Ben Gonzalez O'Brien. 2019. "Sustained Organizational Influence: American Legislative Exchange Council and the Diffusion of Anti-Sanctuary Policy." *Policy Studies Journal*. 47(3): 735-773.
21. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. 2019. "Public Opposition to Sanctuary Cities in Texas: Criminal Threat or Immigration Threat?" *Social Science Quarterly*. 100(4): 1182-1196.
20. Reny, Tyler, **Loren Collingwood**, and Ali Valenzuela. 2019. "Vote Switching in the 2016 Election: Racial and Immigration Attitudes, Not Economics, Explains Shifts in White Voting." *Public Opinion Quarterly*. 83(1): 91-113.

Featured in VOX; The Week; The Economist; New York Times; The Economist

19. Gonzalez-O'Brien, Benjamin, **Loren Collingwood**, and Stephen Omar El-Khatib. 2019. "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration." *Urban Affairs Review*. 55(1): 3-40.

Featured in WaPo Monkey Cage I; and Monkey Cage II; WaPo Fact Check; InsideHigherEd; PolitiFact; The Hill; Christian Science Monitor; Pacific Standard; NBC News; Huffington Post; Seattle Times; The Denver Post; San Jose Mercury News; Chicago Tribune; San Diego Union Tribune; VOX

18. Oskooii, Kassra, Sarah Dreier, and **Loren Collingwood**. 2018. "Partisan Attitudes Toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge." *Politics and Policy* 46(6): 951-984.

17. **Collingwood, Loren**, Jason Morín, and Stephen Omar El-Khatib. 2018. “Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy.” *Race and Social Problems*. 10(4): 275-292.

Featured in CityLab; The Guardian; Mother Jones; NPR

16. **Collingwood, Loren**, Benjamin Gonzalez O’Brien, and Sarah K. Dreier. 2018. “Evaluating Public Support for Legalized Marijuana: The Case of Washington.” *International Journal of Drug Policy*. 56: 6-20.

15. **Collingwood, Loren**, McGuire, Will, Gonzalez O’Brien, Ben, Baird, Katie, and Hampson, Sarah. 2018. “Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington.” *Election Law Journal*. 17:1.

Featured in Seattle Times; CBS News

14. **Collingwood, Loren**, Nazita Lajevardi, and Kassra Oskooii. 2018. “A Change of Heart? How Demonstrations Shifted Individual-Level Public Opinion on Trump’s Muslim Ban.” *Political Behavior*. 40(4): 1035-1072.

Featured in VOX; ThinkProgress; LSE Blog; Al Jazeera; San Francisco Chronicle; NPR; Business Insider; Washington Post

13. **Collingwood, Loren**, Ashley Jochim, and Kassra Oskooii. 2018. “The Politics of Choice Reconsidered: Partisanship and Minority Politics in Washington’s Charter School Initiative.” *State Politics & Policy Quarterly* 18(1): 61-92.

12. Newman, Ben, Sono Shah, and **Loren Collingwood**. 2018. “Race, Place, and Building a Base: Ethnic Change, Perceived Threat, and the Nascent Trump Campaign for President.” *Public Opinion Quarterly*. 82(1): 122-134.

Featured in Pacific Standard; LSE Blog; Newsweek

11. Skulley, Carrie, Andrea Silva, Marcus J. Long, **Loren Collingwood**, and Ben Bishin, “Majority Rule vs. Minority Rights: Immigrant Representation Despite Public Opposition on the 1986 Immigration Reform and Control Act.” 2018. *Politics of Groups and Identities*. 6(4): 593-611.

10. Alamillo, Rudy and **Loren Collingwood**. 2017. “Chameleon Politics: Social Identity and Racial Cross-Over Appeals.” *Politics of Groups and Identities*. 5(4): 533-650.

Featured in WaPo’s Monkey Cage; NBC News; Los Angeles Times

9. **Collingwood, Loren**, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. “eiCompare: Comparing ecological inference estimates across EI and EI:RxC.” *The R Journal*. 8(2): 92-101.

Featured in Investigate West

8. Barreto, Matt, **Loren Collingwood**, Christopher Parker, and Francisco Pedraza. 2015. “Racial Attitudes and Race of Interviewer Item Non-Response.” *Survey Practice*. 8:5.

