

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

MICHAEL HOWE, in his official capacity as
Governor of the State of North Dakota, et al.,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

FACTUAL BACKGROUND..... 3

 I. The prior North Dakota legislative districting plan and election results 3

 II. The 2021 Redistricting 4

 III. District 9’s white-majority electorate and the unusual circumstances of the 2018 election..... 6

 IV. The November 2022 election..... 9

 V. Plaintiffs’ Demonstrative District..... 10

 VI. Spirit Lake and Turtle Mountain have shared non-racial interests related to legislative representation..... 13

 VII. White bloc voting usually defeats Native American voters’ candidates of choice. 14

LEGAL STANDARD..... 17

ARGUMENT 17

 I. Plaintiffs have satisfied the first *Gingles* precondition..... 20

 A. Plaintiffs’ demonstrative district is majority NVAP. 20

 B. Plaintiffs’ demonstrative district is reasonably compact and joins Native American voters with shared non-racial interests. 20

 1. Plaintiffs’ Demonstrative District 9 is reasonably compact and respects traditional districting criteria. 21

 2. Turtle Mountain and Spirit Lake are geographically proximate and their voters share common needs and interests..... 27

 II. Plaintiffs have satisfied—or at the very least shown genuine disputes of material facts—as to the third *Gingles* precondition. 30

 III. Defendant’s contention that Plaintiffs’ Demonstrative District 9 is a racial gerrymander has no basis in evidence and is belied by Supreme Court precedent. 36

CONCLUSION..... 40

CERTIFICATE OF SERVICE 42

TABLE OF AUTHORITIES

Cases

Abbott v. Perez, 138 S. Ct. 2305 (2018)22

Bone Shirt v. Hazeltine, 461 F.3d 1011 (8th Cir. 2006)18, 19, 20, 31, 32, 40

Bone Shirt v. Hazeltine, 387 F. Supp. 2d 1035 (D.S.D. 2005)19

Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004)19, 31

Brand v. National Union Fire Ins. Co. of Pittsburgh, PA, 934 F.3d 799 (8th Cir. 2019)17

Bush v. Vera, 517 U.S. 952 (1996)39

Cooper v. Harris, 581 U.S. 285 (2017)21, 36

Georgia v. Ashcroft, 539 U.S. 461 (2003)4

Johnson v. De Grandy, 512 U.S. 997 (1994).....21, 31

League of United Latin American Citizens v. Perry,
548 U.S. 399 (2006).....18, 19, 21, 27, 28, 29, 36

Miller v. Johnson, 515 U.S. 900 (1995).....39

Missouri State Conference of NAACP v. Ferguson-Florissant School District,
894 F.3d 924 (8th Cir. 2018)18

Old Person v. Cooney, 230 F.3d 1113 (9th Cir. 2000)31

Robinson v. Ardoin, 37 F.4th 208 (5th Cir. 2022)25

Ruiz v. City of Santa Maria, 160 F.3d 543 (9th Cir. 1998).....31, 34

Sensley v. Albritton, 385 F.3d 591 (5th Cir. 2004)38

Session v. Perry, 298 F. Supp. 2d 451 (E.D. Tex. 2004)22

Shaw v. Reno, 509 U.S. 630 (1993)38

Thornburg v. Gingles, 478 U.S. 30 (1986)18, 31, 34

Walz v. Randall, 2 F.4th 1091 (8th Cir. 2021).....17

Wright v. Sumter County Board of Elections & Registration,
657 F. App’x 871 (11th Cir. 2016)30

Statutes and Regulations

N.D. Const. art. IV, § 223

52 U.S.C. § 1030118

Fed. R. Civ. P. 56(a)3, 17

INTRODUCTION

For the first time since 1990, there is no Native American serving in the North Dakota state senate. And in 2022, Native American voters in northeast North Dakota saw their ability to elect state house representatives drop from two seats to one seat. This is the result of a classic example of vote dilution, attributable to packing a supermajority of Native citizens into District 9A—which has the fifth highest Native population among the thirty-one Native American majority district nationwide—while simultaneously cracking the remaining Native population across neighboring Districts 9B and 15. As the stark evidence of the 2022 election results demonstrates, the 2021 redistricting map minimized the voting strength of Native American voters in North Dakota even as the Native American share of the statewide population increased since the last decennial Census.

Defendant’s motion for summary judgment should be denied. Relying on the expert report of Dr. M.V. “Trey” Hood, Defendant contends that Plaintiffs failed to satisfy two of the three preconditions necessary to establish a violation of the Voting Rights Act (“VRA”). But Plaintiffs submitted expert testimony from Dr. Loren Collingwood demonstrating that both conditions are satisfied: the Native American population in the region is sufficiently large and geographically compact to form a majority Native American district from which three legislators would be elected, and white bloc voting usually operates to defeat Native voters’ candidates of choice. This evidence is sufficient to create a genuine dispute of material fact, precluding summary judgment.

Even more damning to Defendant’s motion, however, is that Dr. Hood now disputes his own opinions—opinions on which Defendant’s motion rests. After the motion was filed, Dr. Hood testified at his deposition that the grounds upon which Defendant has moved are incorrect. He testified that Plaintiffs’ Demonstrative District 9 satisfies the majority-minority requirement and is reasonably compact, and that he incorrectly gave equal weight to all the election results he

evaluated in determining whether white bloc voting usually operates to defeat Native voters' candidates of choice in the region. He further testified that when the most probative contests are considered, Plaintiffs easily satisfy this precondition. Likewise, he testified that his *own analysis* of white bloc voting in District 9 shows that Plaintiffs have met their burden when he adds in the most recent elections—elections he agrees are probative and should be included, but which he ran out of time to include in his own analysis.

Furthermore, Defendant *himself* has now reversed course with respect to this precondition. Just yesterday, Defendant moved for summary judgment in *Walen v. Burgum* (No. 1:22-cv-00031-PDW-RRE-DLH). There, Defendant contends that Subdistrict 9A was necessary because enacted District 9 *violates the VRA*. *See id.* ECF No. 102 at 39 (“*Walen MSJ*”). In particular, Defendant asserts that the third *Gingles* precondition is satisfied in District 9. *See id.* (“[R]emoval of the subdivision in District 9 would result in Native American populations that would usually not be able to elect their candidate of choice”); *id.* at 40 (contending that, with respect to enacted District 9, “the preferred candidate of the Native American population in and around . . . Turtle Mountain would be regularly defeated by the White population.”). There no longer appears to be any dispute that *Gingles* prong three is satisfied in District 9. The only remaining question is whether the VRA requires (1) a district configuration that reduces Native American voters' opportunity to elect from three legislative seats to just a one (the enacted plan), or (2) a configuration that maintains Native American voters' opportunity to elect in three legislative seats (Plaintiffs' demonstrative plan). Were there doubt, trial will show the answer is the latter.

Finally, despite concluding in his report that Plaintiffs' Demonstrative District 9 might be a racial gerrymander, Dr. Hood testified that he has no evidence to support this conclusion, is not actually claiming the district is gerrymandered, and the district does not subordinate traditional

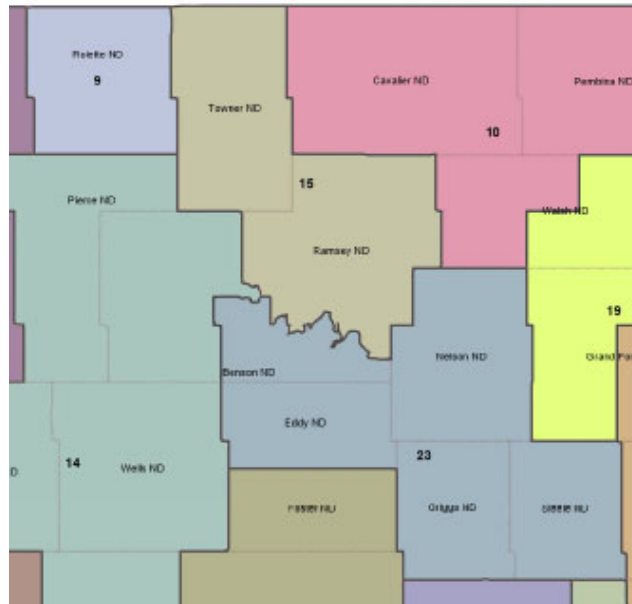
districting principles to racial considerations. In sum, both Defendant’s and Plaintiffs’ experts—and even Defendant himself—now dispute the facts upon which Defendant’s motion rests. Defendant has not and cannot demonstrate that he is “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The motion should be denied.

FACTUAL BACKGROUND

I. The prior North Dakota legislative districting plan and election results

The reservations of the Turtle Mountain Band of Chippewa Indians (“Turtle Mountain”) and the Spirit Lake Nation (“Spirit Lake”) are both located in northeast North Dakota. Prior to the 2021 redistricting, Rolette County—where the Turtle Mountain reservation is located—was its own state legislative district, District 9. The Spirit Lake reservation was in District 23. This region in the 2012-2020 (“benchmark”) plan is shown below:

2012-2020 “Benchmark” Legislative Plan Regional View



Ex. 2 at App. G (Collingwood Rebuttal). From 1990 until 2022, District 9 elected a Native American candidate to the state senate, as well as two state representatives who were the candidates of choice of Native American voters. Ex. 2 at 5-7 (Collingwood Rebuttal). Senator Richard

Marcellais, a Turtle Mountain member, represented District 9 from 2006 until 2022. Ex. 2 at 6 (Collingwood Rebuttal).

II. The 2021 Redistricting

The Joint Redistricting Committee introduced House Bill 1504 as the proposed legislative redistricting plan and held a hearing on November 8, 2021. ECF No. 60-32. The new redistricting plan accounts for population changes as reflected in the 2020 Census. For example, the 2020 Census data revealed that benchmark District 9 was 4,389 people short of the ideal district size. Ex. 2 at 5 (Collingwood Rebuttal); Ex. 9 at 1 (N.D. Legislative Council Population Change Summary). The Census data also showed that the Native American population grew from 5.1% of the statewide VAP in 2010 to 5.9% in 2020. Ex. 2 at 6 (Collingwood Rebuttal).

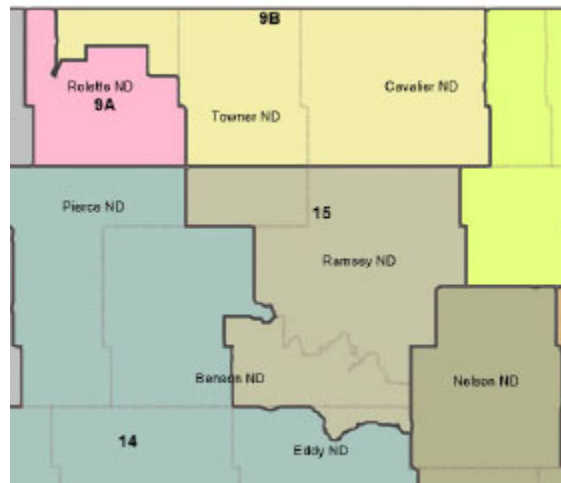
The proposed map substantially changed the districts in northeastern North Dakota and in particular the districts in which the Turtle Mountain and Spirit Lake reservations are located. Parts of Towner and Cavalier Counties—the VAP of which are 96.0% and 95.6% white respectively—were added to District 9. Ex. 2 at App. E, App. G (Collingwood Rebuttal); Ex. 1 at 16 (Collingwood Initial Report). By extending District 9 east into overwhelmingly white counties, the enacted plan dramatically changed the demographic makeup of the district, reducing its NVAP by twenty percentage points, from 74.4% to 54.5%. Ex. 1 at 31 (Collingwood Initial Report).¹ Among the 31 Native American-majority state legislative districts in the country, the enacted version of District 9 has the second lowest NVAP share nationwide. Ex. 2 at 5 (Collingwood

¹ This includes people who identify as exclusively or part Native American. The legislature's reports and Defendant's expert Dr. Hood use only the exclusively Native American data; by that measure District 9 is now just 51.7% Native American. ECF No. 60-35 at 2 (Hood Report). Although the proper metric in VRA cases is to include all people who identify with the minority group as Dr. Collingwood has done, *see Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), the distinction does not make a material difference here, *see Ex. 2 at 3 n.1 (Collingwood Rebuttal)*.

Rebuttal). The average NVAP of a majority-Native American legislative district nationwide is 68.1% and the median is 66.7%. Ex. 2 at 5 (Collingwood Rebuttal). The Spirit Lake reservation was separated from all of the counties with which it previously shared a district and placed in District 15, neighboring District 9. *Compare* Ex. 2 at App G with App. E (Collingwood Rebuttal).

Citing the VRA, the legislature divided District 9 into two subdistricts each with one state representative seat, District 9A and 9B, Ex. 19 at 17:16-18:23 (Nov. 9, 2021, Redistricting Comm. Hr’g Tr.). Presumably this was because, as Defendant asserts in the *Walen* matter, the full District 9 violated the VRA. *Walen* MSJ at 40. The enacted map for the region is shown below:

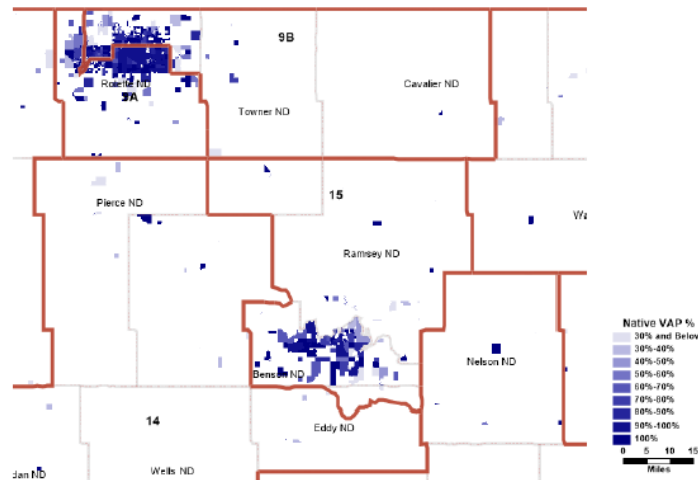
2021 Enacted Plan Regional View



Ex. 2 at App. E (Collingwood Rebuttal). District 9A has a Native American VAP of 79.8%. This is the fifth highest NVAP among the 31 Native American-majority state legislative districts nationwide. Ex. 2 at 5 (Collingwood Rebuttal). The remaining Native American population in northeastern North Dakota is split across Districts 9B and 15. District 9B has a NVAP of 29.4%. ECF No. 60-33 at 3. District 15 has a NVAP of 20.39%. ECF No. 60-33 at 4.

A map illustrating the fragmenting of northeastern North Dakota’s Native American voters among Districts 9A, 9B, and 15 is shown below, with concentrations of Native Americans shown in blue and the district lines shown in red.

Enacted Plan Fragmenting of Native American Population



Ex. 2 at App. A (Collingwood Rebuttal).

Both Chairman Azure of Turtle Mountain and Chairman Yankton of Spirit Lake testified to the Joint Redistricting Committee on November 8, 2021 in support of an amendment offered by Sen. Marcellais to redraw District 9 to join Benson and Rolette Counties in a district that would retain Native American voters’ opportunity to elect a state senator and two state representatives rather than reducing their opportunity to elect a single state representative in one subdistrict. ECF No. 60-32 at 12. The legislature rejected that amendment and adopted House Bill 1504.

III. District 9’s white-majority electorate and the unusual circumstances of the 2018 election

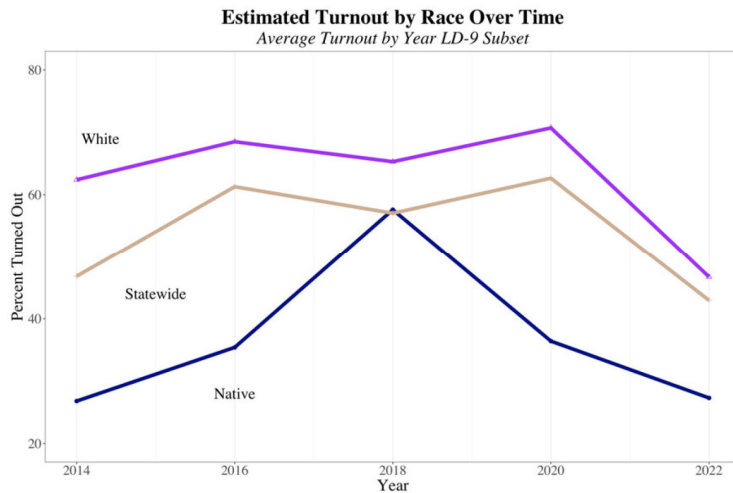
Although the redrawn District 9 has a small majority NVAP (down twenty percentage points from the benchmark district), its voting electorate is, under usual circumstances, substantially majority white. Ex. 2 at 5 (Collingwood Rebuttal). The chart below shows the demographic composition of the voting electorate in District 9 for the past five election cycles:

Enacted District 9 Electorate Demographic Composition

Election	White Electorate Share	Native American Electorate Share
2014	67%	33%
2016	63%	37%
2018	50%	50%
2020	63%	37%
2022	60%	40%

Ex. 2 at 4 (Figure 1) and 5 (¶1) (Collingwood Rebuttal). Notably, the 2018 election marked a stark departure from the usual electoral conditions in District 9. As Plaintiffs’ expert Dr. Collingwood reports, Native American voter turnout nationwide, in North Dakota, and specifically in District 9, is typically substantially lower than white voter turnout. Ex. 2 at 3-4 (Collingwood Rebuttal). In District 9, Native American voter turnout is “usually in the neighborhood of 20-30 percentage points” lower than white turnout. Ex. 2 at 4 (Collingwood Rebuttal). For all categories of voters, turnout in presidential election cycles exceeds turnout in midterm election cycles as a general matter. Ex. 2 at 4 (Collingwood Rebuttal).

The 2018 North Dakota election was different. As the graph below shows, Native American turnout in 2018 skyrocketed to 57.6% in District 9, exceeding statewide overall turnout and approaching (but not reaching) white turnout in the district. Ex. 2 at 4 (Collingwood Rebuttal).



Ex. 2 at 4 (Figure 1) (Collingwood Rebuttal). As Dr. Collingwood explains, “[i]n all the many elections in different jurisdictions that I have studied, I have never seen a Native American turnout number begin to approach 60% in a federal, state, or local contest. Rather, the figures often hover around 30% - which is in line with my estimates in every other election year in LD-9.” Ex. 2 at 4 (Collingwood Rebuttal). Furthermore, the pattern of midterm versus presidential cycle turnout for Native Americans is “strikingly inverted” with respect to the 2018 election. *Id.* Dr. Hood similarly testified that he could not think of another example where a group had a twenty-percentage-point higher turnout in a midterm than in a presidential election. Ex. 3 at 83:13-20 (Hood Dep.).

As Chairman Azure of Turtle Mountain and Chairman Yankton of Spirit Lake explain, the 2018 election featured “unique circumstances” Ex. 4 ¶ 26 (Azure Decl.); Ex. 5 ¶ 27 (Yankton Decl.). The state’s voter ID law, which required proof of residential street addresses—something many Native American voters lacked—had previously been enjoined by this Court but was permitted to go in effect by the U.S. Supreme Court just before the 2018 election. Ex. 4 ¶¶ 24-26 (Azure Decl.); Ex. 5 ¶¶ 25-27 (Yankton Decl.). As a result, “substantial amounts of money spent by national, local, and regional organizations focused on educating and turning out Native voters.” Ex. 4 ¶ 27 (Azure Decl.); Ex. 5 ¶ 34 (Yankton Decl.). In addition, national celebrities like Dave Matthews Band and Mark Ruffalo toured North Dakota Reservations and held get-out-the-vote events. Ex. 4 ¶ 28 (Azure Decl.); Ex. 5 ¶ 35 (Yankton Decl.). This type of sustained spending and electoral education focused on Native American voters had never occurred prior to the 2018 election and has not happened since. Ex. 4 ¶ 29 (Azure Decl.); Ex. 5 ¶ 36 (Yankton Decl.). The turnout among Native American voters in 2018 was “extraordinarily unusual” and the result of “substantial outrage among Native American voters at what seemed clearly to us to be a blatant effort to suppress our voting power.” Ex. 4 ¶¶ 30-31 (Azure Decl.); Ex. 5 ¶¶ 37-38 (Yankton Decl.).

IV. The November 2022 election

The first election under the new legislative redistricting plan was held on November 8, 2022. In District 9, incumbent Sen. Marcellais—who is Native American and the candidate of choice of Native American voters—lost his bid for re-election to his white challenger by a margin of 53.7% to 46.1%. Ex. 1 at 17 (Collingwood Initial Report). Sen. Marcellais carried Rolette County by 60.1% to 39.7% but lost in the newly added white-majority counties by a margin of 79.9% to 19.8% (Cavalier County) and 65.0% to 34.7% (Towner County). Ex. 10 (2022 District 9 Election Results). In District 9A, Jayme Davis—a Native American who was the candidate of choice of Native Americans—won election over her white opponent by 68.6% to 31.1%. Ex. 11 (2022 District 9A Election Results); *see also* Ex. 1 at 15 (Collingwood Initial Report). But in District 9B, incumbent Marvin Nelson—the candidate of choice of Native American voters—lost to his opponent by 56.5% to 37.6%. Ex. 12 (2022 District 9B Election Results); *see also* Ex. 1 at 16 (Collingwood Initial Report). Notably, white voters in Towner County supported Mr. Nelson—who is a white Democrat—at a rate more than 12 percentage points higher than they did Mr. Marcellais, a Native American Democrat. Ex. 1 at 16 (Collingwood Initial Report).

In District 15, Plaintiff Collette Brown—who is Native American and the candidate of choice of Native American voters in the district—lost to her white opponent by 65.5% to 33.9%. Ex. 13 (2022 District 15 Election Results); *see also* Ex. 1 at 26 (Collingwood Initial Report). Ms. Brown carried the Benson County portion of the district by a wide margin (63.4% to 36.0%) but was defeated in every other county in the district by an even wider margin. Ex. 13 (2022 District 15 Election Results). In the race for state representative, two white candidates were elected, with 41.6% and 38.6%—over the Native American candidate Heather Lawrence-Skadsem, who was the candidate of choice of Native American voters in the district. Ex. 13 (2022 District 15 Election

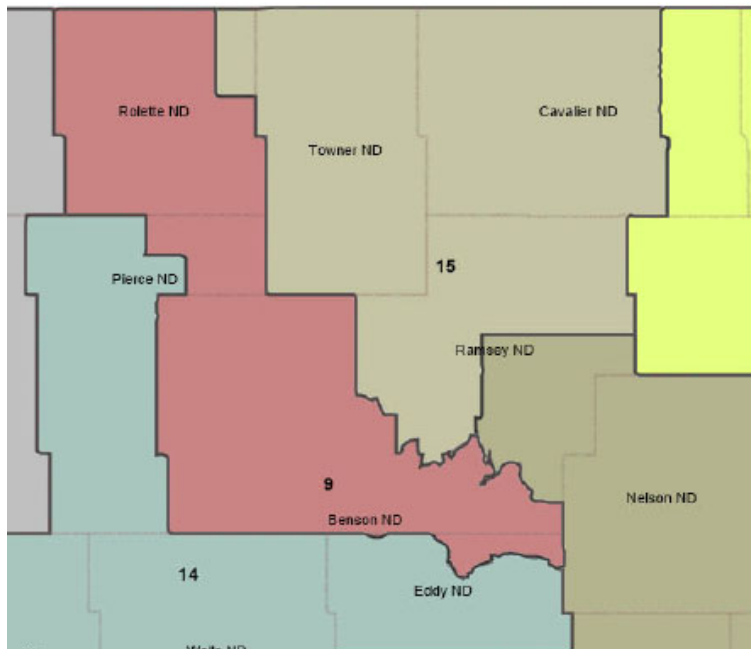
Results); *see also* Ex. 1 at 26 (Collingwood Initial Report). Ms. Lawrence-Skadsem easily carried Benson County but lost the remainder of the district. Ex. 13 (2022 District 15 Election Results).

Under the benchmark plan, Native American voters in northeastern North Dakota succeeded in electing their candidate of choice to all three seats in District 9. Under the 2021 enacted plan, Native American voters in the region were able to elect just *one* candidate of choice—Jayme Davis—to the state house in District 9A. Ex. 2 at 7 (Collingwood Rebuttal). Because of the configuration of districts in the new redistricting plan, for the first time in over thirty years, no member of a North Dakota Native American Tribe serves in the state senate today. Ex. 2 at 6 (Collingwood Rebuttal).