7. Barreto, Matt and **Loren Collingwood**. 2015. “Group-based Appeals and the Latino Vote in 2012: How Immigration Became a Mobilizing Issue.” *Electoral Studies*. 40:490-499.

Featured in Latino Decisions blog

6. **Collingwood, Loren**, Matt Barreto, and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election." *Political Research Quarterly*. 67(3): 632-645.

Featured in LSE Blog

5. Jurka, Tim, **Loren Collingwood**, Amber Boydston, Emiliano Grossman, and Wouter van Atteveldt. 2013. "RTextTools: A Supervised Learning Package for Text Classification in R" *The R Journal*. 5(1).
4. **Collingwood, Loren**. 2012. "Education Levels and Support for Direct Democracy." *American Politics Research*, 40(4): 571-602.
3. **Collingwood, Loren** and John Wilkerson. 2012. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods." *Journal of Information Technology and Politics*, 9(3).
2. **Collingwood, Loren**, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability, and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*, 42(2).
1. Barreto, Matt, **Loren Collingwood**, and Sylvia Manzano. 2010. "A New Measure of Group Influence in Presidential Elections: Assessing Latino Influence in 2008." *Political Research Quarterly*. 63(4).

Featured in Latino Decisions blog

Book Chapters

11. **Collingwood, Loren**, Stephanie DeMora , and Sean Long. "Demographic Change, White Decline, and the Changing Nature of Racial Politics in Election Campaigns." In *Cambridge Handbook in Political Psychology*. Edited by Danny Osborne and Chris Sibley. [Forthcoming].
10. Morín, Jason L. and **Loren Collingwood**. "Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era." In *Anti-immigrant Rhetoric, Actions, and Policies during the Trump Era (2017-2019)*. [Forthcoming]
9. Parker, Christopher S., Christopher C. Towler, **Loren Collingwood**, and Kassra Oskooii. 2020. "Race and Racism in Campaigns." In *Oxford Encyclopedia of Persuasion in Political Campaigns*. Edited by Elizabeth Suhay, Bernard Grofman, and Alexander H. Trechsel. DOI: 10.1093/oxfordhb/9780190860806.013.38
8. **Collingwood, Loren**, and DeMora, Stephanie. 2019. "Latinos and Obama." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
7. DeMora, Stephanie, and **Collingwood, Loren**. 2019. "George P. Bush." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
6. El-Khatib, Stephen Omar, and **Collingwood, Loren**. 2019. "Ted Cruz." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.

5. **Collingwood, Loren**, Sylvia Manzano and Ali Valenzuela. 2014. "November 2008: The Latino vote in Obama's general election landslide." In *Latino America: How America's Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
 4. **Collingwood, Loren**, Justin Gross and Francisco Pedraza. 2014. "A 'decisive voting bloc' in 2012." In *Latino America: How America's Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
 3. Barreto, Matt, **Loren Collingwood**, Ben Gonzalez, and Chris Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election." In William Miller and Jeremy Walling (eds.) *Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections*. Rowan and Littlefield Publishing Group.
 2. **Collingwood, Loren** and Justin Reedy. "Criticisms of Deliberative Democracy." In Nabatchi, Tina, Michael Weiksner, John Gastil, and Matt Leighninger, eds., *Democracy in motion: Evaluating the practice and impact of deliberative civic engagement*. New York: Oxford University Press, 2010.
 1. **Collingwood, Loren**. "Initiatives." In Haider-Markel, Donald P., and Michael A. Card. *Political Encyclopedia of U.S. States and Regions*. Washington, DC: CQ Press, 2009.
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Software

R package: **RTextTools**. This package uses supervised learning methods to automate text classification. Coauthors include Jurka, Boydston, Grossman, and van Atteveldt. Available on CRAN.

R package: **eiCompare**. This package compares outcomes between ecological inference (EI) estimates and EI:Rows by Columns (RxC) estimates. Primary purpose is employed in racially polarized voting analysis. Development Version available here: [eiCompare](#) or on CRAN. Coauthors include Barreto, Oskooii, Garcia-Rios, Burke, Decter-Frain, Murayama, Sachdeva, Henderson, Wood, and Gross.