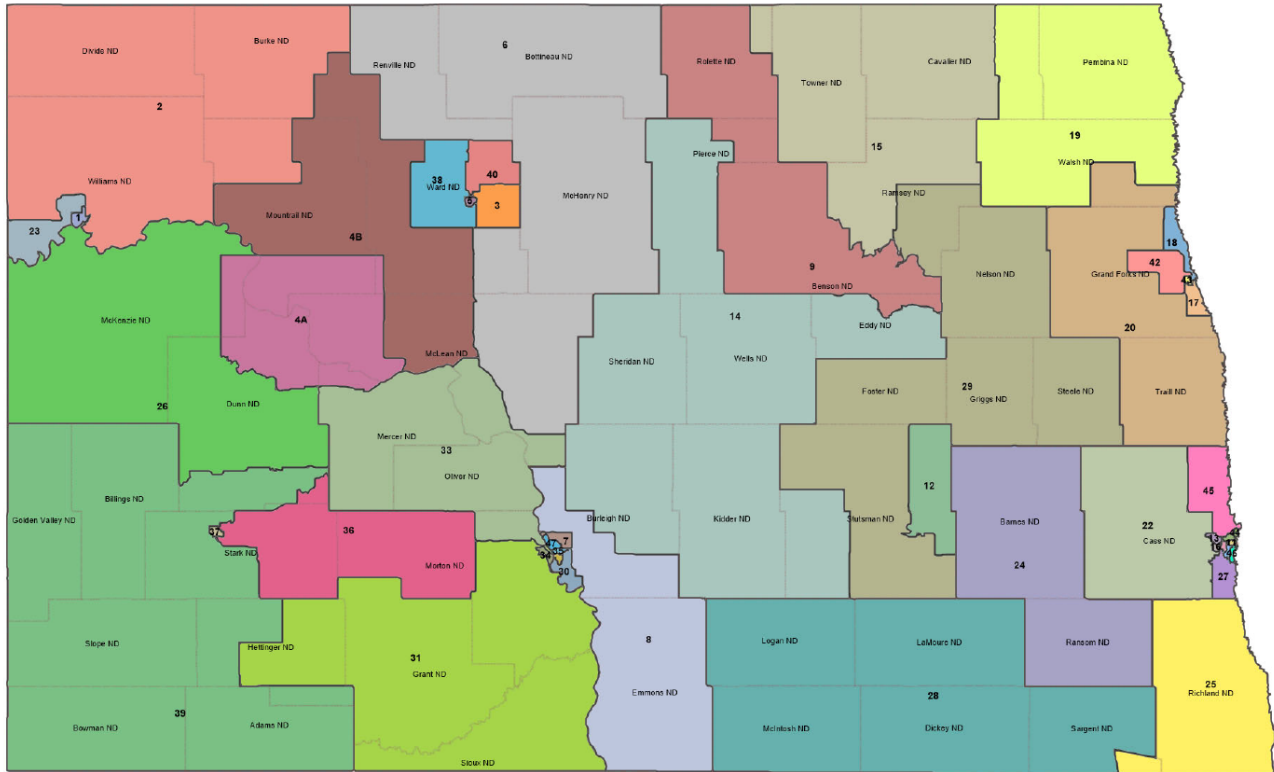
V. Plaintiffs’ Demonstrative District

Plaintiffs’ Demonstrative Plan 1 creates a new District 9 centered primarily in Rolette and Benson Counties. The district (“Demonstrative District 9”) is shown in both a regional view and set into the enacted plan:

Plaintiffs’ Demonstrative Plan 1 Regional View



Plaintiffs' Demonstrative Plan 1 Statewide View



Demonstrative District 9 has a NVAP of 66.1%, which is near exactly the median NVAP of the 31 Native American majority state legislative districts nationwide, and lower than the NVAP of District 9 in the benchmark plan. Ex. 2 at 5 (Collingwood Rebuttal). In Demonstrative District 9, the candidates of choice of Native American voters would have prevailed in 32 of 35 tested contests. Ex. 1 at 32-37 (Collingwood Initial Report).

Demonstrative District 9 does not split any voting precincts or municipalities. Ex. 2 at 16 (Collingwood Rebuttal). Its population deviation is +3.14%, lower than twenty-three of the other districts in the enacted plan. Ex. 2 at 9 (Collingwood Rebuttal). As both Dr. Collingwood and Dr. Hood explain, although the water boundaries of Devil's Lake and the Sheyenne River have a distortionary lowering effect on Plaintiffs' Demonstrative District 9's mathematical compactness scores, *see* Ex. 2 at 10 (Collingwood Rebuttal); Ex. 3 at 136:6-137:4, 155:2-157:6 (Hood Dep.),

the district still scores as more compact than several other districts in the enacted plan, Ex. 2 at 9-11 (Collingwood Rebuttal); Ex. 3 at 146:24-147:19 (Hood Dep.).

At his deposition, Defendant's expert Dr. Hood agreed that Demonstrative District 9 adheres to traditional districting criteria:

Q: [P]laintiffs' proposed District 9 satisfies the population deviation legislative goal, correct?

A: Correct.

Q: We talked about how, under your own metric for Virginia and applied here, that the district is sufficiently or reasonably compact, correct?

A: Correct.

Q: And with respect to county splits, we noted that there was an error in your report with respect to the number of counties, right, that the enacted plan splits?

A: Correct. That's correct.

Q: And demonstrative District 9 has the same number of county splits as does District 15, which is also under challenge in this case, right?

A: Correct.

And it has the same number of county splits as the state house map for [enacted] District 9, correct?

A: Correct.

Q: It splits Eddy County only to adhere to the boundaries of the Spirit Lake Nation, correct?

A: Correct.

Q: And that's the same split of Eddy County that the enacted District 15 makes, correct?

A: Correct.

...

Q: And we discussed how plaintiffs' demonstrative plan restores Towner County to its prior configuration in terms of core retention, moving it to District 15 entirely.

A: That is true.

Q: And we've discussed how the enacted map has features in terms of land bridges or necks or connecting points in districts that are a fair bit smaller than what you termed the land bridge in plaintiffs' demonstrative District 9, right?

A: Correct.

Q: And a number of the enacted districts in the map span much larger – either similar or larger geographic distances than does . . . demonstrative District 9, correct?

A: That's correct, yes.

Q: And . . . enacted District 9, in fact, from east to west is just about as long as plaintiffs' demonstrative District [9] is from north to south, correct?

A: From what I remember, yes.

...

Q: Okay. We discussed how Benson County and Rolette County are closer geographically than Rolette County is to Cavalier County, right?

A: That's true, yes.

Ex. 3 at 188:23-192:2 (Hood Dep.).

VI. Spirit Lake and Turtle Mountain have shared non-racial interests related to legislative representation.

Spirit Lake and Turtle Mountain—as well as their members and voting public—share many common characteristics and interests that relate to their common representational needs in the state legislature. The two reservations are just 55 miles apart. Ex. 2 at 17 (Collingwood Rebuttal). As the chairmen of the two tribes explain, their residents have “shared values and beliefs” and “share the experience of living in rural North Dakota tribal communities.” Ex. 4 ¶ 8 (Azure Decl.); Ex. 5 ¶ 9 (Yankton Decl.). In that respect, they share “similar socio-economic statuses” and have “similar representational needs from our state legislature related to economic investment, state-sponsored services, and legislative appropriations that differ from other North Dakota rural communities, where agricultural and energy interests predominate, and from the state’s urban areas.” Ex. 4 ¶ 8 (Azure Decl.); Ex. 5 ¶ 9 (Yankton Decl.). Turtle Mountain and Spirit Lake “partner together in many political, economic, educational, and public safety organizations,” such as United Tribes of North Dakota, United Tribes Technical College, North Dakota Tribal College System, National Congress of American Indians, North Dakota Native Tourism Alliance, and the National Indian Gaming Association. Ex. 4 ¶ 9 (Azure Decl.); Ex. 5 ¶ 10 (Yankton Decl.). The two tribes have shared interactions with the North Dakota government, including through the North Dakota Indian Affairs Commission and the legislature’s Tribal and State Relations Committee. Ex. 4 ¶ 10 (Azure Decl.); Ex. 5 ¶ 11 (Yankton Decl.).

The two tribes often join together to “pursue similar policy objectives,” including in the state legislature and the state government on “funding for tribal colleges, negotiating the tribal-state gaming compact, taxation on tribal lands, hunting and fishing regulation, tribal and state law enforcement, and funding for education, foster care, health care, etc.” Ex. 4 ¶ 11 (Azure Decl.); Ex. 5 ¶ 12 (Yankton Decl.). Legislation often has similar effects on both tribes, including currently pending House Bill 1536 to enact a state Indian Child Welfare Act. Ex. 4 ¶ 12 (Azure Decl.); Ex. 5 ¶ 13 (Yankton Decl.). Both tribal chairmen serve on the North Dakota Indian Affairs Commission, which seeks to “keep the public informed about the current laws and legislative issues that impact Indian country.” Ex. 4 ¶ 13 (Azure Decl.); Ex. 5 ¶ 14 (Yankton Decl.). The tribes work together with respect to United Tribes Technical College, on which both chairmen serve on the Board, and in that capacity lobby the legislature for funding, including workforce development grants and funding for non-member students. Ex. 4 ¶¶ 14-15 (Azure Decl.); Ex. 5 ¶¶ 15-16 (Yankton Decl.).

VII. White bloc voting usually defeats Native American voters’ candidates of choice.

White bloc voting usually defeats Native American voters’ candidates of choice in Districts 9, 9B, and 15. As Dr. Collingwood explains, three categories of elections are most probative for determining whether the white majority block votes against Native American voters’ candidates of choice: (1) “endogenous” elections, or elections for the office that is at issue (here state legislative elections as opposed to statewide, or “exogenous” elections), (2) more recent elections, and (3) elections featuring a Native American candidate. Ex. 2 at 5 (Collingwood Rebuttal); Ex 1 at 21 (Collingwood Initial Report). At his deposition, Dr. Hood agreed that these elections were more probative. Ex. 3 at 39:3-44:8 (Hood Dep.). Dr. Hood testified that exogenous elections “should be given far less weight,” Ex. 3 at 41:25-42:17 (Hood Dep.), and agreed that the 2022

state senate election in which Senator Marcellais was defeated is the “single most probative contest” for assessing white bloc voting in District 9 “because it features an endogenous election with a Native American candidate and it’s the most recent.” Ex. 3 at 45:15-24 (Hood Dep.).

Dr. Collingwood explains that white bloc voting defeats the Native American preferred candidates in 100% of the endogenous elections in District 9, in 100% of the most recent (2022) elections in District 9, 71% of elections in the most recent two cycles 2022 and 2020, and in 60% of elections in District 9 featuring a Native American candidate. Ex. 2 at 7 (Collingwood Rebuttal). Dr. Collingwood further explains that the 2018 elections exhibited “special circumstances” and “it would be appropriate to entirely disregard the 2018 elections” or at least give them “very little weight” in assessing white bloc voting. Ex. 2 at 8 (Collingwood Rebuttal). If the 2022, 2020, and 2016 elections are all considered—and even if afforded equal weight rather than differentiating based upon probative value—then Dr. Collingwood reports that white bloc voting would prevent the Native American preferred candidates from winning in 12 of 21 contests, or 57% of the time. Ex. 2 at 8 (Collingwood Rebuttal).

Dr. Collingwood further explains that when District 9 and 9B are summed together, the white-preferred candidate wins 58% of the time. Ex. 2 at 7 (Collingwood Rebuttal). Although Dr. Hood included packed District 9A in his calculations, he later testified that he “didn’t necessarily disagree” that it made more sense to exclude District 9A from the combined calculation given District 9A’s overwhelmingly high NVAP. Ex. 3 at 96:4-15, 98:10-99:6 (Hood Dep.). Dr. Hood agreed that including the results for District 9 and 9B and excluding the results of packed District 9A would show that white bloc voting usually defeats Native American preferred candidates in District 9. Ex. 3 at 98:10-99:6 (Hood Dep.). Further, as Dr. Collingwood explains, given the regional focus of the claim in this case—affecting several districts and a subdistrict—the “most

sensible approach” is to consider District 9 and 15 together for purposes of assessing white bloc voting. Ex. 2 at 7 (Collingwood Rebuttal). By that measure white voters block Native American voters’ preferred candidate from winning 64% of the time in the region. *Id.* This is true even without giving additional weight to the more probative endogenous, recent, and racially contested elections, which show even more powerful white bloc voting defeating Native American voters’ preferred candidates. Ex. 2 at 7 (Collingwood Rebuttal).

Dr. Hood conducted his own analysis of white bloc voting in District 9 in his expert report for Defendants in the related *Walen v. Burgum* case (Case No. 1:22-cv-00031-PDW-RRE-DLH). Ex. 14 at 5-6 (Hood Walen Report). In that report, Dr. Hood examined six exogenous elections—three from 2018 and three from 2020—and concluded that Native American-preferred candidates won four of the six, and thus that white bloc voting did not prevent Native American voters’ preferred candidates from prevailing in enacted District 9. At his deposition, however, Dr. Hood testified that he “did not get to a full analysis” and “did not perform any kind of statistical analysis on the 2022 elections” because he had insufficient time to do so before his expert report was due. Ex. 3 at 101:19-102:8 (Hood Dep.). He testified that he agreed it would have been “preferable” to include the 2022 elections because “they certainly are the most recent set of elections.” Ex. 3 at 102:9-16 (Hood Dep.). Dr. Hood then identified during his deposition four 2022 contests he thought were particularly probative and should be added to his analysis: the 2022 elections for U.S. Senate, Attorney General, District 9 state senator, and Public Service Commissioner (which included a Native American candidate). Ex. 3 at 108:8-16 (Hood Dep.). Dr. Hood testified that if the four 2022 elections he agreed should be added to his analysis were included, “that would show 60% defeat rate for the Native American preferred candidates in District 9,” which would demonstrate that white voters usually defeat the candidates preferred by Native American voters

in enacted District 9. Ex. 3 at 109:13-111:15 (Hood Dep.). Including the additional elections that Dr. Hood himself identified thus creates a material dispute between Dr. Hood’s testimony—which confirms the conclusions reached by Plaintiffs’ expert Dr. Collingwood—and the written opinion offered by Dr. Hood with respect to the effect of white bloc voting in the district. It is therefore unsurprising that Defendant *himself* has reversed course since filing his motion and confirmed that the third *Gingles* precondition is satisfied in District 9. *See Walen*, ECF No. 102 at 39-40.

In sum, Plaintiffs, Defendant, and both experts now agree that white voters in Districts 9, 9B and 15 usually defeat Native American voters’ preferred candidates. Ex. 2 at 8 (Collingwood Rebuttal); Ex. 1 at 26 (Collingwood Initial Report); ECF No. 60-35 at 4 (Hood Report); Ex. 15 at HOOD-0256 (Ex. 6 of Hood Dep. showing calculations); *Walen*, ECF No. 102 at 39-40.

LEGAL STANDARD

Summary judgment is proper “when the record establishes that there is ‘no genuine dispute as to any material fact’ and the moving party is ‘entitled to judgment as a matter of law.’” *Brand v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 934 F.3d 799, 802 (8th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). “Courts must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party.” *Id.* Summary judgment is not appropriate where the court must “weigh the evidence, make credibility determinations, or attempt to discern the truth of any factual issue.” *Walz v. Randall*, 2 F.4th 1091, 1099 (8th Cir. 2021).

ARGUMENT

Defendant’s motion for summary judgment should be denied. The evidence—including the deposition testimony of *Defendant’s* expert Dr. Hood—shows that Plaintiffs have satisfied both of the *Gingles* preconditions that are subject of Defendant’s motion, and thus Defendant has failed to meet his burden to show he is entitled to judgment as a matter of law.

Section 2 of the VRA, 52 U.S.C. § 10301, prohibits the dilution of minority voters' voting strength in redistricting plans. "Dilution of racial minority group voting strength may be caused by the dispersal of [minority voters] into districts in which they constitute an ineffective minority of voters or from the concentration of [minority voters] into districts where they constitute an excessive majority." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986). The former is called "cracking" and the latter "packing." As the Eighth Circuit has explained, a minority group that is a "bare numerical majority" of a district may "still face actual impediments and disadvantages" to electoral participation that result from "the history of discrimination and disenfranchisement." *Missouri State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 933 (8th Cir. 2018). Thus, a majority-minority district may violate Section 2 when the "citizen voting-age majority . . . lack[s] real electoral opportunity." *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 428 (2006) ("*LULAC*").

The Court's inquiry under Section 2 "requires an 'intensely local appraisal' of the challenged district," *LULAC*, 548 U.S. at 437, and is "peculiarly dependent upon the facts of each case," *Gingles*, 478 U.S. at 79 (quoting *Rogers v. Lodge*, 458 U.S. 613, 621 (1982)). In states with multi-member state legislative districts, like North Dakota, that "intensely local appraisal" may require creating a multi-member Section 2 minority opportunity district, it may require the creation of subdistricts for the state house elections, or it may require a mix of both statewide. The Section 2 remedy depends on local conditions in each district and on which configuration affords the minority group an equal opportunity to elect candidates of their choice. For example, in *Bone Shirt v. Hazeltine*, the Eighth Circuit affirmed a ruling that South Dakota's state legislative plan violated Section 2 by minimizing the number of legislators Native American voters could elect. 461 F.3d 1011, 1023-24 (8th Cir. 2006). In *Bone Shirt*, the district court ordered a remedial plan that

included one multi-member NVAP majority district (District 27), because the election data showed that district would permit Native American voters to elect their preferred candidates for all three legislative positions. *Bone Shirt v. Hazeltine*, 387 F. Supp. 2d 1035, 1039, 1041 (D.S.D. 2005) (remedial order). The remedial map also included two subdistricts, however—District 26A and 28A—in which the electoral data showed Native American voters could elect their candidates of choice to a single house seat but not the second house seat or the senate seat. *Id.* at 1039; *see also Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 989 (D.S.D. 2004) (trial order). The NVAP of the two subdistricts and one multi-member district adopted by the court ranged from 65.6% to 74.4%. *Id.* (Plan E). Moreover, District 28A combined two separate Native American Reservations—the Cheyenne River Reservation and the Standing Rock Reservation. *Id.* The Eighth Circuit affirmed the district court’s remedial order. *Bone Shirt*, 461 F.3d at 1023-24.

To succeed on a Section 2 claim, plaintiffs must first meet three elements known as the *Gingles* preconditions:

(1) [T]he racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes as a bloc to enable it usually to defeat the minority’s preferred candidate.

Bone Shirt, 461 F.3d at 1018 (quoting *LULAC*, 548 U.S. at 425) (bracket in original).

Both experts agree and Defendant concedes that voting in the region is racially polarized and thus that the second *Gingles* prong is met. Ex. 1 at 14-16, 22 (Collingwood Initial Report); ECF No. 60-35 at 2, 4 (Hood Report); Mem. in Support of Mot. for Summ. J. at 16, ECF 59. Defendant moves only with respect to the first and third *Gingles* preconditions. The motion is without merit and should be denied.

I. Plaintiffs have satisfied the first *Gingles* precondition.

A. Plaintiffs' demonstrative district is majority NVAP.

Plaintiffs have satisfied the first *Gingles* precondition. Plaintiffs' Demonstrative Plan 1 contains a proposed District 9 with a NVAP of 66.1%. Ex. 2 at 5 (Collingwood Rebuttal). This easily surpasses the *Gingles* prong one required majority-minority district showing.

Defendant, however, contends that *Gingles* prong one is not met because the *enacted* versions of Districts 9B and 15 are not majority NVAP. ECF No. 59 at 17-18. This misapprehends the purpose of the first *Gingles* precondition, which focuses on a potential *alternative* district, not whether the *challenged* districts are majority-minority. *Bone Shirt*, 461 F.3d at 1018 (explaining that first *Gingles* precondition is about a "proposed" district). Dr. Hood abandoned his expert report's conclusion regarding the first *Gingles* precondition at his deposition, agreeing that the "conclusion about *Gingles* prong 1 here in your report isn't actually about *Gingles* prong 1; it's just an observation that the enacted District 15 isn't itself a majority Native voting age population district." Ex. 3 at 158:1-159:12 (Hood Dep.); *See also* Ex. 2 at 8-9 (Collingwood Rebuttal).

Defendant's focus on the demographic makeup of the *enacted* districts is therefore misplaced; it is undisputed that Plaintiffs' have proffered majority NVAP demonstrative districts.

B. Plaintiffs' demonstrative district is reasonably compact and joins Native American voters with shared non-racial interests.

Next, Defendant asserts that Plaintiffs cannot establish *Gingles I* because their demonstrative district is not reasonably compact. But Plaintiffs' expert analysis, Defendant's expert testimony, and Supreme Court precedent all confirm that Demonstrative District 9² is

² Plaintiffs focus their discussion on Demonstrative Plan 1 for simplicity, but the same arguments largely apply to both demonstrative plans.

reasonably compact and joins Native Americans with shared non-racial interests. At the least this creates a dispute of fact with respect to Defendant’s motion, precluding summary judgment.

The first *Gingles* precondition requires Plaintiffs to demonstrate that Native American voters can constitute the majority of voters “in some reasonably configured legislative district.” *Cooper v. Harris*, 581 U.S. 285, 301 (2017); *see also LULAC*, 548 U.S. at 430 (“[T]he first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidate of its choice.” (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994))).³

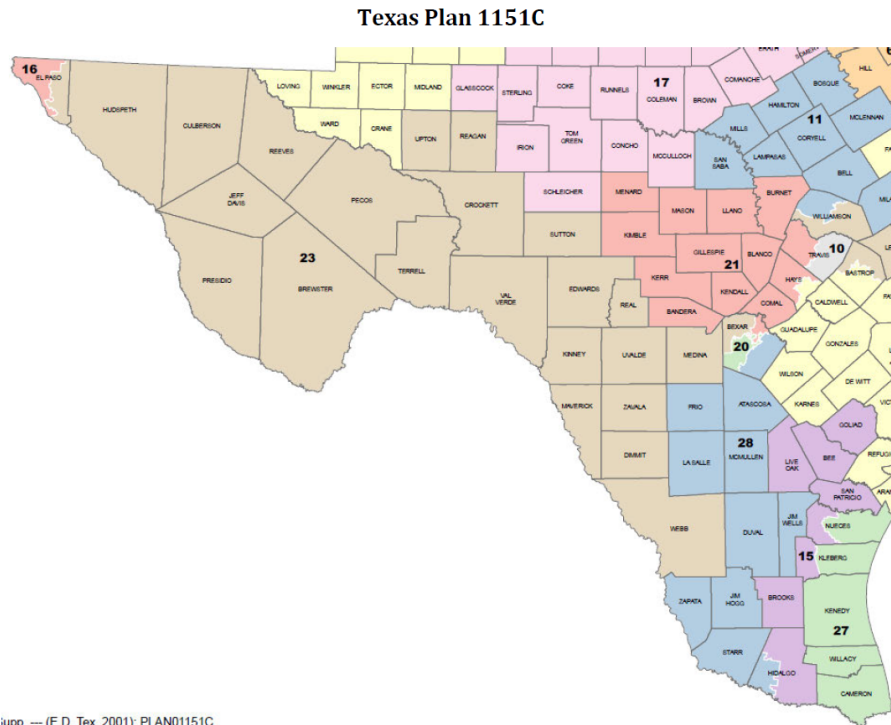
1. Plaintiffs’ Demonstrative District 9 is reasonably compact and respects traditional districting criteria.

Here, Plaintiffs’ expert analysis demonstrates that Demonstrative District 9 is reasonably compact for VRA purposes, in its shape and its adherence to traditional districting criteria. Indeed, Dr. Hood conceded as much at his deposition after Defendant moved for summary judgment.

As Dr. Collingwood explains, Plaintiffs’ Demonstrative District 9 scores higher on mathematical compactness metrics than several congressional districts the Supreme Court has held to be “reasonably compact” for purposes of *Gingles* prong one. Ex. 2 at 12 (Collingwood Rebuttal). In *LULAC*, the Supreme Court considered the compactness aspect of *Gingles* prong one in the context of two Texas congressional plans—one drawn by a federal court and used in the 2002 election and a subsequent legislatively adopted plan used in the 2004 election. 548 U.S. at 409. The Court affirmed the lower court’s holding that the 2002 court-drawn plan, known as “Plan 1151C,” contained six “reasonably compact” Latino opportunity districts for VRA purposes in

³ *De Grandy* articulated this standard in the context of single-member districts. Here, given the comparison of subdistricts to multimember districts, it is more useful to consider the number of *seats* where Native voters have an opportunity to elect.

south and west Texas. *Id.* at 423, 435; *see Session v. Perry*, 298 F. Supp. 2d 451, 488 (E.D. Tex. 2004) (identifying Districts 15, 16, 20, 23, 27, and 28 as the “reasonably compact” Latino opportunity districts for purposes of VRA compliance). Those districts are shown below:



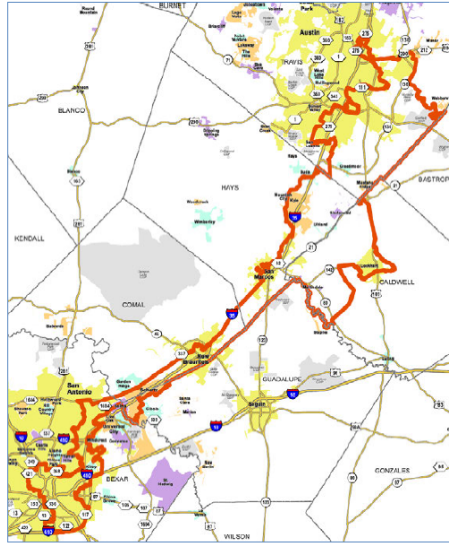
supp. — (E.D. Tex. 2001); PLAN01151C

Ex. 2 at 12 (Collingwood Rebuttal). As Dr. Collingwood found, Plaintiffs’ Demonstrative District 9 has a higher Reock score than two of the districts the *LULAC* Court found to be reasonably compact for purposes of the VRA, and a higher Polsby-Popper score than four of the six districts.⁴

Likewise, Plaintiffs’ Demonstrative District 9 is substantially more compact than a district the Supreme Court recently upheld. In *Abbott v. Perez*, the Supreme Court held that the 2013 Texas legislature had good reasons to believe that then-enacted District 35 met the *Gingles* preconditions. 138 S. Ct. 2305, 2331-32 (2018). District 35—upheld by the Supreme Court—is shown below:

⁴ Reock and Polsby-Popper are different mathematical measures of compactness frequently used by political scientists. *See, e.g.*, Ex. 2 at 9-10 (Collingwood Rebuttal Report). As noted *supra* at 11, the water boundaries in Demonstrative District 9 have a distortive lowering effect these mathematical scores, which is more pronounced with respect to the Polsby-Popper score. *See* Ex. 2 at 10 (Collingwood Rebuttal Report).

Texas Plan C235 District 35



Ex. 2 at 13 (Collingwood Rebuttal). By mathematical scores—and by using one’s eyes—it is clear that Plaintiffs’ Demonstrative District 9 is substantially more compact than then-enacted Texas District 35. Ex. 2 at 13 (Collingwood Rebuttal).

Plaintiffs’ Demonstrative District 9 exceeds the threshold for “reasonable compactness” applied to VRA districts by the Supreme Court, which should resolve the issue. It is at least sufficient to create a dispute of fact with respect to Defendant’s motion. *See also* Ex. 3 at 151:8-25 (Hood Dep.) (Dr. Hood testifying that comparing a demonstrative plan to VRA districts upheld by the Supreme Court is the type of analysis he has done in the past but did not do here).

Notably, Plaintiffs’ Demonstrative District 9 scores higher on mathematical compactness scores than several other state legislative districts in the 2021 enacted plan. Ex. 2 at 9-11 (Collingwood Rebuttal); Ex. 3 at 146:24-147:19 (Hood Dep.). Unless Defendant contends that enacted districts with lower scores than Plaintiffs’ Demonstrative District 9 are unlawful, he cannot claim that Plaintiffs’ proposed district is not reasonably compact. *See* N.D. Const. art. IV, § 2 (requiring that districts be “compact and contiguous”). Indeed, Dr. Hood—who had previously testified as an expert on the subject of compactness in Virginia redistricting litigation—testified at

his deposition that under his previous methodology, all of the enacted North Dakota districts *and* Plaintiffs’ Demonstrative District 9 are “reasonably compact.” Ex. 3 at 143:25-144:8 (Hood Dep.); *see id.* at 189:2-6 (“Q: [U]nder your own metric from Virginia and applied here, . . . [Plaintiffs’ demonstrative] district is sufficiently or reasonably compact, correct? A: Correct.”).⁵

Plaintiffs’ Demonstrative District 9 adheres to other traditional districting criteria as well. As Dr. Collingwood explains, the district splits the same number of counties (three) as does enacted District 15 and the enacted state house version of District 9 (9A and 9B). Ex. 2 at 19-20 (Collingwood Rebuttal). Demonstrative District 9 has the same Eddy County split as the enacted map to follow the Spirit Lake Reservation boundary—a principle the legislature declared important. Ex. 2 at 20 (Collingwood Rebuttal). Plaintiffs’ Demonstrative Plan 1 splits zero voting precincts and zero municipalities. Ex. 2 at 16 (Collingwood Rebuttal); Ex. 3 at 174:12-19 (Hood Dep.). Demonstrative District 9 spans about the same distance north-to-south as the enacted District 9 does east-to-west. Ex. 2 at 18 (Collingwood Rebuttal). And a number of North Dakota’s legislative districts are geographically large—including many that are larger than Plaintiffs’ Demonstrative District 9—because of the sparse population in rural areas of the state. Ex. 2 at 18 (Collingwood Rebuttal); Ex. 3 at 170:12-172:19 (Hood Dep.).

Defendant nonetheless contends that Plaintiffs’ Demonstrative District 9 is not compact because it contains a “narrow land bridge.” ECF No. 59 at 13 (quoting Hood Rep. at 6). At his deposition, Dr. Hood conceded that the “land bridge” to which Defendant referred was the Pierce

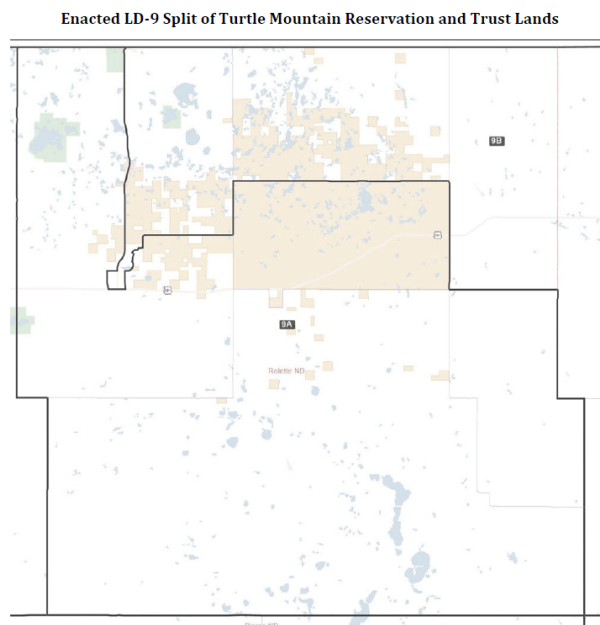
⁵ Moreover, Dr. Hood likewise agreed that comparing Plaintiffs’ Demonstrative District 9 to the enacted District 9, which he did in his report, was not the correct approach. *See* Ex. 3 at 148:6-16 (Hood Dep.) (“Q: The enacted version of District 9 is a rectangle, more or less, right? A: Fair, yes. Q: And do you understand the question, in terms of compactness for Voting Rights Act purposes, to be a comparison to a perfect rectangle, or is it about whether or not the district is reasonably compact standing alone? A: My understanding is that it would be reasonably compact standing on its own.”).

County voting precinct—kept whole—that links Rolette to Benson County in Plaintiffs’ Demonstrative District 1. Ex. 3 at 174:1-11 (Hood Dep.); Ex. 16 (County Precinct Maps). Notably, Dr. Hood acknowledged that Rolette and Benson Counties are geographically closer to one another than Rolette and Cavalier Counties (the counties linked together in the enacted plan). Ex. 3 at 177:3-20 (Hood Dep.). And he agreed that the “land bridge” in Plaintiffs’ Demonstrative District 9 is larger than a number of other “land bridges” and connecting points in other enacted districts in the state. Ex. 3 at 176:17-177:2 (Hood Dep.); *see also* Ex. 2 at 14-16 (Collingwood Rebuttal) (Dr. Collingwood showing other North Dakota districts with connections ranging from 659 *feet* to 2.5 miles). Indeed, as Dr. Collingwood explains, the Pierce County precinct included in Plaintiffs’ Demonstrative District 9 “spans 180 square miles and is itself larger than a majority of the other districts in the plan.” Ex. 2 at 13 (Collingwood Rebuttal). A precinct separating two proximate counties that is kept whole and is geographically larger than a majority of districts in the plan cannot plausibly be labeled a “narrow land bridge.” Especially not in comparison to the much thinner connections approved by the Supreme Court, as evidenced in the maps shown above.

Moreover, there is at least a dispute of fact as to whether Plaintiffs’ demonstrative plan facilitates core retention, another criterion relied on by Defendant to assert that Plaintiffs have failed to establish the first *Gingles* prong. First, the Fifth Circuit has afforded “little value” to Dr. Hood’s “core retention” analysis in another case in which he testified last year because it found that there was no reason that the “previous districting should be used as a measuring stick for compactness” under *Gingles* prong one. *Robinson v. Ardoin*, 37 F.4th 208, 220-21 (5th Cir. 2022). As such, even if there were no dispute, Dr. Hood’s opinion regarding the core retention of Demonstrative District 9 would be insufficient to establish that Defendant is entitled to judgment as a matter of law. Second, as Dr. Collingwood explains, the demonstrative district retains sixty-

three percent of the population that previously resided in District 9—a core retention figure greater than eight other districts in the enacted plan. Ex. 2 at 21 (Collingwood Rebuttal). And Dr. Hood’s discussion of core retention overstates the demonstrative district’s effect on the enacted map, by comparing it to the benchmark plan rather than the enacted plan, which *also* moved Spirit Lake out of its prior district. Ex. 2 at 22-23 (Collingwood Rebuttal). Only 13% of the residents of Demonstrative District 9 (2,195 people) are newly moved compared to the enacted plan; 87% either were previously in District 9 or were also moved to a new district in the enacted plan. Ex. 2 at 22-23 (Collingwood Rebuttal). Thus, while core retention is not a particularly useful criterion in the *Gingles* prong one context, there is at least a dispute of fact regarding this issue.

Finally, unlike the enacted plan, which splits the Turtle Mountain Reservation from its trust lands between Districts 9A and 9B, Plaintiffs’ Demonstrative District 9 keeps the Reservation and the trust lands together—a feature Dr. Hood agreed at his deposition was important and could be a community of interest consideration. Ex. 3 at 169:5-24 (Hood Dep.). Below is the map illustrating how the enacted plan splits the Reservation from the trust lands (shown in tan):



Ex. 2 at 21 (Collingwood Rebuttal).

Ultimately, the best explanation of how Plaintiffs' Demonstrative District 9 is reasonably compact and adheres to traditional districting principles comes from *Defendant's* expert Dr. Hood. His colloquy on the topic at his deposition, quoted at length *supra* at 12-13, suffices to defeat Defendant's motion on these issues. *See* Ex. 3 at 188:23-192:2 (Hood Dep.).

2. Turtle Mountain and Spirit Lake are geographically proximate and their voters share common needs and interests.

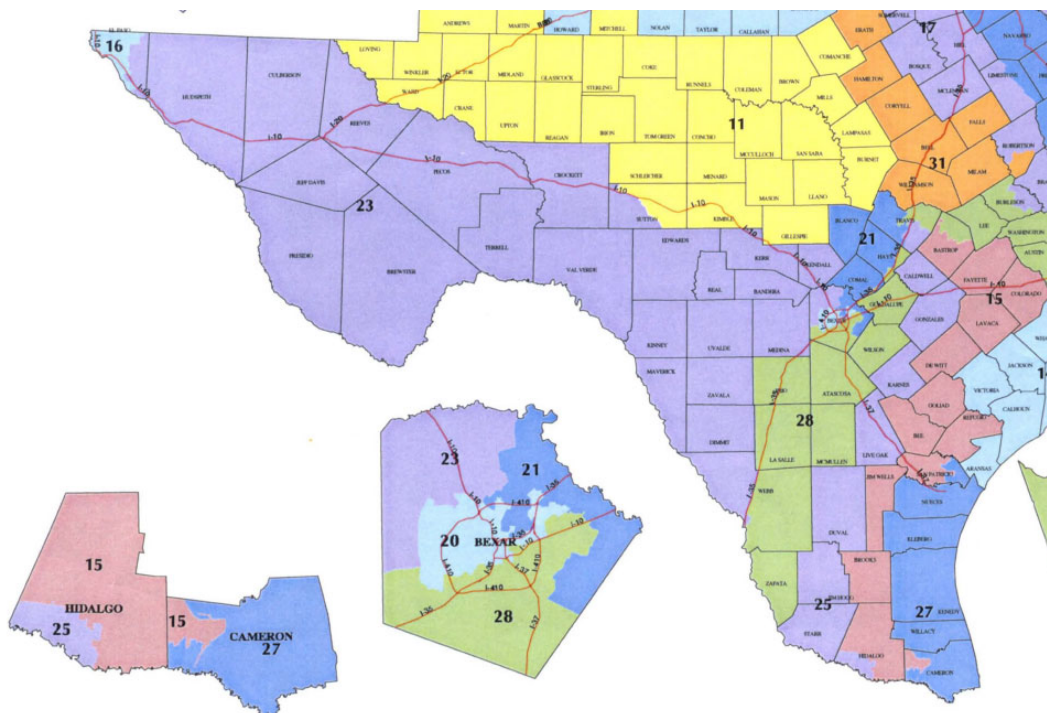
There is sufficient evidence that Turtle Mountain and Spirit Lake are geographically proximate and share common needs and interests to, at a minimum, create a genuine dispute of fact as to Defendants' claim that the first *Gingles* precondition is not met. As Dr. Collingwood and the two tribes' chairmen explain, the two communities are just 55 miles apart. Ex. 2 at 16-17 (Collingwood Rebuttal); Ex. 4 ¶ 6 (Azure Decl.); Ex. 5 ¶ 7 (Yankton Decl.).⁶ As Dr. Hood admits, it is impossible to avoid these types of distances in rural North Dakota legislative districts, given the sparse population. Ex. 3 at 170:12-172:19 (Hood Dep.). In light of the geography of the state and the two Tribal Nation's shared interests, *see supra* at 13-14, this does not represent the type of "enormous geographical distance," that the Supreme Court has held precludes a finding that the first *Gingles* prong is met. *LULAC*, 548 U.S. at 435.

As discussed above, in *LULAC* the Court was tasked with evaluating two separate congressional plans. After the court-enacted Plan 1151C went into effect for the 2002 elections, *see supra* at 21-22, the legislature adopted a new plan, known as "Plan 1374C," in 2003. *LULAC*, 548 U.S. at 413. In order to shore up the District 23 incumbent who had nearly lost the 2002 election because of "an increasingly powerful Latino population," *id.* at 423, the legislature made

⁶ Dr. Hood reports the "[c]entroid to centroid" measurement, which has the effect of making the reservations appear over 20 miles further apart than they are. ECF No. 59 at 18.

changes that dropped District 23’s “Latino share of the total voting-age population [to] just over 50%.” *Id.* at 424. To make up for the degradation in Latino opportunity in District 23, the legislature added a newly configured District 25. *Id.* Map 1374C is shown below:

Texas Plan 1374C



Ex. 18 (Tex. Legislative Council Plan 1374C).

The Court found that the 2003-enacted District 25 was not compact because it was “a long, narrow strip that winds its way from McAllen and the Mexican-border towns in the south to Austin, in the center of the State and 300 miles away,” and because “[t]he Latino communities at the opposite ends of District 25 have divergent ‘needs and interest,’ owing to differences in socio-economic status, education, employment, health, and other characteristics.” *LULAC*, 548 U.S. at 424 (internal quotation marks omitted); *see also id.* at 435 (“We emphasize it is the enormous geographic distance separating the Austin and Mexican-border communities, coupled with the

disparate needs and interests in these populations—not either factor alone—that renders District 25 noncompact for § 2 purposes.”).

Even if 55 miles were a sufficient geographic distance to implicate the first *Gingles* precondition, however, the *LULAC* Court made clear that the presence of shared needs and interests overcomes geographic distance in evaluating whether a district is reasonably compact. *See* 548 U.S. at 435. There, the Court found that the previously-enacted District 23 satisfied the first *Gingles* prong despite stretching 500 miles from El Paso to Laredo, because “the Latino population in old District 23 is, for the most part, in closer geographic proximity than is the Latino population in new District 25” and because of Latino voters’ shared interests in both communities. *Id.* at 424, 435; *id.* at 500 (Roberts, C.J., concurring in part and dissenting in part).

Here, Defendant has not proffered any evidence to suggest that the two Tribes have substantially disparate representational needs sufficient to preclude a finding that together they constitute a community of interest that ought to be preserved. *Cf. LULAC*, 548 U.S. at 435 (finding district compact where “there has been no contention that the different pockets of the Latino population . . . have divergent needs and interests . . .”). By contrast, Chairman Azure of Turtle Mountain and Chairman Yankton of Spirit Lake have explained how the Native Americans of both tribes share a host of needs and interests having nothing to do with race. This includes a unique rural experience that differs from other rural North Dakotans who are united by agricultural and energy interests. Ex. 4 ¶ 8 (Azure Decl.); Ex. 5 ¶ 9 (Yankton Decl.). Moreover, the communities share “similar socio-economic statuses,” and “similar representational needs from our state legislature related to economic investment, state-sponsored services, and legislative appropriations.” *Id.*; *see generally* Ex. 20 (W. McCool Report). The Tribes partner across a host of educational, tourism, and gaming organizations. Ex. 4 ¶ 9 (Azure Decl.); Ex. 5 ¶ 10 (Yankton

Decl.). Spirit Lake and Turtle Mountain also work together to pursue legislative objectives such as “funding for tribal colleges, negotiating the tribal-state gaming compact, taxation on tribal lands, hunting and fishing regulation, tribal and state law enforcement, and funding for education, foster care, health care, etc.” Ex. 4 ¶ 11 (Azure Decl.); Ex. 5 ¶ 12 (Yankton Decl.). And the Tribes have shared needs and interests with respect to their legislative representation on a host of issues unrelated to race, making their combination appropriate under *Gingles* prong one. See *LULAC*, 548 U.S. at 434-35 (noting that shared interests beyond race is an appropriate basis to combine geographically dispersed minority voters).

As Dr. Hood’s testimony shows, Demonstrative District 9 satisfies the first *Gingles* precondition, precluding summary judgment in favor of Defendant on that issue.

II. Plaintiffs have satisfied—or at the very least shown genuine disputes of material facts—as to the third *Gingles* precondition.

Where the parties are in dispute, summary judgment on *Gingles* prong three is typically inappropriate because it requires “weighing the evidence.” *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 657 F. App’x 871, 872-73 (11th Cir. 2016) (reversing grant of summary judgment that rested upon discounting one expert’s calculations, choosing which elections to consider, and improperly weighing past elections more than recent elections”). Here, the evidence shows that Plaintiffs have satisfied the third *Gingles* precondition, or at the very least there are genuine disputes of material fact that would require the Court to weigh the evidence presented by the parties’ experts. This is apparent both from Dr. Collingwood’s analysis in his attached reports, Dr. Hood’s deposition testimony, and now Defendant’s own position in *Walen*. As such, Defendant is not entitled to summary judgment on the third *Gingles* precondition.

To determine whether white bloc voting exists, such that the third prong is satisfied, courts must look to “election results from the majority-white district” in a region, *i.e.*, the district that is

alleged to have a cracked minority population, and not on neighboring “packed” districts. *Bone Shirt*, 461 F.3d at 1027 (Gruender, J., concurring) (“If the State’s approach were correct, packing would be both the problem and the solution—i.e., having illegally packed Indians into one district, the State could then point out that Indians are sometimes able to elect their preferred candidate in the packed district”); *see also Bone Shirt*, 336 F. Supp. 2d at 1011 (same); *De Grandy*, 512 U.S. at 1003-04 (focusing on whether white voters vote as bloc “to bar minority groups from electing their chosen candidates except in a district where a given minority makes up the voting majority”); *Old Person v. Cooney*, 230 F.3d 1113, 1122 (9th Cir. 2000) (noting that counting results of majority minority district in *Gingles* prong three would “permit white bloc voting in a majority-white district to be washed clean by electoral success in neighboring majority-Indian districts”).

After selecting the appropriate district(s) to analyze, the Court must analyze election results in those districts according to their relative probative value—not simply sum all elections and afford them equal weight. “Endogenous and interracial elections are the best indicators of whether the white majority usually defeats the minority candidate.” *Bone Shirt*, 461 F.3d at 1020-21. Moreover, “[t]he more recent the election, the higher its probative value.” *Id.* at 1021. Exogenous elections—here, those for statewide office reconstituted within the challenged district—“are not as probative as endogenous elections,” though they can “hold some probative value.” *Id.*

Finally, in assessing the third precondition the Court must also consider whether “special circumstances . . . may explain minority electoral success in a polarized contest.” *Gingles*, 478 U.S. at 57 & n.26. Special circumstances will remove an election from consideration in *Gingles* prong three if “the election was not representative of the typical way in which the electoral process functions.” *Ruiz v. City of Santa Maria*, 160 F.3d 543, 557 (9th Cir. 1998). “Only minority electoral

success in typical elections is relevant to whether a Section 2 majority voting bloc usually defeats the minority's preferred candidate." *Id.* at 558. Here, the evidence is in Plaintiffs' favor.

First, Dr. Collingwood explains that "in each category of election that is considered most probative, there is a clear and compelling pattern of white voters usually defeating Native American voters' candidates of choice in District 9." Ex. 2 at 6 (Collingwood Rebuttal). This is so in 100% of the endogenous contests and 100% of the most recent 2022 elections. Ex. 2 at 7 (Collingwood Rebuttal). If the 2022 and 2020 elections are considered together, white voters block the election of Native American voters' preferred candidates in 71% of elections. Ex. 2 at 7 (Collingwood Rebuttal). In elections featuring Native American candidates across all election cycles considered, the Native American candidates lose 60% of the time. Ex. 2 at 7 (Collingwood Rebuttal). This is sufficient to demonstrate that the white majority "typically votes in a bloc to defeat the minority candidate" in District 9. *Bone Shirt*, 461 F.3d at 1020.

In reaching the opposite conclusion in his expert report, Dr. Hood (and, Defendant, in his motion in this case) merely added all possible elections together and gave every election equal weight to conclude that the Native American-preferred candidates win more often than not. But doing so places far too great of weight on the exogenous, statewide, and older elections that overstate the potential for Native American-preferred candidates—and certainly Native American candidates—to win. At his deposition, Dr. Hood conceded that this was not the correct approach. Rather, he testified that exogenous elections "should be accorded far less weight," that more recent elections are more probative, and that elections featuring Native American candidates are also more probative. Ex. 3 at 39:3-44:8 (Hood Dep.). Importantly, Dr. Hood agreed that the defeat of Native American Sen. Richard Marcellais in the 2022 election in District 9 is the "single most probative contest" for assessing the third *Gingles* precondition "because it features an endogenous

election with a Native American and it's the most recent." Ex. 3 at 45:15-24 (Hood Dep.). Thus even the testimony of Defendant's expert points strongly in favor of a *Gingles* prong three showing.

Further, as Dr. Collingwood explains and as the case law establishes, *see supra*, Dr. Hood's review of Dr. Collingwood's data is flawed because he added District 9A—with its near 80% NVAP—into his calculations for *Gingles* prong three. Ex. 2 at 7 (Collingwood Rebuttal); ECF No. 60-35 at 3 (Hood Report). Dr. Hood acknowledged that the 100% win rate for Native American voters in District 9A “doesn't tell us what's happening in the cracked—the allegedly cracked populations outside District 9A,” and testified that he “do[es]n't disagree necessarily” that a better approach to his analysis is to remove District 9A from the calculus and focus on Districts 9 and 9B. Ex. 3 at 95:19-97:7 (Hood Dep.). Dr. Hood agreed that doing so would yield a 58% defeat rate in the districts for Native American preferred candidates. Ex. 3 at 98:10-99:6 (Hood Dep.); *see also* Ex. 2 at 7 (Collingwood Rebuttal). Focusing the analysis on District 9 and 15, Dr. Collingwood's analysis shows a 64% combined defeat rate for Native American preferred candidates. Ex. 2 at 7 (Collingwood Rebuttal).

Second, Dr. Hood's report and Defendant's motion do not account for the special circumstances that define the 2018 elections. As explained above, the 2018 elections were not close to the typical electoral environment in North Dakota or District 9 with respect to Native American turnout. *See supra* at 7-8; *see also* Ex. 2 at 4, 8 (Collingwood Rebuttal). As Dr. Collingwood explained, “I have studied and conducted many turnout analyses . . . in areas with large shares of Native American eligible voters. In all the many elections in different jurisdiction[s] I have studied, I have never seen a Native American turnout number” like the 57.6% among Native Americans in District 9 in 2018. Ex. 2 at 4 (Collingwood Rebuttal). Dr. Collingwood explained

this was highly unusual as well because it inverted the normal presidential to midterm turnout pattern and changed the electoral composition of District 9 from its ordinary 60-67% white share to being split evenly 50-50% between white voters and Native American voters. Ex. 2 at 4-5 (Collingwood Rebuttal). Chairmen Azure and Yankton explain that the 2018 election, with its intense focus on Native American turnout from regional, state, and national groups with considerable financial resources, the presence of national celebrities holding get-out-the-vote concerts on the reservations, and the outrage among Native Americans at what they viewed as an effort to suppress their voting strength with the “residential street address” voter ID requirement, made the election unlike any before or since. Ex. 4 ¶¶ 24-31 (Azure Decl.); Ex. 5 ¶¶ 25-38 (Yankton Decl.). Indeed, Dr. Hood could not think of another example where a group had such higher turnout in a midterm than in a presidential election. Ex. 3 at 82:21-83:20 (Hood Dep.).

If the 2018 elections are excluded as special circumstances as Dr. Collingwood advises, Ex. 2 at 8 (Collingwood Rebuttal); *see also Ruiz*, 160 F.3d at 558 (“Only minority electoral success in typical elections is relevant to whether a Section 2 majority voting bloc usually defeats the minority’s preferred candidate”), and the 2022, 2020, and 2016 elections are considered in combination—even weighing the elections equally—then Native American voters’ preferred candidates in District 9 lose 57% of the time. Ex. 2 at 8 (Collingwood Rebuttal); Ex. 3 at 90:10-23 (Hood Dep.); *see Gingles*, 478 U.S. at 61 (finding *Gingles* prong three satisfied based upon data from three probative election cycles).