R package: **Rvoterdistance**. Calculates distance between voters and multiple polling locations and/or ballot drop boxes. Ports C++ code for high speed efficiency. Available on CRAN.

R package: **Rweights**. Creates survey weights via iterative variable raking. Survey design object and weights vector are produced for use with R, Stata, and other programs. Currently in alpha form with unix tarball available here: [Rweights](#).

R package: **Rmturkcheck**. Functions for cleaning and analyzing two-wave MTurk (or other) panel studies. Available: [Rmturkcheck](#)

R package: **RCopyFind**. Functions for extracting data frames then plotting results from WCopyFind plagiarism text program. Co-authored with and Maintained by Steph DeMora. Available: [RCopyFind](#)

Under Review / Working Papers

Barreto, Matt, Michael Cohen, **Loren Collingwood**, Chad Dunn, and Sonni Waknin. “Using Bayesian Improved Surname Geocoding (BISG) to Assess Racially Polarized Voting in Voting Rights Act Challenges.” [Revise & Resubmit]

Gonzalez O’Brien, Ben, **Loren Collingwood**, and Michael A. Paarlberg. “What Leads to Refuge? Sanctuary Policies and the Influence of Local Demographics and Partisanship.” [Revise & Resubmit]

Collingwood, Loren, Juandalyn Burke, Ari Decter-Frain, Hikari Murayama, Pratik Sachdeva, Matt Barreto, Scott Henderson, Spencer Wood, and Joshua Zingher. “Comparing BISG to CVAP Estimates in Racially Polarized Voting Analyses.” [Under Review]

Hickel Jr., Flavio R., Kassra A.R. Oskooii, and **Loren Collingwood**. “How Immigrant Resentment Impacts Latinx Support for Donald Trump and Restrictive Immigration Policies.” [Under Review]

Collingwood, Loren, Jason Morín, and Edward Vargas. “Protesting Detention: How Protests Activated Group Empathy and Party ID to Shift Attitudes on Child Detention.” [Working Paper]

Paarlberg, Michael A. and **Loren Collingwood**. “Fact or Fiction: Testing the link between local immigration policy and the MS-13 ‘Threat’.” [Working Paper]

Awards, Grants, and Fellowships

Matt Barreto and Loren Collingwood. Detection of Vote Dilution: New tools and methods for protecting voting rights. Data Science for Social Good project selection, University of Washington. 2020

Loren Collingwood. Measuring Cross-Racial Voter Preferences. UCR Faculty Senate. \$3,500. 2019.

Francisco Pedraza and Loren Collingwood. Evaluating AltaMed’s 2018 GOTV Efforts in Los Angeles. \$12,000. 2018-2019.

Allan Colbern, Loren Collingwood, Marcel Roman. A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement. Center for American Progress. \$7,100. 2018.

Karthick Ramakrishnan, Mindy Romero, Loren Collingwood, Francisco Pedraza, Evaluating California’s Voter’s Choice Act. Irvine Foundation. \$150,000, 2018-2019.

William McGuire, Loren Collingwood, Ben Gonzalez O’Brien, and Katie Baird, “Evaluating the Impact of Drop Boxes and Get-Out-The-Vote Advertising on Voter Turnout in Pierce County, WA.” MIT Election Data and Science Lab, \$16,365, 2017

Justin Freebourn and Loren Collingwood, Blum Initiative \$4,000, 2017

Hellman Fellowship Grant, UC Riverside, \$30,000, 2014-2015

Best Dissertation Award, 2013 Western Political Science Association

UC Riverside Harrison & Ethel Silver Fund, \$2,000, 2013

Best Graduate Student Paper Award State Politics section, 2012 American Political Science Association

Texas A&M Experimental Methods Winter Institute, \$800, January, 2011

UseR! 2011 Conference travel grant, \$1000, August, 2011

Center for Statistics and the Social Sciences travel grant, \$870, January, 2011

David J. Olson Research Grant, University of Washington Political Science, \$2,000, January, 2011

Warren Miller Scholarship Award, Inter-University Consortium for Political and Social Research, Summer 2009

Matthews Fellowship, University of Washington, Winter 2008 - Spring 2009

Brennan Center for Justice, New York University [with Matt Barreto]
Indiana Voter Identification Study, \$40,000 – Oct. 2007, 6 months