Third, Dr. Hood’s own independent analysis—updated by him during his deposition—shows that *Gingles* prong three is satisfied in District 9. Although Dr. Hood’s expert report in this case merely responds to Dr. Collingwood’s analysis, in the related *Walen* matter he produced an expert report conducting an independent analysis of all three *Gingles* preconditions for Districts 9,

9A, and 9B. Ex. 14 (Hood Walen Report). In that report, he analyzed six elections from 2018 and 2020, and found that Native American voters' preferred candidates were defeated in two of the six. Ex. 14 at 6 (Hood Walen Report). When asked at his deposition why he had not included any 2022 elections in his analysis—considering that his handwritten notes included at least the 2022 District 9 result showing Sen. Marcellais' loss—Dr. Hood testified: “I did not get to a full analysis” because he ran out of time before his report was due. Ex. 3 at 101:9-102:16 (Hood Dep.). He further testified that including the 2022 elections was “preferable” as the “most recent set of elections.” *Id.* Dr. Hood then identified four additional 2022 contests that he thought should be included and agreed, presuming Dr. Collingwood's reported results for 2022 were correct, that these results would change Dr. Hood's own determination with respect to *Gingles* prong three. Ex. 3 at 108:8-16; 109:13-111:15 (Hood Dep.). With the addition of the 2022 elections he selected as most probative, Dr. Hood determined that his analysis “would show 60 percent defeat rate for the Native American preferred candidates in District 9.” Ex. 3 at 109:24-111:3 (Hood Dep.).

Q: And a 60 percent defeat rate for Native preferred candidates would constitute usually being defeated by white bloc voting, correct?

A: Well, I guess it would meet the definition of more typically than not.

Q: And that's the definition that you apply to your *Gingles* prong 3 analysis?

A: Correct, yes.

Ex. 3 at 111:8-15 (Hood Dep.).

Moreover, Defendant has abandoned the position taken in his motion and now affirmatively contends that the third *Gingles* precondition is satisfied and that elections held in the full District 9 violate the VRA. *Walen*, ECF No. 102 at 39-40. This is not surprising in light of Dr. Collingwood's analysis, Dr. Hood's testimony, the 2022 election results. But this about-face means that both parties—and their experts—now agree the third *Gingles* precondition is satisfied in District 9, precluding Defendant's request for summary judgment to the contrary.

Fourth, and finally, Defendant does not dispute that *Gingles* prong three is satisfied in Districts 9B and 15. ECF No. 60-35 at 4 (Hood Report); Ex. 1 at 26 (Collingwood Initial Report); Ex. 14 at 6 (Hood Walen Report); Ex. 2 at 8 (Collingwood Rebuttal). This likewise precludes the entry of summary judgment in favor of Defendants on third *Gingles* precondition.

III. Defendant’s contention that Plaintiffs’ Demonstrative District 9 is a racial gerrymander has no basis in evidence and is belied by Supreme Court precedent.

Defendant’s claim that Demonstrative District 9 is a racial gerrymander is unsupported by the evidence and belied by Supreme Court precedent. A party alleging a racial gerrymander must show that race was the “predominant factor” in the decision to “place a significant number of voters within or without a particular district. *Cooper*, 581 U.S. at 291. This requires a showing that other factors, like compactness, respect for political subdivisions, and others, were “subordinated . . . to racial considerations.” *Id.* (internal quotation marks omitted). Even if race does predominate in the drawing of a district, compliance with Section 2 of the VRA is a compelling interest that precludes a district from being deemed an Equal Protection violation. *Id.* at 292.

Defendant contends that Plaintiffs’ Demonstrative District 9 is a racial gerrymander because it “do[es] not properly account for the traditional redistricting principles” and “combine[s] the populations of two distinct and geographically separated Native American Tribes.” ECF No. 59 at 25. But as the above discussion regarding *Gingles* prong one shows, Plaintiffs’ Demonstrative District 9 satisfies the traditional redistricting criteria as well or better than enacted Districts 9, 9A, 9B, and 15, and many other enacted districts. It also beats out districts that the Supreme Court has found to comply with traditional districting principles for VRA purposes. *See supra* Part I. Moreover, Spirit Lake and Turtle Mountain have a host of shared needs and interests having nothing to do with race, and thus are properly combined in a VRA district. *See LULAC*, 548 U.S. at 434-35.

All Defendant cites for his supposition that Demonstrative District 9 is a racial gerrymander is Dr. Hood's statement that the district raises such "questions" in his expert report. ECF No. 59 at 21-25. But at his deposition, Dr. Hood testified that he is "not saying that" it *is* a racial gerrymander, that he "do[es]n't believe [he] can make that determination," and that he doesn't "have the evidentiary basis to say that." Ex. 3 at 199:22-200:12 (Hood Dep.). He further testified:

Q: And your testimony with respect to traditional districting criteria is not that plaintiffs' demonstrative district subordinates those criteria in favor of a racial classification, right? You don't have that evidence?

A: No, I didn't say that.

Ex. 3 at 203:2-8 (Hood Dep.). Dr. Hood further agreed that "just the fact that there are two Native American tribes in a district does not on its own mean that the district is a racial gerrymander," that "Native American reservations are more than just racial groups, [] they are sovereign nations," that they have non-racial interests, and that "Native American tribes might have shared interests that relate to issues with respect to representation in the state legislature." Ex. 3 at 198:10-14, 202:4-17 (Hood Dep.). But Dr. Hood testified that *he* could not speak to the presence or absence of nonracial shared interests between Spirit Lake and Turtle Mountain. Ex. 3 at 17:15-23 (Hood Dep.) ("Q: And so you're not opining on anything related to those two tribes with respect to their shared interests or common interests or socioeconomic status or anything of the like. Is that right? A: Correct. Q: And you wouldn't have any knowledge or basis to do that, right? A: Correct.").

Ultimately Dr. Hood testified it was just as likely that the *legislature's* version of District 9 was a racial gerrymander by stretching eastward to pick up white voters:

Q: And it can be a racial gerrymander to include white voters in a district instead of other races of voters, right?

A: That is correct, certainly.

Q: And so to the extent that enacted District 9 stretches across to include rural white voters instead of Native American voters, under your view, that too could be an indication of a racial gerrymander?

A: Potentially.

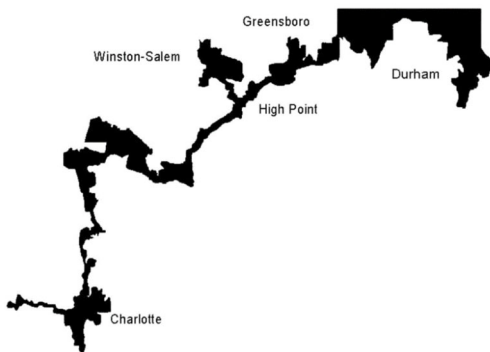
Ex. 3 at 197:25-198:9 (Hood Dep.).

Defendant next cites *Sensley v. Albritton*, 385 F.3d 591 (5th Cir. 2004), in support of his claim that Demonstrative District 9 is a racial gerrymander. In *Sensley*, the court rejected the plaintiffs' demonstrative plan because it was "irregular," had an "extended and distorted shape," with a "narrow corridor [] carefully drawn to avoid areas of higher Caucasian population concentration[s]," and at certain points was "only a city block wide." *Id.* at 597 & n.4. The plan split municipal boundaries and connected Black voters who "share[d] few community interests." *Id.* at 598. As Dr. Hood acknowledged, Plaintiffs' Demonstrative District 9 does none of these things. *See supra* at 12-13. Moreover, the court's concern regarding the 15-mile distance between connected populations in *Sensley*, *id.* at 597, must be understood in the context of the map at issue—a nine-district parish police jury board. *Id.* at 591. It is unremarkable that a 15-mile distance might weigh against compactness for a nine-member county police board plan, but it would be unreasonable to apply the same yardstick to a sparsely populated, rural North Dakota state legislative district. *See, e.g.*, Ex. 3 at 170:12-172:19 (Hood Dep.).

Plaintiffs' Demonstrative District 9 bears no resemblance to the districts the Supreme Court has invalidated as racial gerrymanders. In *Shaw v. Reno*, for example, the Court rejected North Carolina District 12 as a racial gerrymander, describing it as "160 miles long and, for much of its length, no wider than the [interstate] corridor" that "winds in snakelike fashion through tobacco country, financial centers, and manufacturing areas until it gobbles in enough enclaves of black neighborhoods." 509 U.S. 630, 635-36 (1993). Later, the Court in *Cooper* rejected a modern iteration of the same district ruled unconstitutional in *Shaw*, because it similarly went block-by-block adding Black voters and subtracting white voters in a way the Court held was only explainable by race. 137 S. Ct. at 1474-76. In *Miler v. Johnson*, the Court invalidated a Georgia

congressional district that carefully included Black voters and excluded white voters block-by-block. 515 U.S. 900, 909 (1995). And in *Bush v. Vera*, the Court invalidated a Texas congressional district that appeared “like a jigsaw puzzle . . . in which it might be impossible to get the pieces apart.” 517 U.S. 952, 965, 973 (1996). The maps are shown below:

***Shaw* Invalidate District**



***Cooper* Invalidated District**



***Miller* Invalidated District**



***Bush* Invalidated District**



Defendant also suggests that Plaintiffs’ Demonstrative District 9 is not proper because its NVAP is 66.1% rather than the bare majority NVAP of the enacted District 9. ECF No. 59 at 21. But, as discussed above, the enacted District 9 is dilutive and its actual electorate is supermajority white in normal electoral conditions. *See supra* at 7. Moreover, a 66.1% NVAP is exactly in line with the national median for Native American majority legislative districts. *See Ex. 2* at 5 (Collingwood Rebuttal). It is likewise similar to the NVAP of enacted District 4A, which

Defendant is defending in *Walen* as required by the VRA. Ex. 17 (N.D. Legislative Council District 4A Data). Moreover, Demonstrative District 9’s NVAP accords with the remedial plan the Eighth Circuit affirmed in *Bone Shirt*. There, the court noted that the remedial districts had 65% and 74% NVAPs, respectively, and noted the importance of considering “other factors, including turnout.” 461 F.3d at 1023. Defendant’s suggestion that there is something improper about a 66% NVAP district is especially peculiar, considering he is simultaneously defending District 9A—which at 79.8% NVAP is the fifth highest in the nation—against Plaintiffs’ allegation that it is excessively packed. Ex. 2 at 5 (Collingwood Rebuttal). These two positions are irreconcilable.

Moreover, Defendant’s contention that Demonstrative District 9 is an improper remedy because it is a multi-member district is misplaced. ECF No. 59 at 21. As Plaintiffs discussed above, *see supra* at 17-19, whether an appropriate VRA remedy is single-member or multi-member districts depends upon an intensely local appraisal of the electoral conditions of each district—not a blunt one-size-fits-all rule. The Eighth Circuit’s decision in *Bone Shirt* upholding a combination of single member and multi-member Native American majority VRA remedial districts in South Dakota underscores this fact.

The evidence forecloses Defendant’s suggestion that Demonstrative District 9 would somehow violate the Equal Protection Clause. The district is required by the VRA, complies with traditional districting principles, joins Native American voters and tribes that share common interests and needs across a host of issues having nothing to do with race, and would remedy the enacted plan’s dilutive effect which has reduced from three to one the number of legislators Native American voters in northeastern North Dakota can elect to the state legislature.

CONCLUSION

For the foregoing reasons, Defendant’s motion for summary judgment should be denied.

March 1, 2023

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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Mark P. Gaber
Mark P. Gaber

Counsel for Plaintiffs

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

MICHAEL HOWE, in his official capacity as
Governor of the State of North Dakota, et al.,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

DECLARATION OF MARK P. GABER

Pursuant to 28 U.S.C. § 1746, I, Mark P. Gaber, declare as follows:

1. I am an attorney for the Campaign Legal Center, duly licensed to practice law in the District of Columbia and admitted to practice before this Court.

2. Together with co-counsel, I represent Plaintiffs the Turtle Mountain Band of Chippewa Indians, Spirit Lake Tribe, Wesley Davis, Zachary S. King, and Collette Brown.

3. I have personal knowledge of the facts stated herein.

4. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' expert Dr. Loren Collingwood's rebuttal report, served by Plaintiffs on Defendant in this matter pursuant to Fed. R. Civ. P. 26(a)(2).

5. Attached hereto as Exhibit 3 is a true and correct copy of the transcription of the deposition of Defendant's expert Dr. M.V. "Trey" Hood, taken in this matter on February 13, 2023.

6. Attached hereto as Exhibit 9 is a true and correct copy of the North Dakota Legislative Council 2020 Census – Population Change Summary prepared for the Redistricting Committee and dated August 2021, which can be found in the public record at

<https://www.ndlegis.gov/sites/default/files/resource/committee-memorandum/23.9119.01000.pdf>.

7. Attached hereto as Exhibit 10 is a true and correct copy of the 2022 N.D. Secretary of State Election Results for District 9, which can be found in the public record at <https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>.

8. Attached hereto as Exhibit 11 is a true and correct copy of the 2022 N.D. Secretary of State Election Results for District 9A, which can be found in the public record at <https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>.

9. Attached hereto as Exhibit 12 is a true and correct copy of the 2022 N.D. Secretary of State Election Results for District 9B, which can be found in the public record at <https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>.

10. Attached hereto as Exhibit 13 is a true and correct copy of the 2022 N.D. Secretary of State Election Results for District 15, which can be found in the public record at <https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>.

11. Attached hereto as Exhibit 14 is a true and correct copy of the report produced by Defendant's expert Dr. M.V. "Trey" Hood in the related matter, *Walen v. Burgum*.

12. Attached hereto as Exhibit 15 is a true and correct copy of notes taken by Defendant's expert Dr. M.V. "Trey" Hood and produced in response to a subpoena duces tecum served in this matter.

13. Attached hereto as Exhibit 16 is a true and correct copy of the country precinct maps for Pierce County, which can be found in the public record at <https://www.piercecountynd.gov/image/cache/doc10633120220301130731.pdf>; Rolette County, which can be found in the public record at

<https://vip.sos.nd.gov/pdfs/Precinct%20Maps/Rolette%20County.pdf>; Eddy County, which can be found in the public record at <https://vip.sos.nd.gov/pdfs/Precinct%20Maps/Eddy%20County.pdf>; and Benson Counties, which can be found in the public record at <https://vip.sos.nd.gov/pdfs/Precinct%20Maps/Benson%20County.pdf>.

14. Attached hereto as Exhibit 17 is a true and correct copy of the North Dakota Legislative Council District Data for District 4A, which can be found at https://www.ndlegis.gov/files/committees/67-2021/map_for_consideration_092921.pdf.

15. Attached hereto as Exhibit 18 is a true and correct copy of the Texas Legislative Council Plan 1374C, which can be found at <https://lrl.texas.gov/scanned/redistricting/documents/15157.pdf>. The Texas Legislative Council is routinely called upon by federal courts to provide technical assistance in Texas redistricting litigation. *See, e.g., Perez v. Texas*, 891 F. Supp. 2d 808, 811-812 (W.D. Tex. 2012).

16. Attached hereto as Exhibit 19 is a true and correct copy of the transcription of the November 9, 2021 Redistricting Committee meeting, which was produced by the Defendant to all parties in the related matter *Walen v. Burgum*.

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

Executed this 1st day of March, 2023 in Washington, DC.

/s/ Mark P. Gaber
Mark P. Gaber

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EXHIBIT 1

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as Governor
of the State of North Dakota, et al.,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

**DECLARATION TO ACCOMPANY THE EXPERT REPORT
OF LOREN COLLINGWOOD**

Pursuant to 28 U.S.C. § 1746, I, Loren Collingwood, declare that:

My name is Loren Collingwood. I am an expert witness designated by Plaintiffs in the above referenced case now pending in the United States District Court for the District of North Dakota.

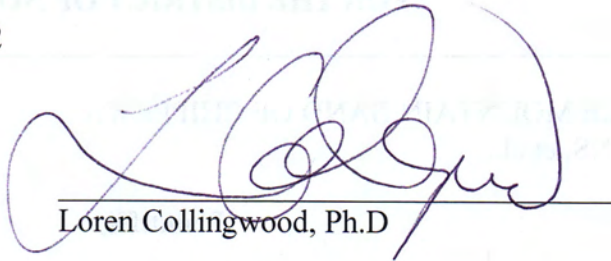
A true and correct copy of my curriculum vitae is attached hereto as a part of my report. The following report, a true and correct copy of which is attached and incorporated herein for all purposes, is a summary of my opinions and conclusions. The materials I relied upon to develop my analyses and opinions are cited therein and/or produced herewith for all counsel.

The court testimony and publications I am required to disclose are described in my attached report and/or curriculum vitae.

My reasonable and necessary hourly rate for my time in this case is \$325.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 30th day of November, 2022



Loren Collingwood, Ph.D

Loren Collingwood, Ph.D

Deponent

DECLARATION TO ACCOMPANY THE EXPERT REPORT
OF LOREN COLLINGWOOD

I, Loren Collingwood, declare that

My name is Loren Collingwood. I am an expert witness designated by Plaintiff in the

above referenced case and am pending in the District Court of the State of North Dakota.

Dated:

A true and correct copy of my declaration is attached hereto as a part of my report.

The following report is true and correct and which is attached and contained herein for all

purposes in a summary of my reports and conclusions. The materials I relied upon to develop

my analyses and conclusions are cited therein and/or produced herewith for all purposes.

The only material which I relied upon to develop my analyses and conclusions is my attached

report and/or conclusions.

I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2022-11-30

Executive Summary

In this report, I examine past election results in North Dakota statewide, and the areas comprising the newly adopted Legislative Districts 9, 9A, 9B, and 15. I do this to determine if voting is racially polarized—i.e., if Native American voters generally prefer one candidate, and white voters vote as a bloc against that preferred candidate. In conducting this analysis, I analyzed 40 general elections from 2014 to 2022, and used the Ecological Inference (EI) statistical method to evaluate if racially polarized voting (RPV) exists. RPV is present in every election contest except for two contests.

I also conducted electoral performance analyses in the following jurisdictions: The newly adopted Legislative District 9, and Sub-Districts 9A and 9B, and Legislative District 15. 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 jurisdiction under consideration (i.e., the newly adopted legislative map). I only conduct performance analysis in contests with RPV because those elections are the ones that provide meaningful information about the effects of white bloc voting.

Finally, I conducted an electoral performance analysis and assessed map metrics on two demonstrative maps proposed by plaintiffs.

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

- Racially polarized voting (RPV) is present in North Dakota statewide elections, and specifically in the areas comprising Legislative Districts 9 and 15. This is particularly clear in the 2016 elections featuring three Native American candidates.
- It is not necessary to rely only on exogenous (statewide) elections, because endogenous elections have now been conducted in the November 2022 election for state legislature in Districts 9, 9A, 9B, and 15. RPV is present in all these contests, and is particularly stark in contests featuring Native American candidates. This is true among both Native American voters and white voters, with both either supporting or opposing Native American candidates at even higher rates than when the groups' respective candidates of choice are both white.
- I used well-known statistical methods to assess RPV – ecological inference (EI) and Rows by Columns (RxC) – which consistently demonstrated racially polarized voting patterns between Native Americans and non-Hispanic white voters.

- In statewide elections featuring Native American candidates, racially polarized voting is present, and white voters effectively block Native American voters from being able to elect their candidates of choice in 4/4 elections analyzed.
- Native American voters cohesively prefer the same candidates for political office in the newly adopted Legislative Districts 9, Subdistricts 9A and 9B, and Legislative District 15. White voters cohesively prefer a different set of candidates for political office.
- In my reconstituted electoral performance analysis, Native American-preferred candidates tend to win in the full District 9 prior to the 2022 elections, but lose in every single 2022 contest for a block rate of 100% (8 out of 8). This includes the more probative endogenous contest featuring the Native American state senate incumbent Richard Marcellais, who was defeated for reelection by his white opponent. Of the five contests from 2014-2022 featuring Native American candidates as the preferred candidate of Native American voters, the Native American candidate loses District 9 in 60% of those contests.
- In my reconstituted electoral performance analysis, Native American-preferred candidates win handily in the newly adopted Legislative Sub-District 9A. However, Native American-preferred candidates disproportionately lose in the newly adopted Legislative Sub-District 9B because because white voters cohesively vote as a bloc against Native American voters' preferred candidates.
- In Sub-District 9B, of the 36 contests analyzed for bloc voting, white voters block the Native American-preferred candidate 29 times for a block rate of 81%. In cases involving Native American candidates, the block rate climbs even higher, to 100%.
- In Legislative District 15, the Native-American preferred candidate loses in 29 of 30 analyzed elections, for a block-rate of 96%. Just Heidi Heitkamp won in this district in an election that featured unusually intensive get-out-the-vote efforts aimed at North Dakota Native American voters as a backlash to the state's residential street address voter ID requirements in 2018.
- An analysis of plaintiff's demonstrative maps shows that Native American-preferred candidates would succeed in carrying these districts. In Demonstrative 1, of the 35 contests I analyzed, the Native American-preferred candidate won 32 of 35 (91%). In Demonstrative 2, of the 28 contests I analyzed, the Native American-preferred candidate won 26 of 28 (93%).¹

My opinions are based on the following data sources: Statewide North Dakota general elections from 2014-2022; 2022 legislative district elections, Census Voting Age Population (VAP) block data (PL-94-171 North Dakota file), Dave's Redistricting 2020 Census VTD file

¹ I did not analyze 2014 contests in Demonstrative 2 because of complications surrounding precinct joins, as Benson County went from eight precincts to four between 2014 and 2016.

for relevant VTD/precincts in North Dakota, North Dakota Legislative Districts shape files, and plaintiff's Proposed State House Districts GIS 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 am the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I am charged with drawing court-ordered single member districts.

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

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 five election years to determine whether a pattern of RPV is present in a given geography and/or political jurisdiction (i.e., statewide, Legislative District 9, etc.). In an election contest between two candidates, RPV is present when voters belonging to one racial/ethnic group vote for one candidate and 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 of both racial groups back the same candidate in a contest, 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, 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. At issue in this report, however, is whether the recently passed Legislative Districts 9 (including subdistricts 9A and 9B) and 15 of North Dakota’s state legislative plan potentially dilutes Native American voters’ ability to elect candidates of choice.

I examine RPV in the context of North Dakota of both exogenous statewide general elections reconstituted within Districts 9, 9A, 9B, and 15, as well as the most recent endogenous 2022 state legislative contests for those seats.

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. However, all 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 on the ecological inference (EI) method and the Rows by Columns (RxC) 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 voting age population (rather than out of total voted in that contest) and include an estimate for no vote. I then calculate vote choice estimates by race for only people who voted. In this way, the method prevents non-voters from skewing the analysis and accounts for variation in turnout by race.

The rest of the report presents my results: 1) A list of the elections analyzed; 2) Results and analysis; 3) District 9, 9a, and 9b results and analysis; 4) District 15 results and analysis; 5) Plaintiff map results and analysis.

List of Elections Analyzed

Table 1 and 2 present the elections I analyzed. Native American candidates have an asterisk after their name. Overall, there are 40 elections. To establish statewide RPV, I only analyze the contests featuring Native American candidates: the 2016 U.S. Congress, the 2016 Insurance Commissioner, the 2016 Public Services Commissioner, and the 2022 Public Services Commissioner. I do this to establish RPV and blocking occur against Native American candidates in North Dakota in general.

In District 9, I analyze 38 elections across four election cycles finding RPV in each contest. However, in District 15, I analyzed 32 contests because I could not adequately convert the new District 15 to the 2014 precincts to join previous results with the new district boundaries. This is due to collapsed precincts falling within the district occurring between 2014 and 2016 that did not affect the merge in District 9 but did do so in District 15. Nonetheless, I find RPV in every single contest I analyzed in District 15.

Table 1. List of contests analyzed, between 2014-2022. Native American candidates have an asterisk after their name.