Teaching Experience

POSC 10 (American Politics); POSC 146 (Mass Media & Public Opinion); POSC 171 (State Politics); POSC 104S (Race and Ethnic Politics Special Topics); POSC 108 (Race and Ethnic Politics)

POLS 300: Immigration Politics with Focus on Latino Politics

POLS 300: The Voting Rights Act: Causes and Effects

POSC 202A: Introduction to Quantitative Methods (Graduate)

POSC 207: Statistical Programming and Data Science for the Social Sciences (Graduate)

POSC 207: Quantitative Text Analysis (Graduate)

POSC 220: Graduate Seminar in Race and Ethnic Politics in the U.S.

POSC 256: Graduate Seminar in Public Opinion

POSC 253: Graduate Seminar in Electoral Politics

Text Classification with R using the `RTextTools` package, UNC-Chapel Hill Workshop

Text Analysis with Political Data, Claremont Graduate School, 2019

CSSS Intermediate R Workshop 2011, Instructor (Summer)

POLS 501: Advanced Research Design and Analysis, Teaching Assistant (2 quarters)

ICPSR Summer Course: Methodological Issues in Quantitative Research on Race and Ethnicity, Teaching Assistant

POLS 202: Introduction to American Politics, Teaching Assistant

CSSS Math Camp 2011, Teaching Assistant

POLS 499D: Center for American Politics and Public Policy Undergraduate Honors Seminar (2 quarters)

Professional Service

Co-editor, *Politics of Groups and Identities*, 2020-2021

Reviewer, Political Behavior, Journal of Information Technology and Politics, American Politics Research, Social Sciences Quarterly, Journal of Politics, Politics of Groups and Identities, American Journal of Political Science, Political Research Quarterly, State Politics and Public Policy, American Political Science Review, British Journal of Political Science, Journal of Race and Ethnic Politics, Urban Studies, Urban Affairs Review; many other journals

Conference Papers and Presentations

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California Lutheran University. (October 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Chico. (March 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk Humboldt State University. (March 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk Oregon State University. (February 2020).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of San Diego. (November 2019).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of Massachusetts. (January 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of New Mexico. (December 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Northridge, Los Angeles. (November 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk Occidental College, Los Angeles. (November 2019).

Collingwood, Loren (with Sean Long). "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act." UC Irvine Critical Observations on Race and Ethnicity Conference. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Geneva, Switzerland. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Bern, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk ETH Zurich, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk London School of Economics, U.K. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Leeds, U.K. (October 2019).

Valenzuela, Ali, Kassra Oskooi, and Loren Collingwood. "Threat or Reassurance? Framing Midterms Results among Latinos and Whites." American Political Science Association, Washington, DC. (August 2019).

Paarlberg, Michael A. and Loren Collingwood. "Much Ado about Nothing: Local Immigration Policy and the MS-13 'Threat' ." American Political Science Association, Washington, DC. (August 2019).

Collingwood, Loren. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." International Center for Local Democracy (ICLD) Conference on Local Democracy. Umea, Sweden (June 2019).

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of California, Irvine (May 2019).

Collingwood, Loren. "Text Analysis with R." Invited talk and presentation. Claremont Graduate University (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." PRIEC. UC Davis (May 2019).

Collingwood, Loren. "Data Analysis with R." Invited presentation and training Cal Poly Pomona (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk Northern Arizona University (May 2019)

Collingwood, Loren (with Jason Morín). "Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era." Invited Talk Universidad Nacional Autonoma de Mexico, Distrito Federal, Mexico (February 2019).

Roman, Marcel, Allan Colbern, and Loren Collingwood. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." PRIEC Consortium. University of Houston (December 2018)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of Illinois Chicago (November 2018)

Collingwood, Loren. "Ongoing Research in Sanctuary Cities and Immigration Politics." Invited Talk University of Pennsylvania Perry World House (November 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." Invited Talk Rutgers University (October 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." UCR Alumni Research Presentation Washington and Philadelphia (October 2018)

Collingwood, Loren, Jason Morin. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Invited Talk UCLA (October 2018).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". APSA (September 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." American Political Science Association Conference (August 2018).