Year	Contest	Dem Candidate	GOP Candidate	Statewide Winner	D9 RPV	D15 RPV	Statewide RPV
2022	Agriculture Commissioner	Dooley	Goehring	Goehring	Yes	Yes	
2022	Attorney General	Lamb	Wrigley	Wrigley	Yes	Yes	
2022	Public Service Commissioner 4 yr	Hammer	Hoffart	Hoffart	Yes	Yes	
2022	Public Service Commissioner	Moniz*	Fedorchak	Fedorchak	Yes	Yes	Yes
2022	Secretary of State	Powell	Howe	Howe	Yes	Yes	
2022	U.S. House	Mund	Armstrong	Armstrong	Yes	Yes	
2022	U.S. Senate	Christiansen	Hoeven	Hoeven	Yes	Yes	
2022	State Senate D9	Marcellais*	Weston	Weston	Yes		
2022	State Senate D15	Brown*	Estenson			Yes	
2022	State House D15	Lawrence*	Johnson/Frelich	Johnson/Frelich		Yes	
2020	President	Biden	Trump	Trump	Yes	Yes	
2020	U.S. House	Raknerud	Armstrong	Armstrong	Yes	Yes	
2020	Governor	Lenz	Burgum	Burgum	Yes	Yes	
2020	Auditor	Hart	Gallion	Gallion	Yes	Yes	
2020	Treasurer	Haugen	Beadle	Beadle	Yes	Yes	
2020	Public Services Commissioner	Buchmann	Kroshus	Kroshus	Yes	Yes	
2018	U.S. Senate	Heitkamp	Cramer	Cramer	Yes	Yes	
2018	U.S. House	Schneider	Armstrong	Armstrong	Yes	Yes	
2018	Secretary of State	Boschee	Jaeger (I)	Jaeger	Yes	Yes	
2018	Attorney General	Thompson	Stenhjem	Stenhjem	Yes	Yes	
2018	Agriculture Commissioner	Dotzenrod	Goehring	Goehring	Yes	Yes	
2018	Public Services Commissioner	Brandt	Christmann	Christmann	Yes	Yes	
2018	Public Services Commissioner 2yr	Buchmann	Kroshus	Kroshus	Yes	Yes	
2018	Tax Commissioner	Oversen	Rauschenberger	Rauschenberger	Yes	Yes	
2016	President	Clinton	Trump	Trump	Yes	Yes	
2016	U.S. Senate	Glassheim	Hoeven	Hoeven	Yes	Yes	
2016	U.S. House	Iron Eyes*	Cramer	Cramer	Yes	Yes	Yes
2016	Governor	Nelson	Burgum	Burgum	Yes	Yes	
2016	Insurance	Buffalo*	Godfread	Godfread	Yes	Yes	Yes
2016	Public Services Commissioner	Hunte Beaubrun*	Fedorchak	Fedorchak	Yes	Yes	Yes
2016	Treasurer	Mathern	Schmidt	Schmidt	Yes	Yes	
2014	Attorney General	Kraus	Stenhjem	Stenhjem	Yes		
2014	Agriculture Commissioner	Taylor	Goehring	Goehring	Yes		
2014	Public Service Commissioner 2yr	Axness	Fedorchak	Fedorchak	Yes		
2014	Public Service Commissioner	Reisenauer	Kalk	Kalk	Yes		
2014	Secretary of State	Fairfield	Jaeger	Jaeger	Yes		
2014	Tax Commissioner	Astrup	Rauschenberger	Rauschenberger	Yes		
2014	U.S. House	Sinner	Cramer	Cramer	Yes		

Table 2. List of non-partisan contests analyzed, 2016.

Year	Contest	Candidate 1	Candidate 2	Statewide Winner	D9 RPV	D15 RPV	Statewide RPV
2016	Justice of Supreme Court	Bolinske	Tufte	Tufte	No	No	
2016	Supervisor of Public Inst.	Chiang	Baesler	Baesler	No	No	

Racially Polarized Voting Statewide

I analyzed three statewide contests including Native American candidates in 2016 and one in 2022:

- 2016 Insurance Commissioner featuring Ruth Buffalo (Native American) and Jon Godfread
- 2016 U.S. House of Representatives featuring Chase Iron Eyes (Native American) and Kevin Cramer (as well as Libertarian Jack Seaman)
- 2016 Public Service Commissioner featuring Marlo Hunte-Beaubrun (Native American), Julie Fedorchak, and Thomas Skadeland (Libertarian)
- 2022 Public Service Commissioner featuring Melanie Moniz (Native American) and Julie Fedorchak.

To conduct the analysis and all analyses, I gathered precinct election returns for candidates running in each contest either from the redistricting data hub² or the North Dakota Secretary of State, which provides precinct vote returns³ While the redistricting data hub data come formatted in VTDs and in 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 VTD to precinct crosswalk column.

Next, I downloaded the 2020 VTD Census file from Dave's Redistricting – publicly available software. This file aggregates Census block demographic data to the VTD level. I join this file with the voting data based on the GEOID20 column – which is a unique ID for each VTD/precinct.

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

² <https://redistrictingdatahub.org/state/north-dakota/>

³ See <https://results.sos.nd.gov/ResultsSW.aspx?text=All&type=SW&map=CTY&eid=292> for 2016 example.

estimated number of VAP Native American individuals by the total number of VAP individuals in a precinct. I do the same for non-Hispanic white, then generate a race:other category. I convert candidate choice to a percent by dividing candidate vote by VAP (rather than out of total voted in that contest) and include an estimate for no vote. I then calculate vote choice estimates by race for only people who voted. In this way, the method accounts for non-voters and accounts for variation in turnout by race.

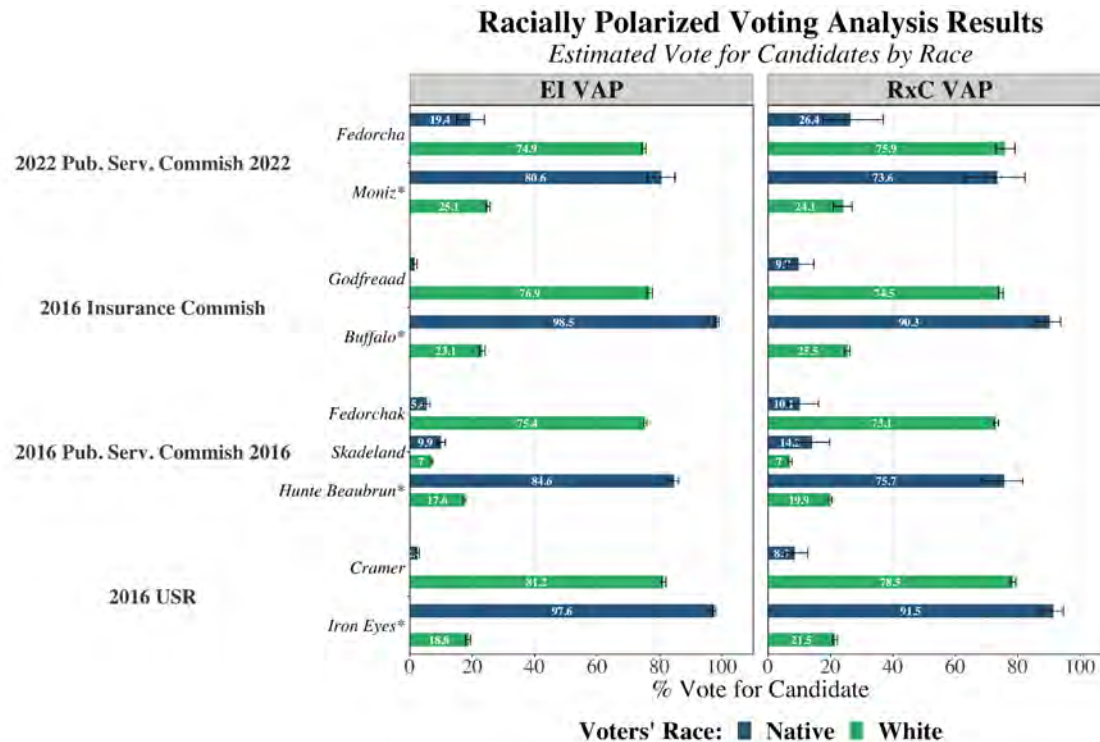
Figure 1 presents the racially polarized voting results. For every analysis, I include both iterative Ecological Inference results, and Rows by Columns (RxC) results – the most commonly accepted EI methods. The two methods consistently produce substantively similar findings. Beginning with the 2016 U.S. House of Representatives contest, in the EI analysis, Native Americans backed Chase Iron Eyes with 98%. White voters, however, supported Cramer with 81%. In the RxC analysis, results are complementary: Native Americans backed Chase Iron Eyes with 92%. White voters, however, supported Cramer with 79%.

In the 2016 Public Service Commissioner race, the Native American vote backed Hunte Beaubrun at 85% (76% with RxC model). However, white voters backed preferred Fedorchak with 75% (73% in the RxC model).

On the Insurance Commissioner contest, the Native American vote supported Ruth Buffalo with 99% of the vote (90% in the RxC model). Meanwhile, white vote backed Godfread with 77% (75% in the RxC model).

Finally, in 2022, the patterns are consistent: Native American voters supported Moniz for Public Service Commissioner (81% EI, 74% RxC), whereas white voters supported Fedorchak (75% EI, 76% RxC).

Figure 1. Racially Polarized Voting assessment statewide involving native American candidates, 2016 general election, and 2022 general election.



The above section reveals stark racially polarized voting between Native American voters and white voters in North Dakota. Moreover, the findings show that whites are blocking Native Americans from electing candidates of choice. Based on official statewide results,⁴ of the three Native American candidates that ran statewide all lost:

- In the 2016 U.S. House race, Cramer (white) won 69% to Iron Eyes' 24%.
- In the 2016 Insurance Commissioner race, Godfread (white) defeated Buffalo (Native American) 64% to 27%.
- In the 2016 Public Service Commissioner contest, Fedorchak bested Hunte-Beaubrun by a margin of 69% to 23%.
- In the 2022 Public Service Commissioner contest, Fedorchak beat Moniz 71% to 29%.⁵

Thus, all four Native American candidates lose handily; as whites bloc-vote against the Native American candidates.

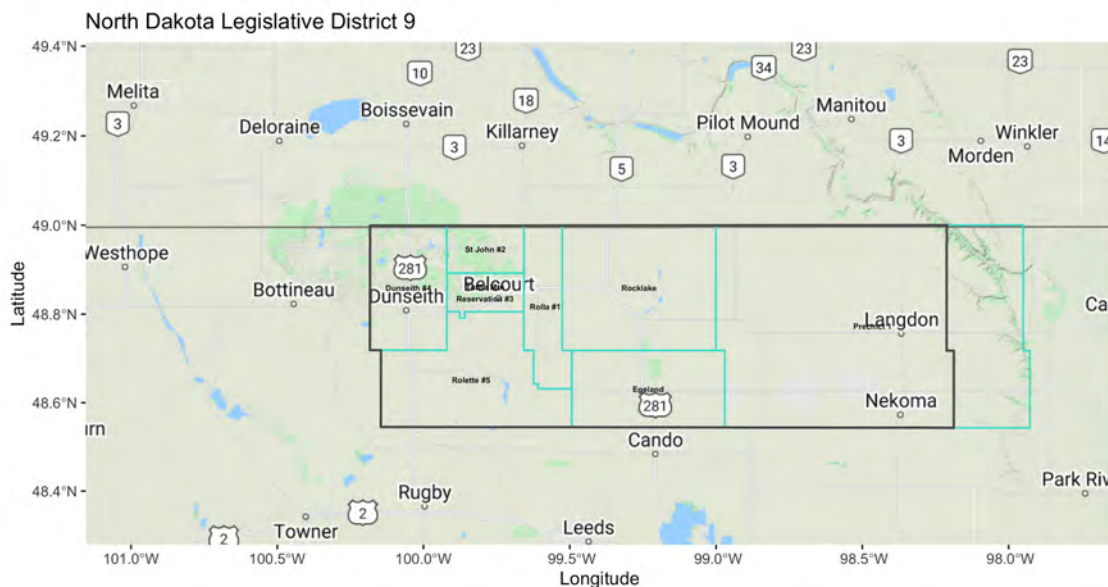
⁴ <https://results.sos.nd.gov/ResultsSW.aspx?text=All&type=SW&map=CTY&eid=292>

⁵ <https://results.sos.nd.gov/ResultsSW.aspx?text=All&type=SW&map=CTY&mode=0>

Racially Polarized Voting in District 9

I analyzed 30 previous contests between 2014-2020 in the new Legislative District 9, and eight contests in 2022 for a total of 38 contests. To do so, first, I took the legislative shape file boundary from the state of North Dakota and subset it to just District 9. I then overlaid these boundaries against the voting district (VTD) boundaries for the state of North Dakota. Figure 2 presents the map with precinct boundaries in turquoise, precinct name written as text, and black boundary. Just one precinct is split between being in the district and outside of the district – Precinct 1 from Cavalier County. However, most of Cavalier’s population and geography is kept within the district.

Figure 2. District 9 under new North Dakota map.



Figures 3 - 7 present the results of the RPV analysis across 38 election contests spanning five election years from 2014 - 2022. For each election cycle I present two columns: The EI estimates (Column 1) and RxC estimates (Column 2). On the y-axis I list each contest, and the candidate surnames. Surnames labeled with an asterisk feature Native American candidates. Vote choice estimates for both whites and Native Americans are displayed visually with the blue bar representing the Native American vote share for a given candidate, and the green bar representing the white vote for a candidate. Each model’s 95% confidence intervals present the underlying statistical uncertainty (the likely range the true estimate would fall into given the statistical model).

There are so many contests that I will not list every single result here because the pattern is exceptionally clear: Native American voters tend to prefer one set of candidates, white voters prefer another set of candidates. In only two contests in 2016 (Justice of the Supreme Court and Supervisor of Public Instruction) are elections not racially polarized. For example, in the 2014 Agriculture Commissioner contest, the EI model estimates that 58% of white voters backed Goehring, whereas 94% of Native Americans backed Taylor. The RxC shows similar patterns: 54% of whites backing Goehring and 87% of Native Americans backings Taylor. The Attorney General contest shows a similar result: 88% (74% in RxC) of Native American voters supported Kraus Parr whereas 80% (75% in RxC) of white voters backed Stenehjem. A similar pattern is repeated in all the other 2014 contests for an RPV rate of 100%.

Figure 3. Racially Polarized Voting assessment in statewide contests subset to the new District 9 boundaries, 2014 contests.

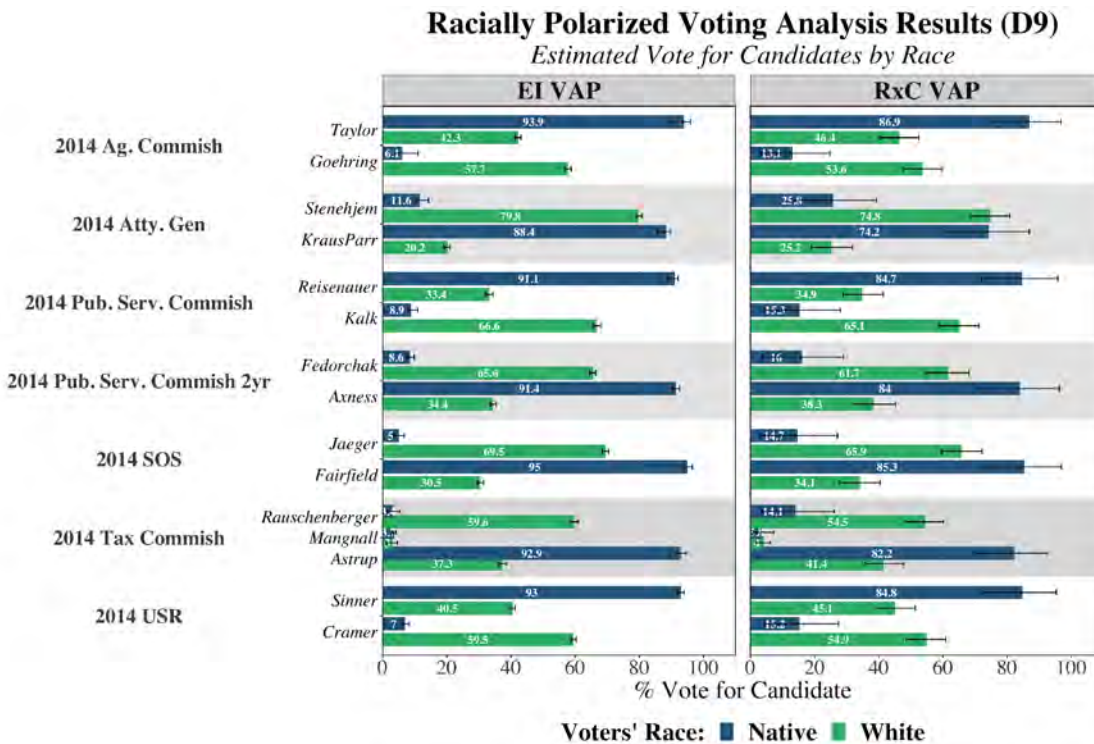
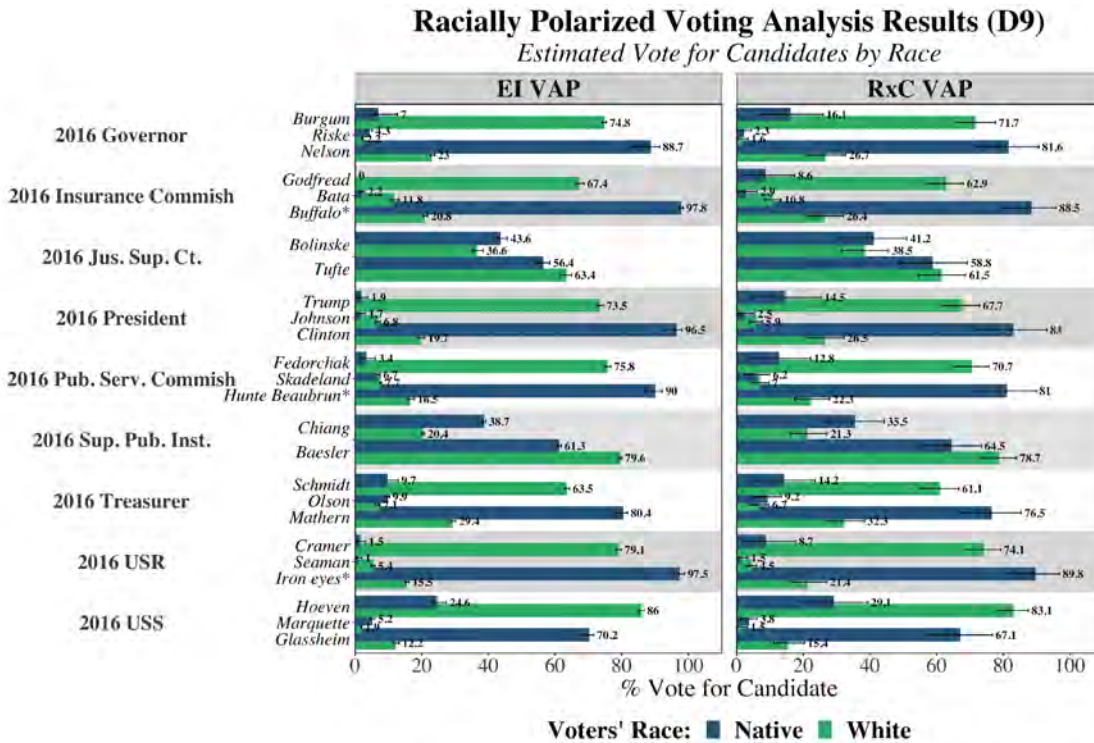


Figure 4 presents results from the 2016 RPV analysis, displayed in the exact same format as 2014. The findings are exceedingly consistent with the 2014 analysis. RPV is present in seven of nine contests (78%). For example, the EI analysis shows 89% (82% in RxC model) of Native American voters backing Nelson, whereas 74% (72% in RxC model) of white voters supporting Burgum. Moreover, of particular note, the results show a tendency for Native American candidates to receive greater support among Native American voters than do white candidates. For example, 98% (89% in RxC model) of Native American voters supported Ruth Buffalo for Insurance Commissioner; and 98% (90% in RxC model) supported Chase Iron Eyes for U.S. Congress.

The only exceptions to the patterns of RPV are the Justice of the Supreme Court and Supervisor of Public Instruction contests. There, a majority of both white and Native American voters support the same candidates: Tufte for Supreme Court and Baesler for Public Instruction, respectively.

Figure 4. Racially Polarized Voting assessment in statewide contests subset to the new District 9 boundaries, 2016 contests.



I examined eight 2018 contests subset to Legislative District 9. Each contest shows very clear patterns of racially polarized voting. For example, in the U.S. House of Representatives election, the EI model shows Native Americans backing Schneider with 86% and the RxC model puts the number at 81%. Meanwhile, white voters instead back Armstrong at 69% (EI model) to 62% (RxC model). Every contest here shows consistent patterns.

Figure 5. Racially Polarized Voting assessment in statewide contests subset to the new District 9 boundaries, 2018 contests.

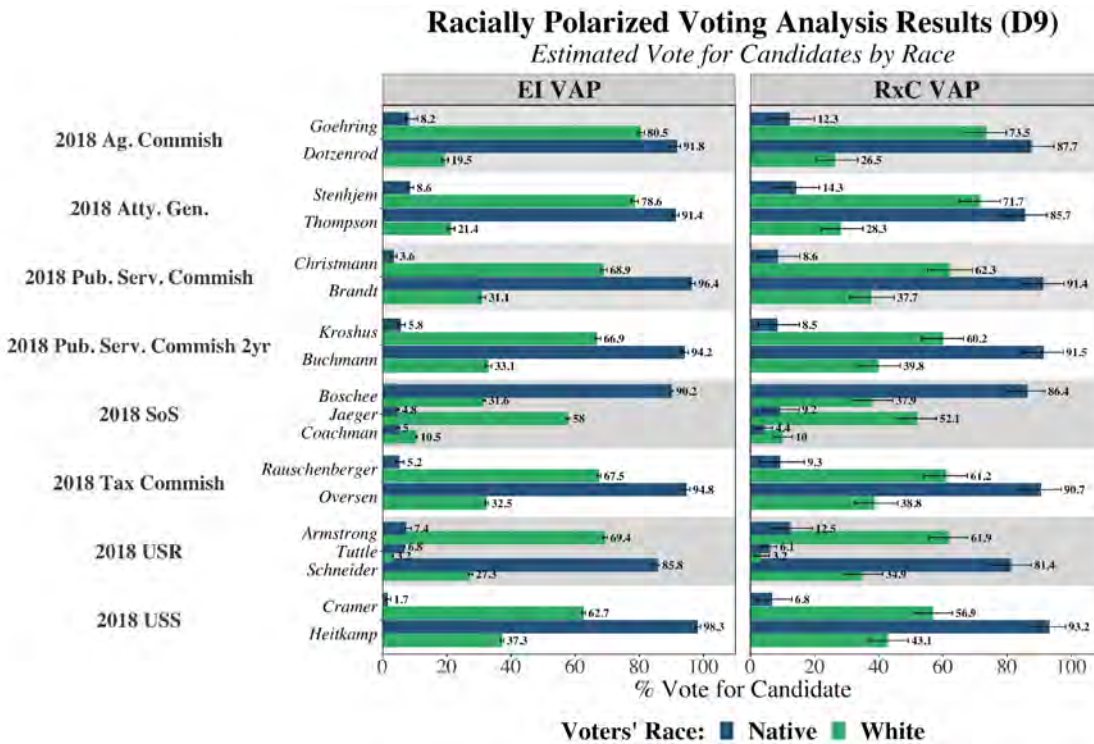
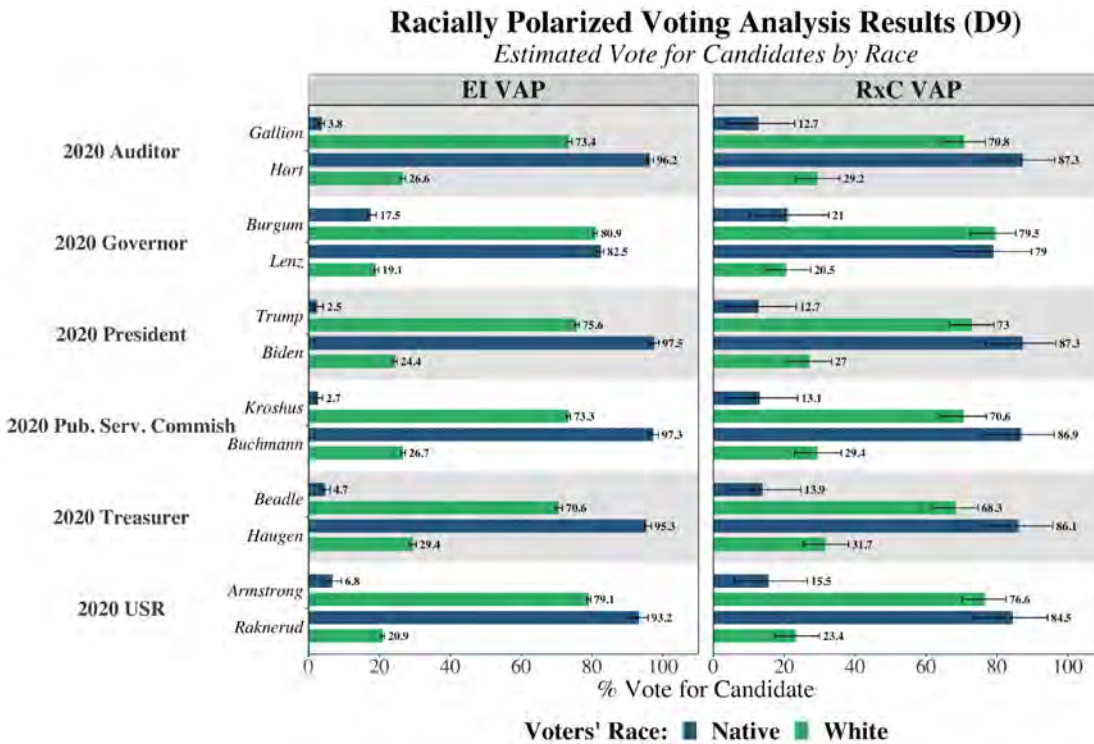


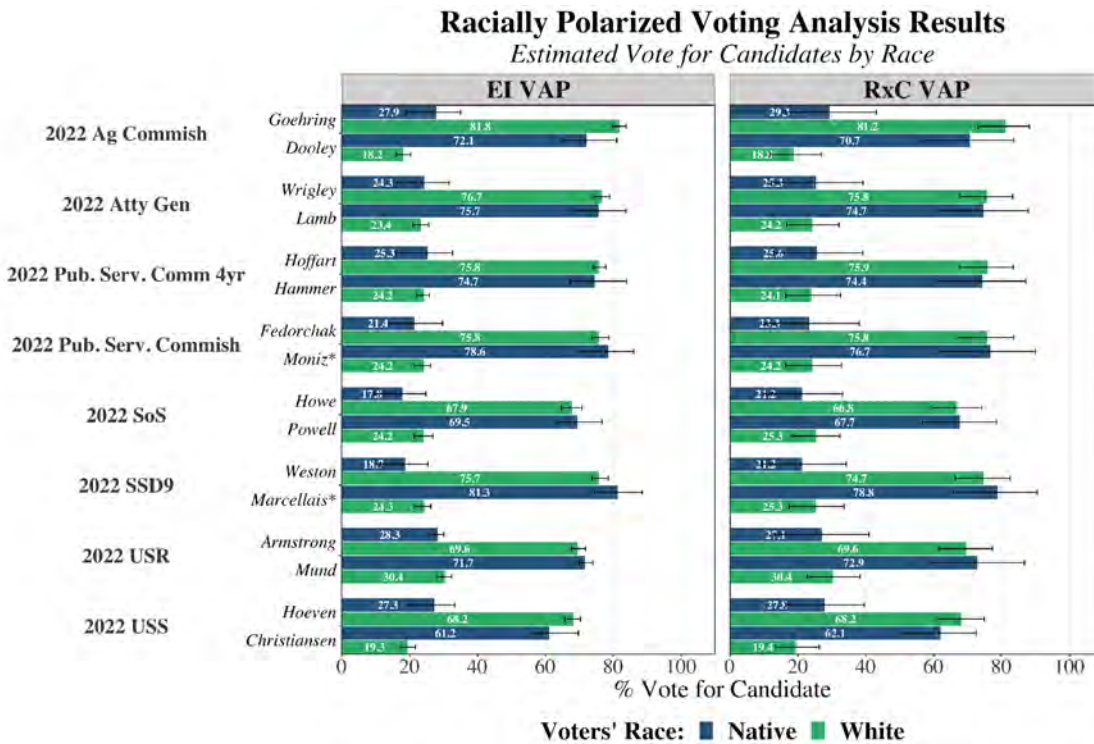
Figure 6 presents the 2020 RPV results. All six contests once again show very clear and consistent patterns of racially polarized voting. For example, 98% (87% in the RxC model) of Native American voters backed Joe Biden for president; whereas 76% (73% in RxC model) of whites instead backed Donald Trump. Every other contest reflects these patterns bar none.

Figure 6. Racially Polarized Voting assessment in statewide contests subset to the new District 9 boundaries, 2020 contests.



Finally, I analyzed the recent round of general election contests subset to District 9. I include here the analysis of the actual results in the new Legislative District 9 – an endogenous contest. The patterns are again consistent with earlier years: Native American voters back one set of candidates and white voters back a different set of candidates. This is true in all eight contests, but especially in the endogenous contest (LD 9) between the Native American candidate (Marcellais) and Weston. In that contest, Native American voters backed Marcellais (81% in EI model, 79% in RxC model), whereas white voters preferred Weston between 75% (RxC model) to 76% (EI model). Taken in total then, RPV is present in 36 of 38 (95%) contests analyzed in D9 over a five-cycle period.

Figure 7. Racially Polarized Voting assessment in statewide contests subset to the new District 9 boundaries, 2020 contests.



I do not conduct an EI or RxC RPV analysis in subdistricts 9A and 9B because 1) there are so few precincts in each subdistrict, and 2) subdistrict 9A has a large share of Native Americans, whereas 9B does not, so there are no truly homogeneous precincts of both racial groups in both subdistricts.

But because it is clear that RPV exists within District 9 as a whole, and because subdistrict 9A contains 68.5% of the total Native VAP within District 9 and subdistrict 9B contains 79.7% of the total white VAP within District 9, it necessarily follows that voting within the two subdistricts is likewise racially polarized.

This pattern can be confirmed by a review of the demographic makeup of the precincts within each subdistrict and their election results. For example, the charts below present the Native American and white VAPs within the precincts in both subdistricts as well as the 2022 election results for state house and state senate within those precincts. As is clear from the chart below, the election results within the precincts change in relation to the increase or decrease in the Native American or white VAPs. In subdistrict 9A, it is clear from the homogeneous Native American Rolette Precinct 3 that the two Native American state legislative candidates – Davis and Marcellais – were Native American voters’ candidates of choice. Their vote share decreases in the remaining two precincts in correlation to their corresponding decrease in VAP share.

Table 3. Subdistrict 9A – Demographics and 2022 Legislative Results.

Precinct	Native VAP	White VAP	2022 State House Native Cand.	2022 State House White Cand.	2022 State Senate Native Cand.	2022 State Senate White Cand.
Rolette 3	0.936	0.055	Davis: 90.3%	Malo: 9.6%	Marcellais: 87.3%	Weston: 12.6%
Rolette 4	0.783	0.205	Davis: 70.9%	Malo: 29.2%	Marcellais: 74.9%	Weston: 25.1%
Rolette 5	0.373	0.609	Davis: 26.9%	Malo: 72.5%	Marcellais: 30.0%	Weston: 69.8%

In subdistrict 9B, it is clear from the homogeneous white precincts in Towner and Cavalier Counties that Weston and Henderson are the candidates of choice of white voters in subdistrict 9B. But Marcellais and Nelson prevail in the majority Native American Rolette Precinct 2. Notably, Nelson – who is white and was the incumbent state house representative before District 9 was split into subdistricts – receives over 12 percentage points higher among the white voters in Towner County than the Native American incumbent senator Marcellais. This illustrates the trend noted above that white bloc voting increases when the candidates preferred by Native American voters are themselves Native Americans.

Table 4. Subdistrict 9B – Demographics and 2022 Legislative Results.

Precinct	Native VAP	White VAP	2022 State House Native Cand.	2022 State House White Cand.	2022 State Senate Native Cand.	2022 State Senate White Cand.
Rolette 1	0.398	0.562	Nelson: 49.3%	Henderson: 49.3%	Marcellais: 39.2%	Weston: 60.4%
Rolette 2	0.774	0.219	Nelson: 58.2%	Henderson: 40.8%	Marcellais: 56.0%	Weston: 44.0%
Towner County	0.027	0.96	Nelson: 46.1%	Henderson: 51.6%	Marcellais: 34.7%	Weston: 64.9%
Cavalier County	0.018	0.956	Nelson: 20.4%	Henderson: 68.8%	Marcellais: 19.8%	Weston: 79.9%

Given the clear RPV from the EI and RxC analysis in District 9 as a whole, the high concentration of District 9's Native American voters within subdistrict 9A and its white voters within subdistrict 9B, and the correlation observable between the subdistricts' precincts' demographics and election results, it is clear that the subdistricts both feature RPV.

Performance Analysis District 9

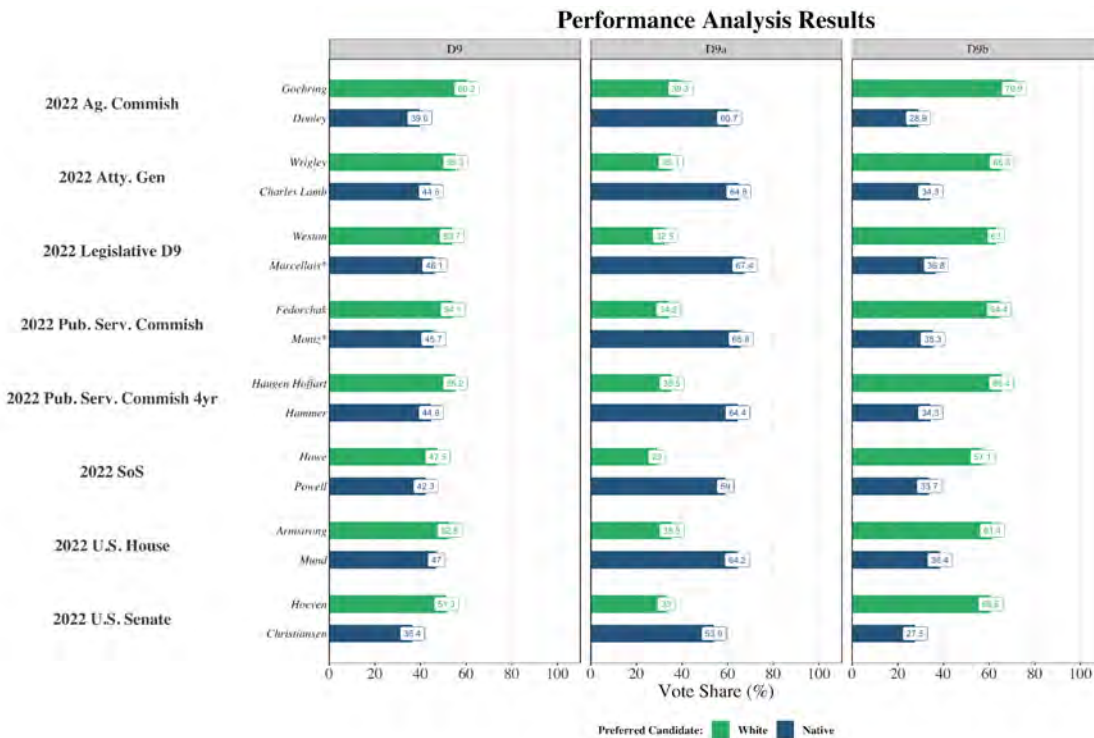
To conduct the performance analysis, I subset the precinct vote returns to the appropriate precincts then sum votes for candidate 1 and candidate 2, respectively, dividing by total votes. I also take care to weight split precincts by underlying population voting age

population. For instance, if a precinct’s population is half inside subdistrict 9A and half in 9B, I weight all precinct votes according to this share.

Figure 8 presents the 2022 election results of the full District 9 then also subdistricts 9A, and 9B. The full district results are presented in the left-most panel, 9A the middle panel, and 9B the rightmost panel. The main finding is very straightforward: White-preferred candidates (as adjudged by the RPV analysis above) won every single 2022 election in the full District 9, including the legislative district itself (Weston 53.7% to 46.1% for Marcellais). In general the victories tend to range from 5% to 10%, but Goehring beats Dooley by more than 20 points in the Agriculture Commission contest.

However, Districts 9A and 9B show diverging results: Native-preferred candidates prevailed in all eight contests within the 9A boundaries, but white-preferred candidates prevailed in all eight contests within the 9B boundaries.

Figure 8. Performance analysis assessment in statewide contests subset to the new District 9 boundaries, as well as endogenous LD-9 2022 elections.



I also conducted a performance analysis in the 2020 contests, displayed in Figure 9. These contests show a mixed result at the full district level: Native-preferred candidates prevail in four of six contests; however the contests are generally very competitive. At the subdistrict level, once again Native-preferred candidates convincingly win in Subdistrict 9A (6/6, 100% success) and convincingly lose in Subdistrict 9B (0/6, 0% success).

Figure 9. Performance analysis assessment in statewide contests subset to the new District 9 boundaries, 2020 elections.



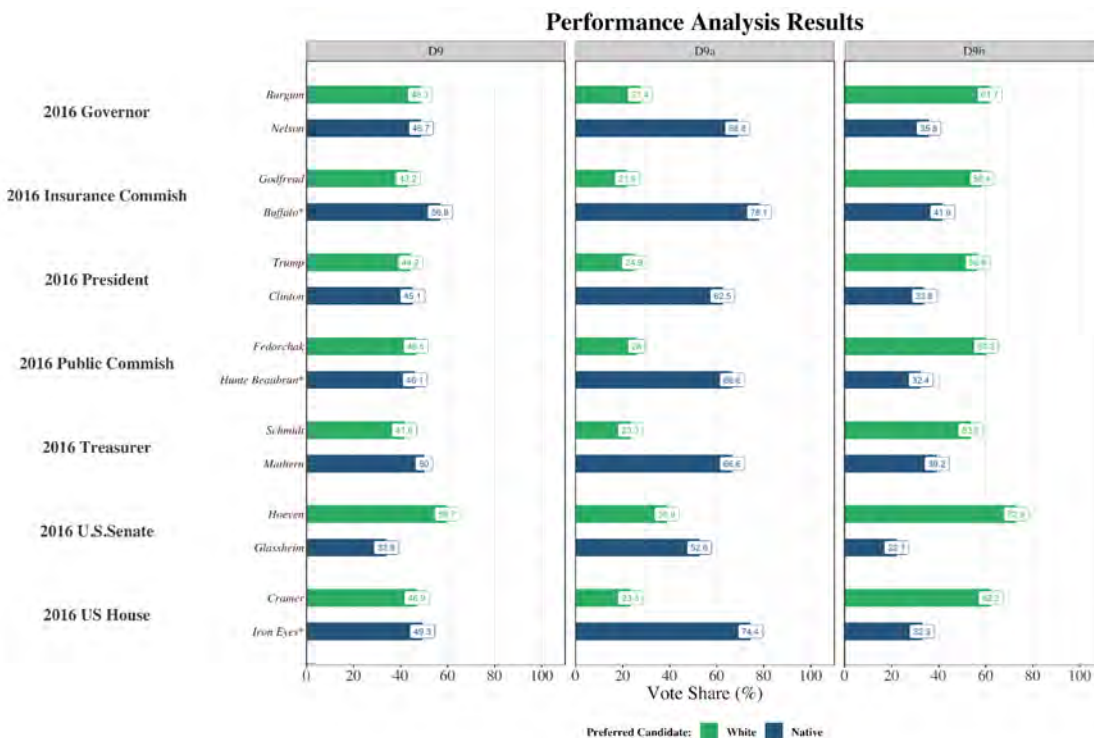
I conducted a similar performance analysis in the 2018 statewide contests (see Figure 10). The 2018 election presents special circumstances that warrant caution and counsel against mechanically interpreting that year's election results. First, nationwide this was a Democratic wave election. Second, there was a unique and unprecedented voter turnout effort targeted to Native American voters in North Dakota that year as a backlash to the residential street address voter ID law that came back into effect following the U.S. Supreme Court's decision lifting the injunction against that law in the weeks prior to the November 2018 election. That election featured an intense voter turnout effort from state, regional, and national Native American rights groups as well as celebrity appearances and concerts at Turtle Mountain and other reservations seeking to boost turnout and overcome the effects of the challenged law. Third, the top of the ticket was a nationwide marquee U.S. Senate race between then-Sen. Heitkamp and now-Sen. Cramer. In these exceptional circumstances, the Native-preferred candidates were able to win the full District 9 (8/8, 100% success rate). At the subdistrict level, once again Native-preferred candidates convincingly win in Subdistrict 9A (8/8, 100% success) and win more often than not in Subdistrict 9B (5/8, 63% success).

Figure 10. Performance analysis assessment in statewide contests subset to the new District 9 boundaries, 2018 elections.



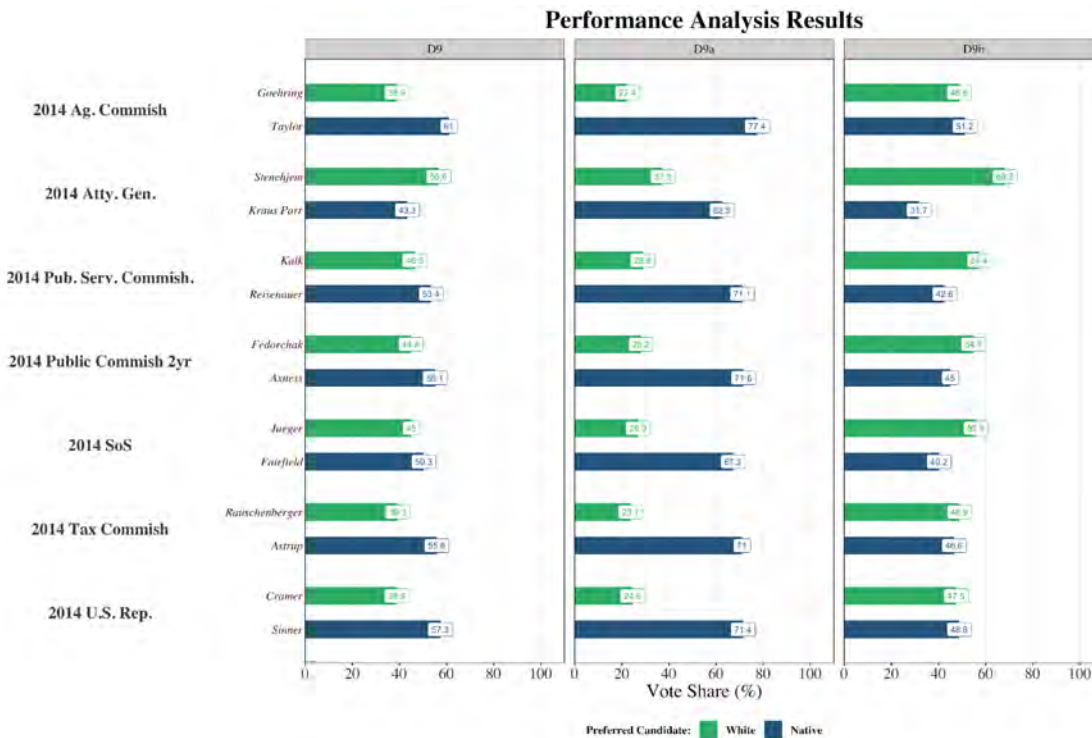
Figure 11 shows my performance analysis results of 2016 contests subset to Districts 9, 9A, and 9B. Note this analysis excludes the two contests in which RPV is not present. The full District 9 results show Native-preferred candidates winning in 5 of 7 contests, but the margins are extremely close. For example, in the Gubernatorial contest Nelson (Native-preferred) bests Burgum 48.7% to 48.3%. The subdistrict results, however, once again show clear Native-preferred candidate victories in 9A (7 of 7, 100% success) and white-preferred candidate victories in 9B (0 of 7 Native-preferred victories, 0% success).

Figure 11. Performance analysis assessment in statewide contests subset to the new District 9 boundaries, 2016 elections.



Finally, Figure 12 shows the 2014 contests results. The results show Native-preferred candidates tending to prevail in the full District 9, always prevailing in subdistrict 9A and prevailing two of seven times in 9B.

Figure 12. Performance analysis assessment in statewide contests subset to the new District 9 boundaries, 2014 elections.



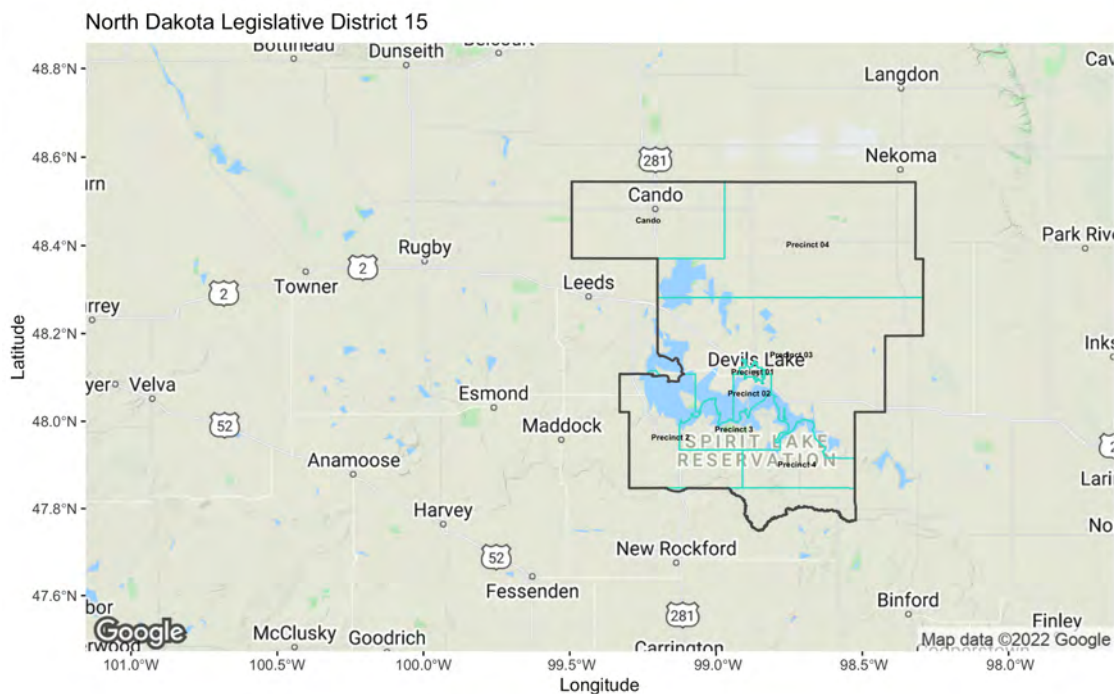
Taken in total, in the newly passed Legislative District 9, earlier elections show that the Native-preferred candidate tended to win the full District 9 (although with the 2018 election presenting special circumstances that counsel against providing them undue weight), always win subdistrict 9A, and almost always lose subdistrict 9B. However, when we examine the most recent round of elections (2022) we observe that the Native-preferred candidate lost every single contest, including the defeat of the Native American candidate (Marcellais) in the actual District 9 contest for state senate, and the defeat of Native American-preferred incumbent state representative Nelson in subdistrict 9B. The result is that following the 2022 elections, Native American voters in District 9 went from being able to elect 3 of 3 state legislators to instead just 1 of 3 state legislators within District 9.

Overall, the results point to three conclusions with respect to white bloc voting in District 9. First, the more recent election data—which is generally accepted as the most probative of current local conditions and voting patterns—reveals a stark pattern of white bloc voting preventing Native American voters from being able to elect their preferred candidates in District 9. Second, in the endogenous contests – which are generally accepted as having greater probative value than exogenous contests – there is a clear pattern of white bloc voting preventing Native American voters from being able to elect their preferred candidates in District 9. Third, across all analyzed years when the candidate of choice of Native American voters in District 9 is a Native American (as opposed to a white candidate), then white bloc voting results in the Native American candidate losing 60% of the contests in District 9.

Racially Polarized Voting in District 15

I analyzed 32 contests in the new legislative District 15. Figure 13 presents the district boundaries with precincts lined in turquoise and labeled at each respective precinct's geospatial centroid.

Figure 13. District 15 under new North Dakota map.



Figures 14 - 17 present the results of the RPV analysis across 32 election contests spanning five election years from 2016 - 2022. The results are consistent with the District 9 analysis: RPV is present in 30 of 32 contests for a rate of 94% RPV. This is likewise true in the 2022 endogenous contests for District 15 state senate and state house – both of which featured Native American candidates who were the candidates of choice of Native American voters.

Figure 14. Racially Polarized Voting assessment in statewide contests subset to the new District 15 boundaries, 2016.

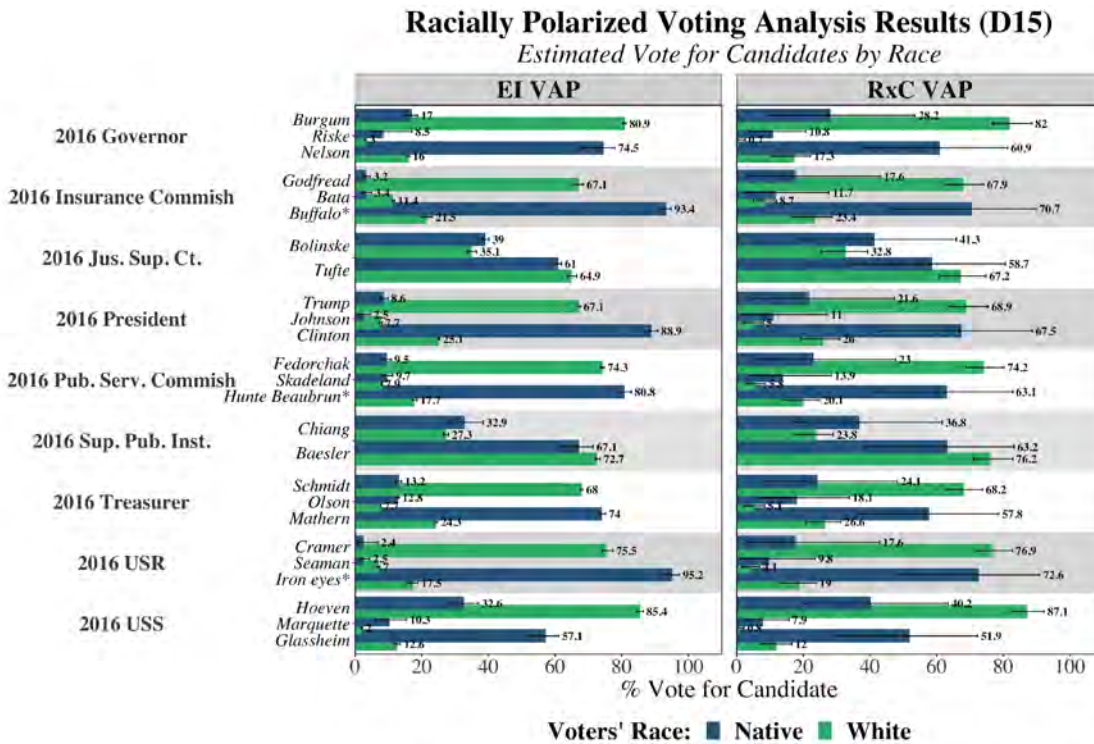


Figure 15. Racially Polarized Voting assessment in statewide contests subset to the new District 15 boundaries, 2018.