Collingwood, Loren, Sergio Garcia-Rios, and Hannah Walker. "The Impact of Exposure to Police Brutality on Political Attitudes Among Black and White Americans." Cooperative Comparative Post-Election Survey (CMPS) Conference. (August, 2018).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". Politics of Race Immigration and Ethnicity Consortium (August 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Politics of Race Immigration and Ethnicity Consortium, Michigan State University (April 2018)

Collingwood, Loren, Benjamin Gonzalez O'Brien, and Joe Tafoya. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." Midwest Political Science Association Conference (April 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Western Political Science Association Conference (April 2018).

DeMora, Stephanie, Adriana Ninci, and Loren Collingwood. "Shoot First in ALEC's Castle: The Diffusion of Stand Your Ground Laws." Politics of Race Immigration and Ethnicity Consortium, ASU (February 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Politics of Race Immigration and Ethnicity Consortium, UCR (September 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." APSA (September 2017).

Collingwood, Loren, McGuire, Will, Gonzalez O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." APSA (September 2017).

Collingwood, Loren, Reny, Tyler, Valenzuela, Ali. "Flipping for Trump: In 2016, Immigration and Not Economic Anxiety Explains White Working Class Vote Switching." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." Politics of Race Immigration and Ethnicity Consortium, UCSB (May 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Vancouver, Western Political Science Association Conference (April. 2017).

Collingwood, Loren, McGuire, Will, Gonzalez-O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." WPSA (April 2017).

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". Vancouver, Western Political Science Association Conference WPSA (April 2017).

Rush, Tye, Pedraza, Francisco, Collingwood, Loren. "Relieving the Conscience: White Guilt and Candidate Evaluation." Politics of Race Immigration and Ethnicity Consortium, UCI (March 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Philadelphia, American Political Science Association Conference (Sept. 2016)

Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios, and Kassra Oskooii. "Estimating Candidate Support: Comparing EI & EI-RxC." Chicago, Midwest Political Science Association Conference (April 2016)

Bishin, Benjamin, Loren Collingwood, and Erinn Lauterbach. "Cross-Racial Mobilization in a Rapidly Diversifying Polity: Latino Candidates and Anglo Voters" Chicago, Midwest Political Science Association Conference (April 2016)

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". San Diego, Western Political Science Association Conference (April 2016)

Collingwood, Loren and Antoine Yoshinaka. The new carpetbaggers? Analyzing the effects of migration on Southern politics. The Citadel Conference on Southern Politics, Charleston, SC (Mar 2016)

Alamillo, Rudy and Loren Collingwood. Chameleon Politics: Social Identity and Racial Cross-Over Appeals. American Political Science Association Conference, San Francisco (Sept 2015)

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." San Francisco, American Political Science Association Conference (Sept 2015)

Alamillo, Rudy and Loren Collingwood. Chameleon Politics: Social Identity and Racial Cross-Over Appeals. Western Political Science Association Conference, Las Vegas (April 2015)

Barreto, Matt and Loren Collingwood. Confirming Electoral Change: The 2012 U.S. Presidential Election OSU Conference (October, 2013). "Earning and Learning the Latino Vote in 2008 and 2012: How the Obama Campaign Tried, Refined, Learned, and Made Big Steps in Cross-Racial Mobilization to Latinos.

Collingwood, Loren and Ashley Jochim. 2012 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Electoral Competition and Latino Representation: The Partisan Politics of Immigration Policy in the 104th Congress."

Collingwood, Loren. 2012 Western Political Science Association Annual Conference (March) Portland, OR. "The Development and Use of Cross-Racial Mobilization as Campaign Strategy in U.S. Elections: The Case of Texas 1948-2010."

Collingwood, Loren. 2012 Institute for Pragmatic Practice Annual Conference (March) Seattle, WA. "Changing Demographics, Rural Electorates, and the Future of American Politics."

Collingwood, Loren. 2012 Politics of Race, Immigration, and Ethnicity Consortium (January) Riverside, CA. "The Development of Cross-Racial Mobilization: The Case of Texas 1948-2010."

Collingwood, Loren. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization."

Forman, Adam and Loren Collingwood. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "Measuring Power via Presidential Phone Records." (Poster)

Collingwood, Loren with (Tim Jurka, Wouter Van Atteveldt, Amber Boydstun, and Emiliano Grossman). UseR! 2011 Conference. (August) Coventry, United Kingdom. "RTextTools: A Supervised Learning Package for Text Classification in R."

Jurka, Tim, Loren Collingwood, Wouter Van Atteveldt, Amber Boydstun, and Emiliano Grossman. 2011 Comparative Agendas Project Conference. (June) Catania, Italy. "RTextTools: A Supervised Learning Package for Text Classification in R."

Collingwood, Loren and John Wilkerson. 2011 Journal of Information Technology & Politics Conference. (May) Seattle, WA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Politics of Race, Immigration, and Ethnicity Consortium (May) Davis, CA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "Race-Matching as Targeted Mobilization."

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren (with John Wilkerson). Invited Talk: Texas A&M University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with John Wilkerson). Invited Talk: Rice University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Race-Matching as Targeted Mobilization."

Collingwood, Loren and John Wilkerson. 2011 Text as Data Conference. (March) Evanston, IL. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren and John Wilkerson. 2011 Southern Political Science Conference. (January) New Orleans, LA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with Ben Gonzalez). 2010 American Political Science Association Annual Conference. (September) Washington, DC. "The Political Process in Florida: Modeling African American Registration Rates Post *Smith v. Allwright*, 1944-1964."

Wilkerson, John, Steve Purpura, and Loren Collingwood. 2010 NSF Funded Tools for Text Workshop. (June) Seattle, WA. "Rtexttools: A Supervised Machine Learning Package in an R-Wrapper."

Collingwood, Loren and Marcela Garcia-Castanon. 2010 Western Political Science Association Annual Conference. (April) San Francisco, CA. "Negativity as a Tool: candidate poll standing and attack politics."

Collingwood, Loren. 2010 Politics of Race, Immigration, and Ethnicity Consortium. (January) Riverside, CA. "White Outreach: A spatial approach to modeling black incorporation in Florida post *Smith v. Allwright*, 1944-1965."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Levels of Education, Political Knowledge and Support for Direct Democracy."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "The Negativity Effect: Psychological underpinnings of advertising recall in modern political campaigns."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren, (with Matt Barreto and Sylvia Manzano) 2009 Shambaugh Conference. (March) University of Iowa, IA. "More than one way to shuck a tamale: Latino influence in the 2008 general election."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Francisco Pedraza (with Matt Barreto and Chris Parker). 2009 Center for Statistics and the Social Sciences 10th Anniversary Conference. (May) Seattle, WA. "Race of interviewer effects: perceived versus actual."

Collingwood, Loren (with Matt Barreto, Chris Parker, and Francisco Pedraza). 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Race of interviewer effects: perceived versus actual."

Barreto, Matt, Loren Collingwood and Todd Donovan. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Early Presidential Primaries, Viability, and Vote Switching in 2008."

Collingwood, Loren. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Levels of Education and Support for Direct Democracy: A Survey Experiment."

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. "Levels of Education and Support for Direct Democracy: A Survey Experiment." (Poster)

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. "Response Effects in Multi-Candidate Primary Vote Questions." (Poster)

Computer Skills

R, Stata, Python, WinBugs/JAGS, L^AT_EX, SPSS, MySQL, Access, ArcGIS, Some C++ when interacting with R.

Reports

Collingwood, Loren. (2008). *The Washington Poll: pre-election analysis*. www.washingtonpoll.org.

Collingwood, Loren. (2008). *Democratic underperformance in the 2004 gubernatorial election: explaining 2004 voting patterns with an eye towards 2008*. www.washingtonpoll.org.

Barreto, Matt, Loren Collingwood, Francisco Pedraza, and Barry Pump. (2009). *Online voter registration in Washington State and Arizona*. Commissioned by Pew Research Center.

Collingwood, Loren, Todd Donovan, and Matt Barreto. (2009). *An assessment of ranked choice voting in Pierce County, WA*.

Collingwood, Loren. (2009). *An assessment of the fiscal impact of ranked choice voting in Pierce County, WA*. Commissioned by the League of Women Voters.

Barreto, Matt, and Loren Collingwood. (2009). *Latino candidates and racial block voting in primary and judicial elections: An analysis of voting in Los Angeles County board districts*. Commissioned by the Los Angeles County Chicano Employees Association.