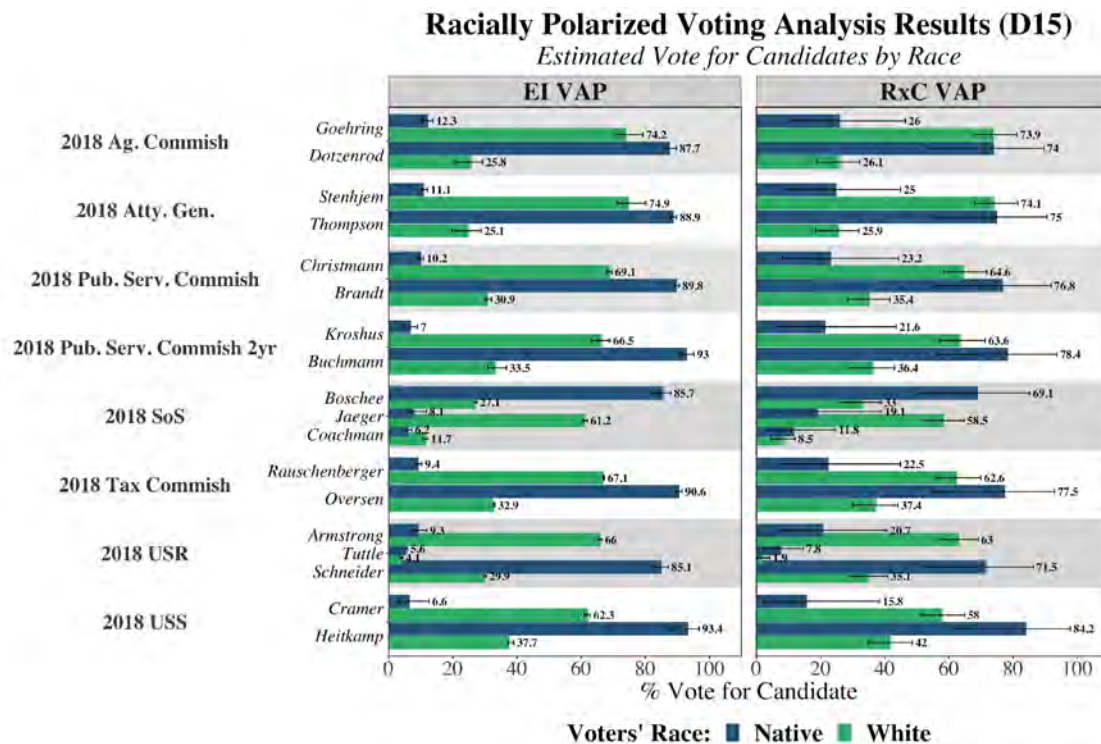


Figure 16. Racially Polarized Voting assessment in statewide contests subset to the new District 15 boundaries, 2020.

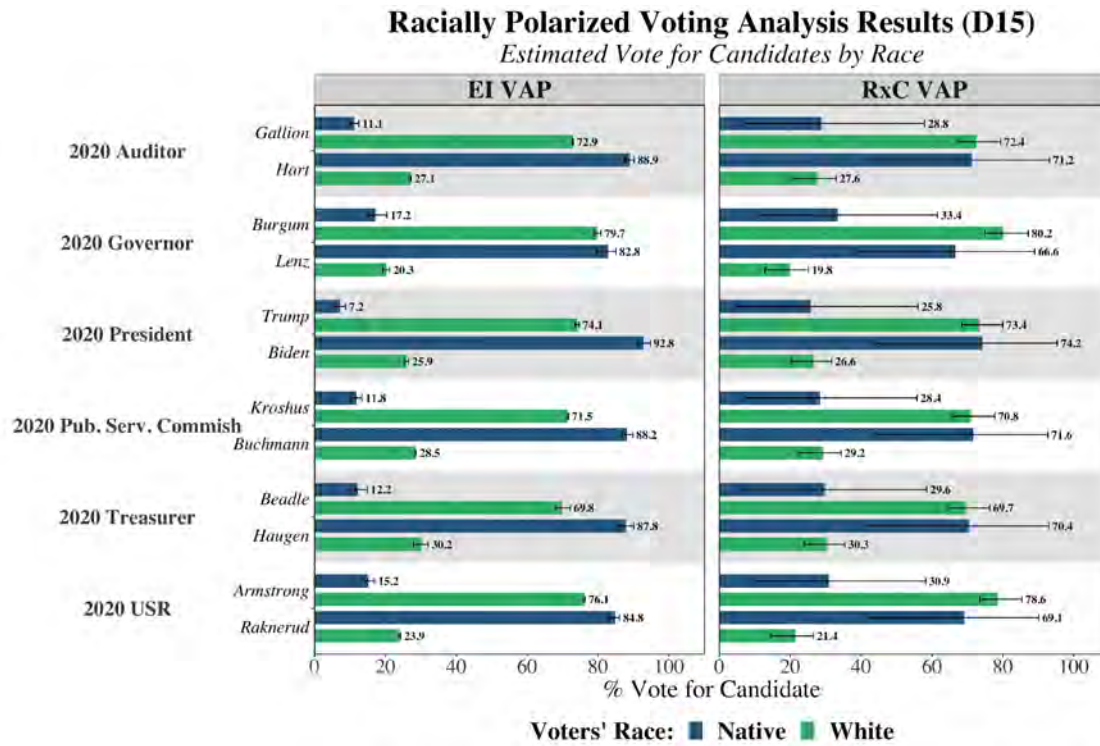
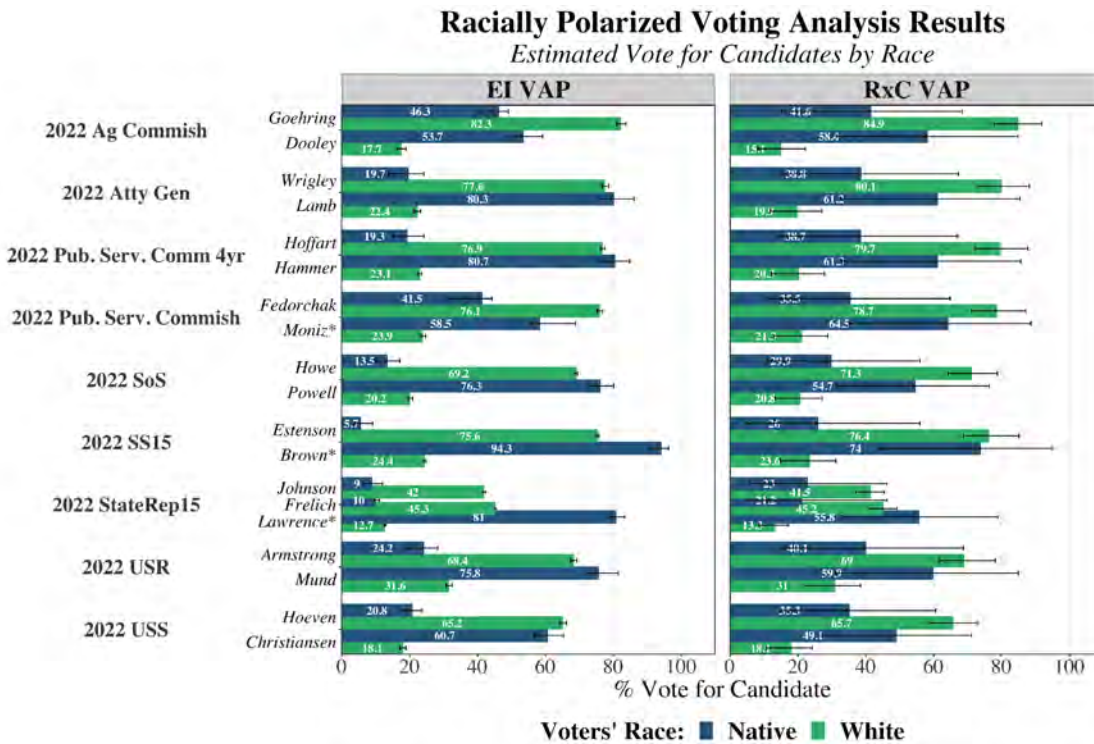


Figure 17. Racially Polarized Voting assessment in statewide contests subset to the new District 15 boundaries, 2022.



Performance Analysis District 15

I conduct a similar analysis here as I did on District 9. Figures 18-21 present electoral performance analysis on the 30 contests between 2016-2022 that exhibited RPV in D15. Overall, the results are very clear: the white-preferred candidate wins every single contest by a large margin with the exception of the 2018 U.S. Senate race where Heidi Heitkamp carried the district. Thus, the block rate by which white voters prevent the Native American preferred candidate from prevailing in District 15 is 97%.

Figure 18. Performance analysis assessment in statewide contests subset to the new District 15 boundaries, 2022 elections.

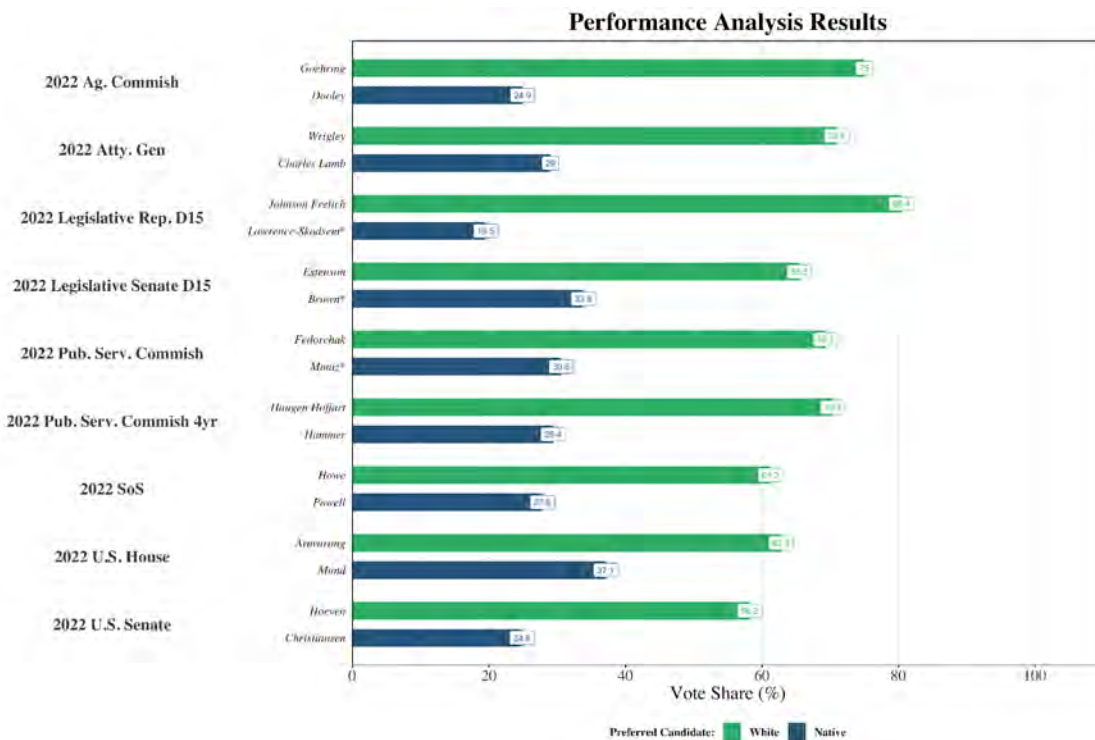


Figure 19. Performance analysis assessment in statewide contests subset to the new District 15 boundaries, 2020 elections.

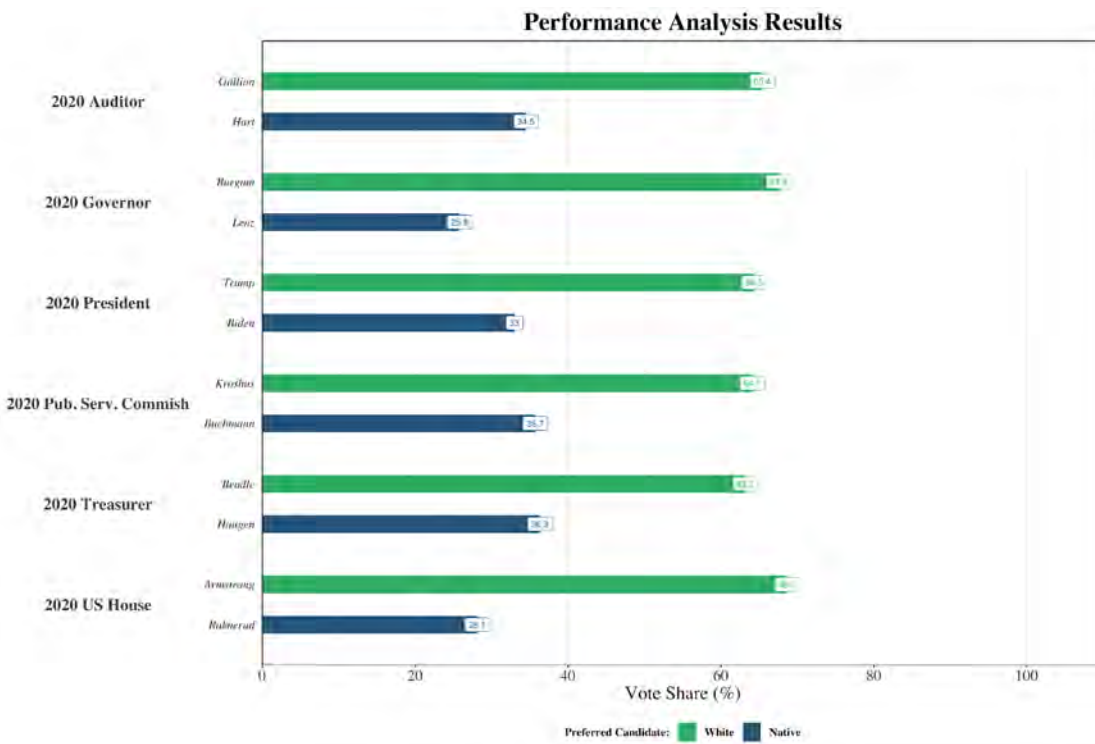


Figure 20. Performance analysis assessment in statewide contests subset to the new District 15 boundaries, 2018 elections.

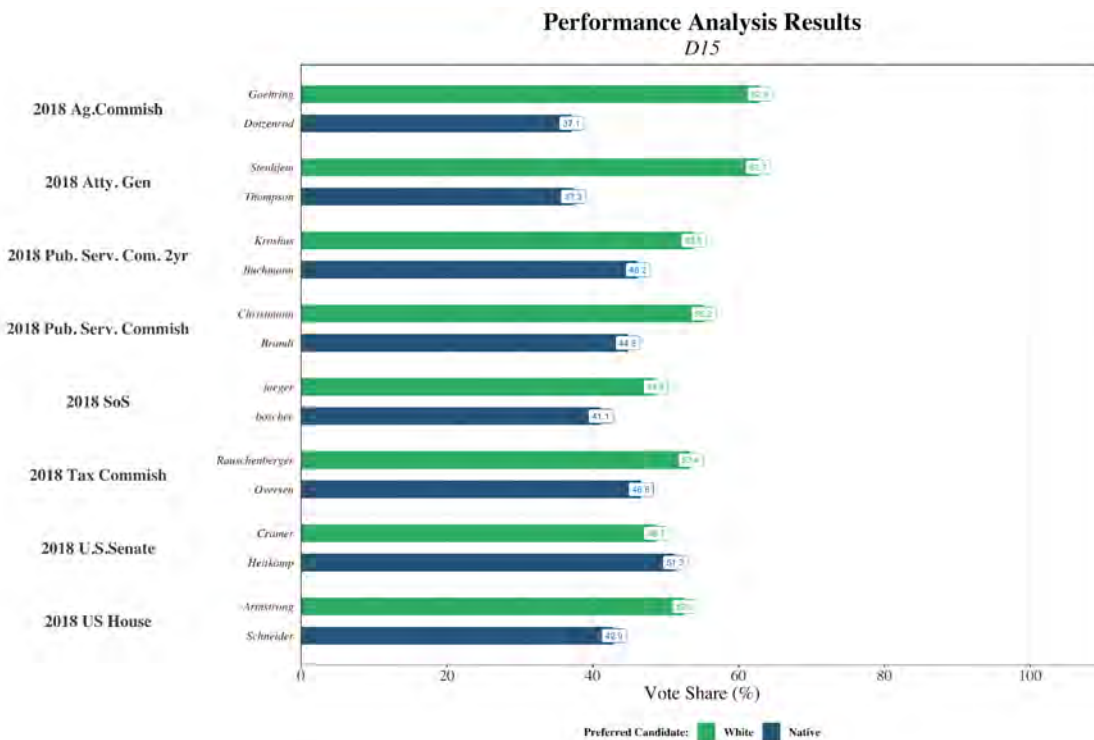
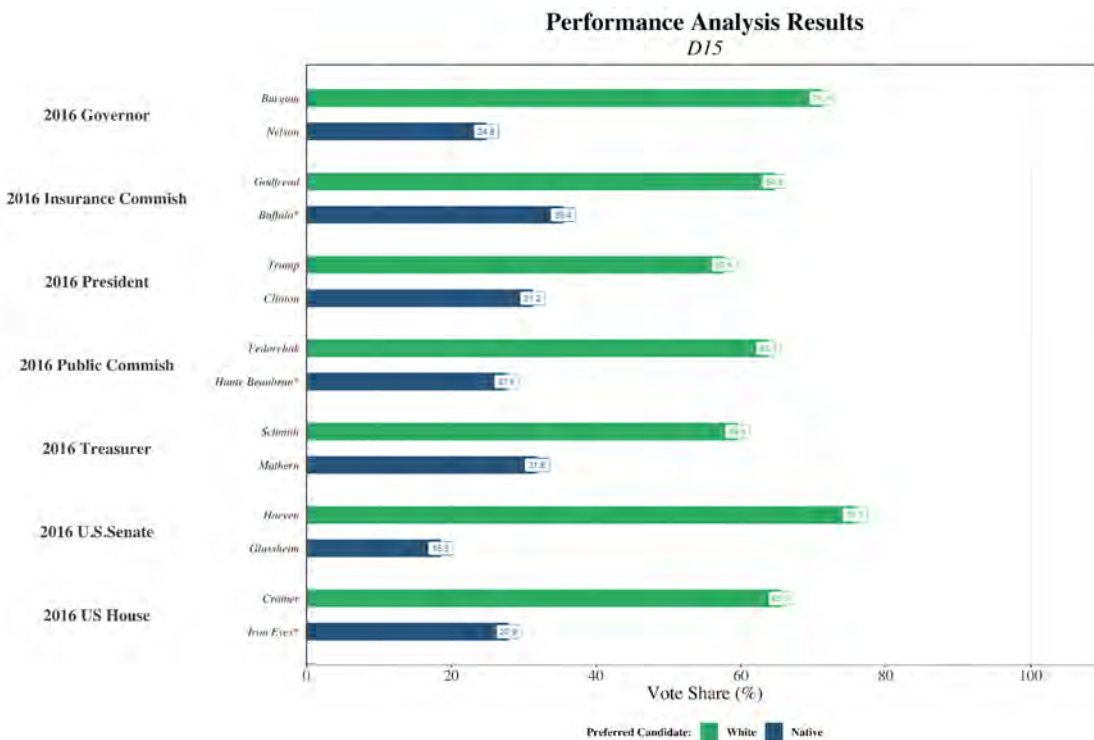


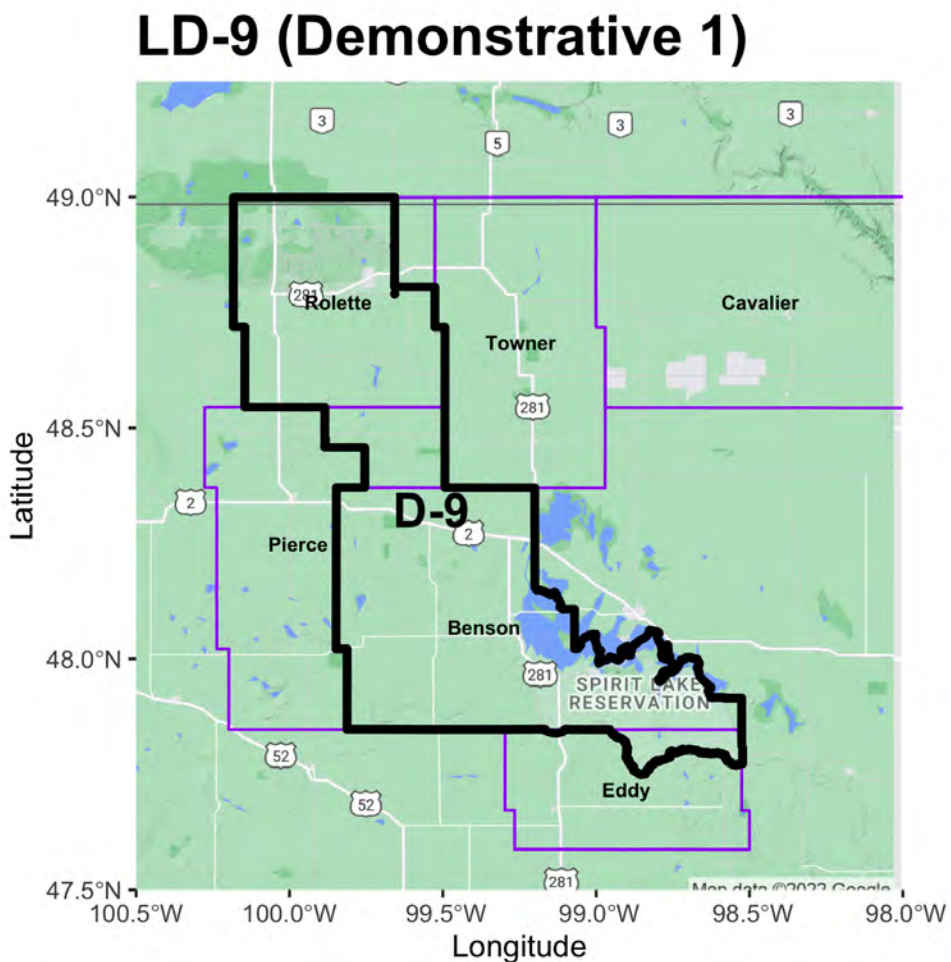
Figure 21. Performance analysis assessment in statewide contests subset to the new District 15 boundaries, 2016 elections.



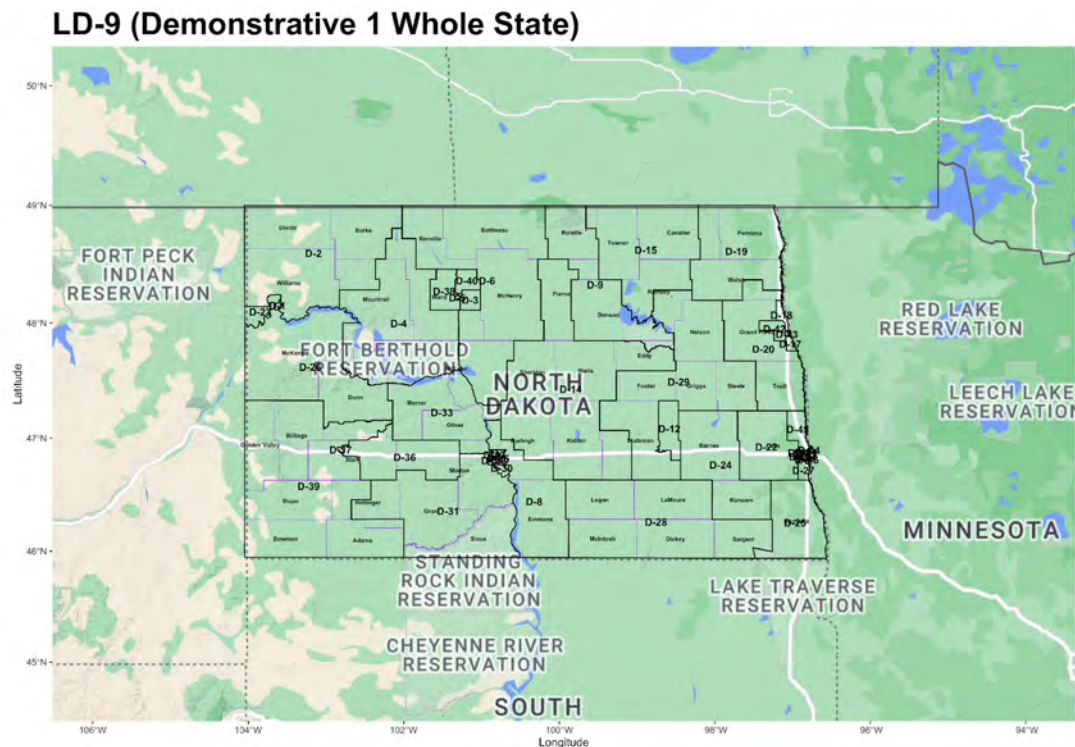
Plaintiffs' Demonstrative Maps

Plaintiffs have asked me to examine the electoral performance of two demonstrative districts, both of which create a new District 9 that would include the Turtle Mountain and Spirit Lake reservations. Demonstrative 1 is shown below. Figure 22 presents the map – the black line indicates the district boundary.