Barreto, Matt, and Loren Collingwood. (2011). *A Review of Racially Polarized Voting For and Against Latino Candidates in Los Angeles County 1994-2010*. Commissioned by Los Angeles County Supervisor Gloria Molina. August 4.

Collingwood, Loren. (2012). *Recent Political History of Washington State: A Political Map*. Commissioned by the Korean Consulate.

Collingwood, Loren. (2012). *Analysis of Polling on Marijuana Initiatives*. Commissioned by Greenberg Quinlan Rosner.

Collingwood, Loren, Sean Long, and Francisco Pedraza. (2019). *Evaluating AltaMed Voter Mobilization in Southern California, November 2018*. Commissioned by AltaMed.

Relevant Work Experience

Collingwood Research, LLC

Statistical Consulting and Analysis

January 2008 - Present

Conducted over 200 projects involving political research, polling, statistical modeling, redistricting analysis and mapping, data analysis, micro-targeting, and R software development for political and non-profit clients. Clients include: Greenberg Quinlan Rosner, Latino Decisions, Pacific Market Research, Beck Research, Squier Knapp Dunn Communications, Anzalone–Lizst Research, League of Women Voters, Shelia Smoot for Congress, pollster.com, Comparative Agendas Project, Amplified Strategies, Gerstein Bocian & Agne, Strategies 360, the Korean Consulate, the California Redistricting Commission, Monterey County Redistricting Commission, ClearPath Strategies, Los Angeles County Council, Demchak & Baller Legal, Arnold & Porter LLP, JPM Strategic Solutions, National Democratic Institute (NDI) – on site in Iraq, Latham & Watkins, New York ACLU, United States Department of Justice (Demography), Inland Empire Funder’s Alliance (Demography), Perkins & Coie, Elias Law Group; Santa Clara County (RPV Analysis); Native American Rights Fund (NARF); West Contra Costa Unified School District (Demography); Lawyers’ Committee for Civil Rights Under Law; LatinoJustice PRLDEF, Voces de Frontera; Roswell, NM Independent School District

Expert Witness Work

Expert Witness: *Faith Rivera, et al. v. Scott Schwab and Michael Abbott No. 2022-CV-000089*, 2022

Expert Witness: *LULAC Texas et al. v. John Scott et al (1:21-cv-0786-XR)*, 2022

Expert Witness: *Pendergrass v. Raffensperger (N.D. Ga. 2021)*,

Expert Witness: *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, 2021

Expert Witness: *East St. Louis Branch NAACP vs. Illinois State Board of Elections*, 2021

Expert Witness: *LULAC of Iowa vs. Pate*, 2021-2022

Expert Witness: *United States Department of Justice vs. City of Hesperia*, 2021-2022

Expert Witness: *NAACP vs. East Ramapo Central School District*, New York, 2018-2019

Riverside County, Corona and Eastvale, 2015

Los Angeles County Redistricting Commission, 2011

Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County and alternative map creation, 2010-2011

State of California, Citizens Redistricting Commission, including Blythe, CA, in Riverside County, 2011

Monterey County, CA Redistricting, alternative map creation, 2011

Loren Collingwood

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Greenberg Quinlan Rosner

Assistant Analyst, Anna Greenberg

June 2005 - May 2007

Assisted in the development of questionnaires, focus group guidelines, memos, and survey reports for political, non-profit, and corporate clients. Moderated in-depth interviews and focus groups.

Greenberg Quinlan Rosner

Field Associate

December 2003 - June 2005

Managed qualitative and quantitative data collection process in the U.S. and internationally. Provided methodological advice, including sample stratification, sampling Latino populations, and modal sampling strategies.

Congressman Adam Schiff

Database Manager

March 2003 - June 2003

Managed constituent mail and survey databases; updated and maintained Member's Congressional voting record.

Strategic Consulting Group

Field Organizer, Carol Roberts for Congress

July 2002 - November 2002

Recruited and coordinated over 100 volunteers for mailings, canvassing, phone banking, and GOTV operations. Developed internship program and managed 15 interns from local colleges and high schools.

Institute for Policy Studies

Intern, John Cavanagh

May 2001 - August 2001

Provided research assistance for projects advocating reform of the WTO, World Bank, and IMF. Worked on reports and op-ed pieces on global economic issues advocating fair trade.