Figure 22. Demonstrative Plan 1.



District 9 within Demonstrative Plan 1 maintains all the 2022 precincts (which were redrawn following redistricting) whole. Its version of District 9 has a Native American VAP of 66.1% compared to enacted District 9's 54.5% and the prior decade's District 9's 74.4%. The map below shows Demonstrative Plan 1 fit into the enacted statewide plan.

Figure 22. Demonstrative Plan 1 whole state.

As the map above shows, the reconfiguration of District 9 in Demonstrative Plan 1 requires minor adjustments to neighboring Districts 14, 15, and 29. Both the enacted plan and Demonstrative Plan 1 have an overall population deviation of 9.87%. District 9 in Demonstrative Plan 1 has a Reock compactness score that is higher (i.e., more compact) than five other districts in the plan enacted by the legislature. The overall Reock compactness score of the enacted plan and Demonstrative Plan 1 are equal at 0.41. Both the enacted plan and Demonstrative Plan 1 feature similar numbers of county splits. The enacted plan splits 20 counties 49 times; Demonstrative Plan 1 splits 21 counties 51 times.

Figures 23-27 show the reconstituted performance analysis results for elections 2014-22, in a similar way I showed for enacted Districts 9 and 15. Overall, this plan performs much more favorably for Native Americans – giving them a strong ability to elect a candidate of choice at the full district. The Native American candidate of choice wins all but three contests over the five-year period.

Figure 23. Performance analysis assessment in statewide contests subset to Demonstrative 1 boundaries, 2022 elections.

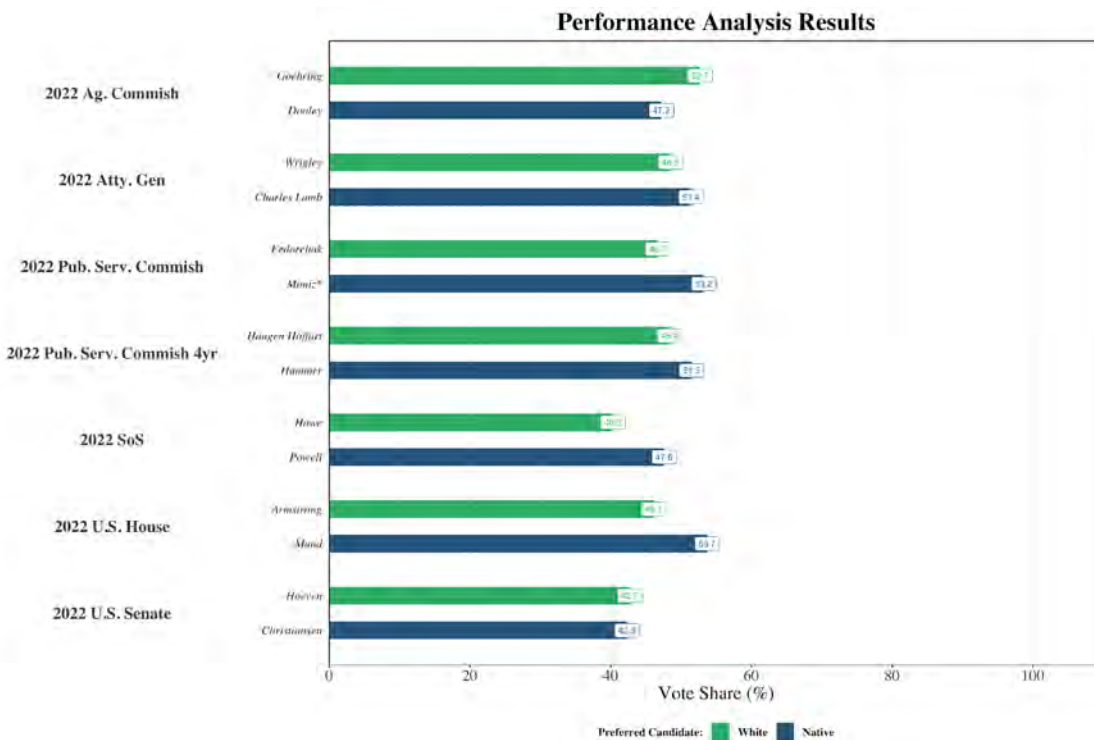


Figure 24. Performance analysis assessment in statewide contests subset to Demonstrative 1 boundaries, 2020 elections.

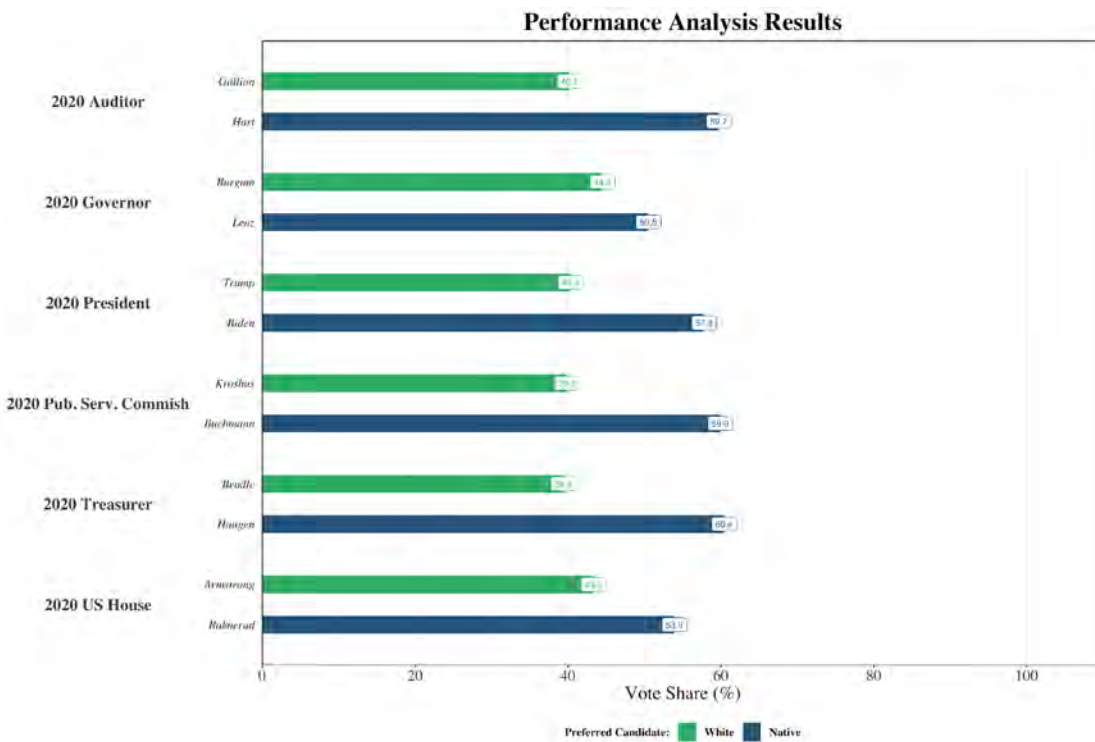


Figure 25. Performance analysis assessment in statewide contests subset to Demonstrative 1 boundaries, 2018 elections.

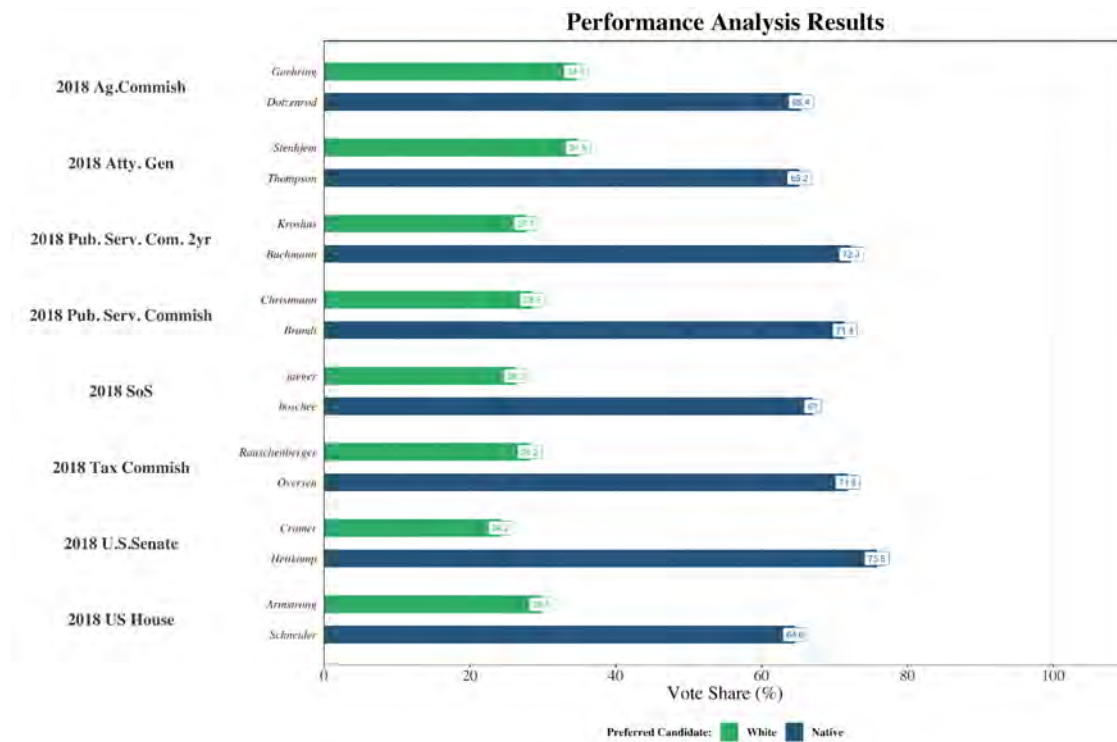


Figure 26. Performance analysis assessment in statewide contests subset to Demonstrative 1 boundaries, 2016 elections.

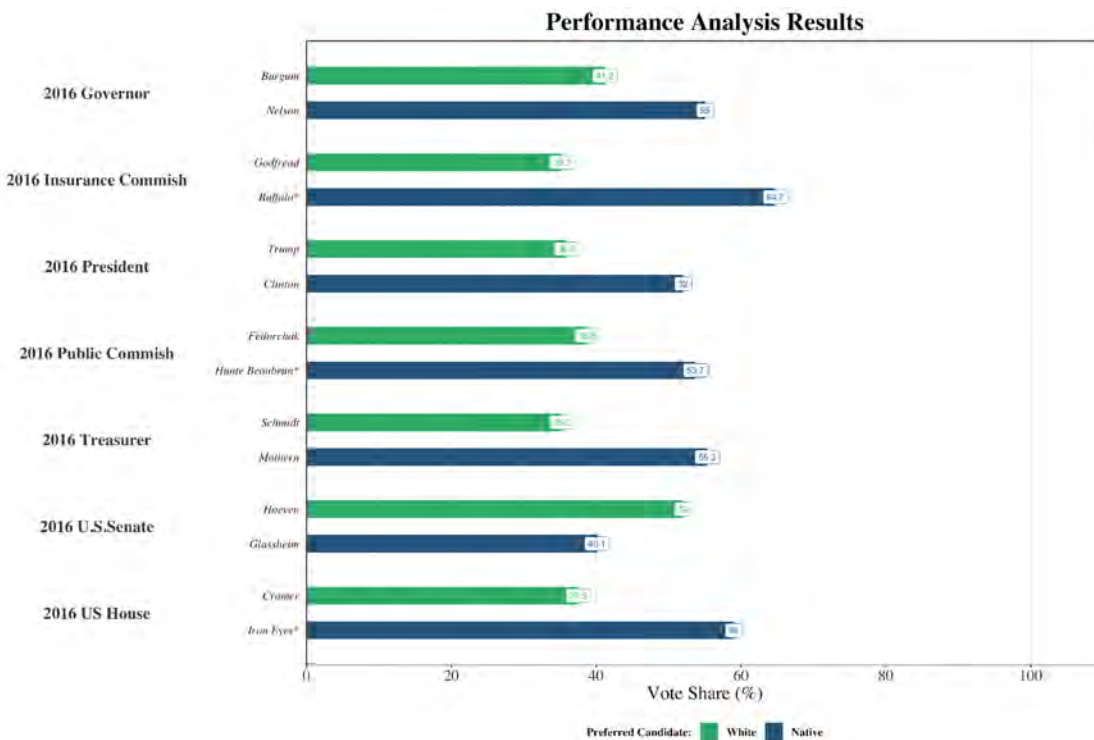
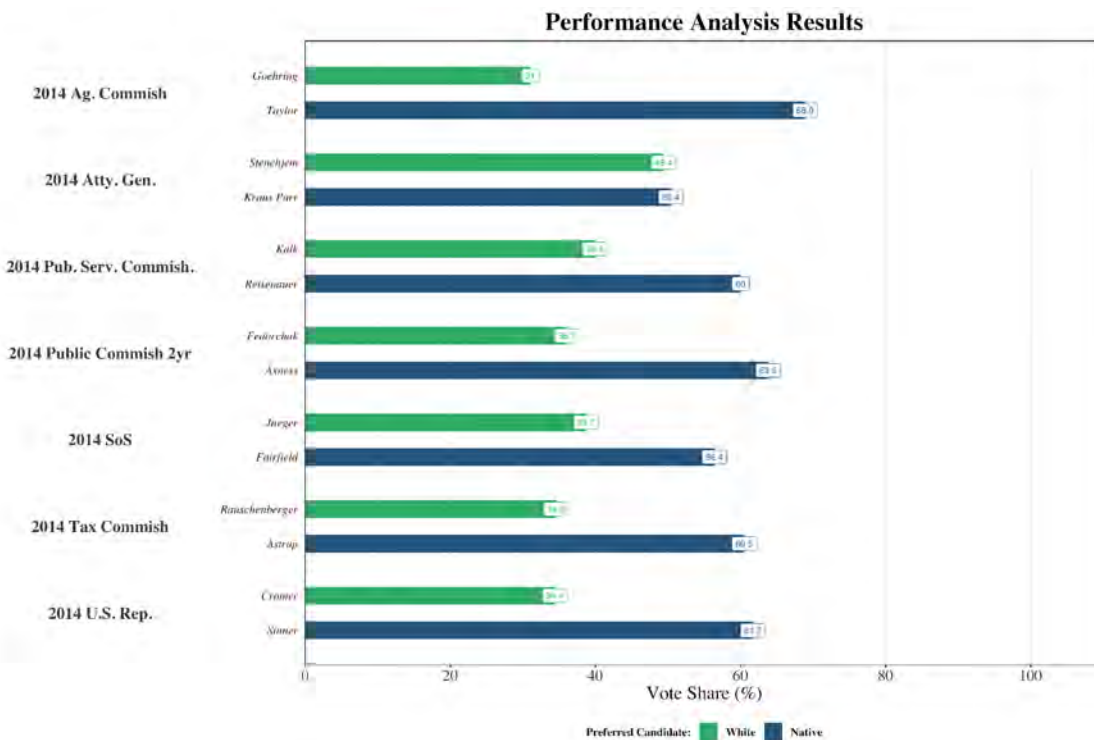
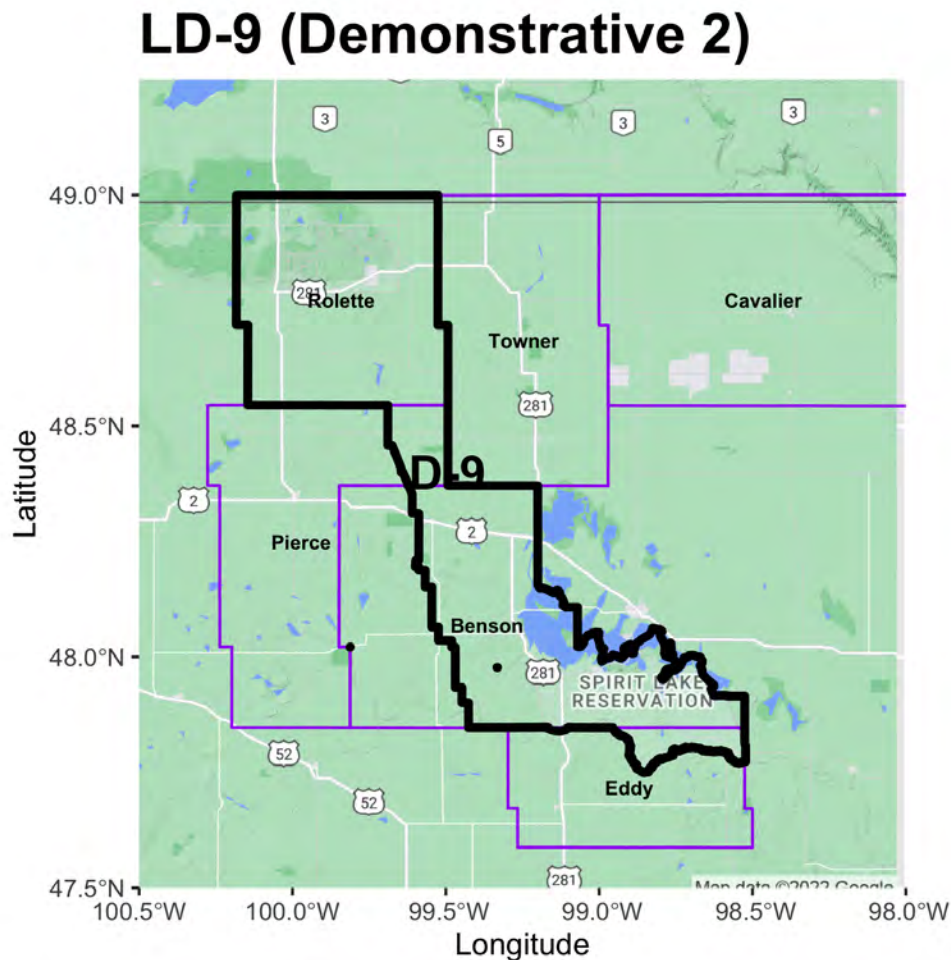


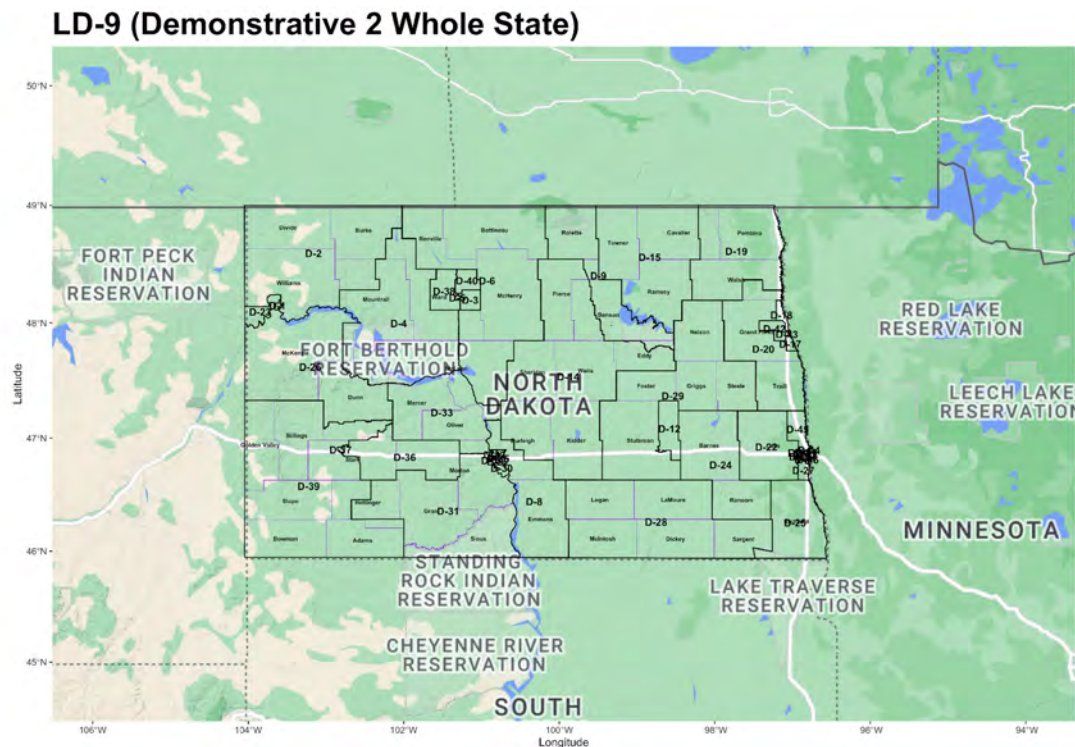
Figure 27. Performance analysis assessment in statewide contests subset to Demonstrative 1 boundaries, 2014 elections.



I have also analyzed a second map, Demonstrative Plan 2, which is shown below.

Figure 28. Demonstrative Plan 2.

In Demonstrative Plan 2, District 9 has a Native American VAP of 69.1%. Demonstrative Plan 2 illustrates an alternative way in which District 9 could be modified to afford Native American voters the ability to elect their preferred candidates with the most minimal effect on neighboring districts. By splitting Benson County Precinct 1 and Pierce County Precinct 1 rather than assigning them entirely to District 9 (as Demonstrative Plan 1 does), it is possible to shift population from District 14 to District 9 without necessitating a subsequent addition of new territory to District 14. This is so because in the enacted plan District 14 has a population deviation of +613, and so has room to shed population without needing a concomitant gain somewhere else. As a result, unlike in Demonstrative Plan 1, Demonstrative Plan 2 requires no changes to District 29 – limiting to just two neighboring districts (District 14 and 15) the necessary modifications. The statewide map of Demonstrative Plan 2 is shown below.

Figure 29. Demonstrative Plan 2 whole state.

In both the enacted plan and Demonstrative Plan 2, the overall population deviation is 9.87%. District 9 in Demonstrative Plan 2 has a Reock compactness score that is higher (i.e., more compact) than two other districts enacted by the legislature. The overall Reock compactness score of the enacted plan and Demonstrative Plan 2 are equal at 0.41. Both the enacted plan and Demonstrative Plan 2 feature the same number of county splits; both split 20 counties 49 times.

Figures 30 - 33 show the reconstituted election performance analysis under Demonstrative plan 2. It is clear from this analysis – and particularly from the 2022 results – that Native American voters are very likely to elect candidates of choice in this reconfigured district relative to the enacted D9. Of particular note, in 2022, the Native-preferred candidates wins seven of eight contests compared to losing all contests in enacted District 9.

Figure 30. Performance analysis assessment in statewide contests subset to Demonstrative 2 boundaries, 2022 elections.

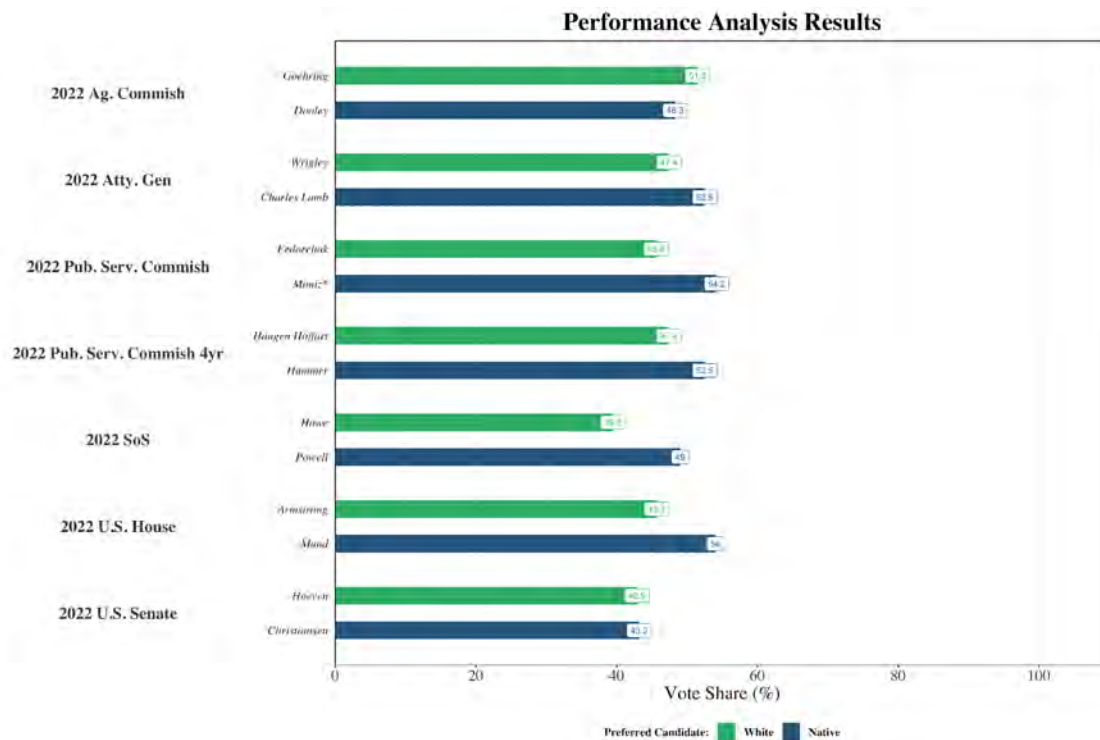


Figure 31. Performance analysis assessment in statewide contests subset to Demonstrative 2 boundaries, 2020 elections.

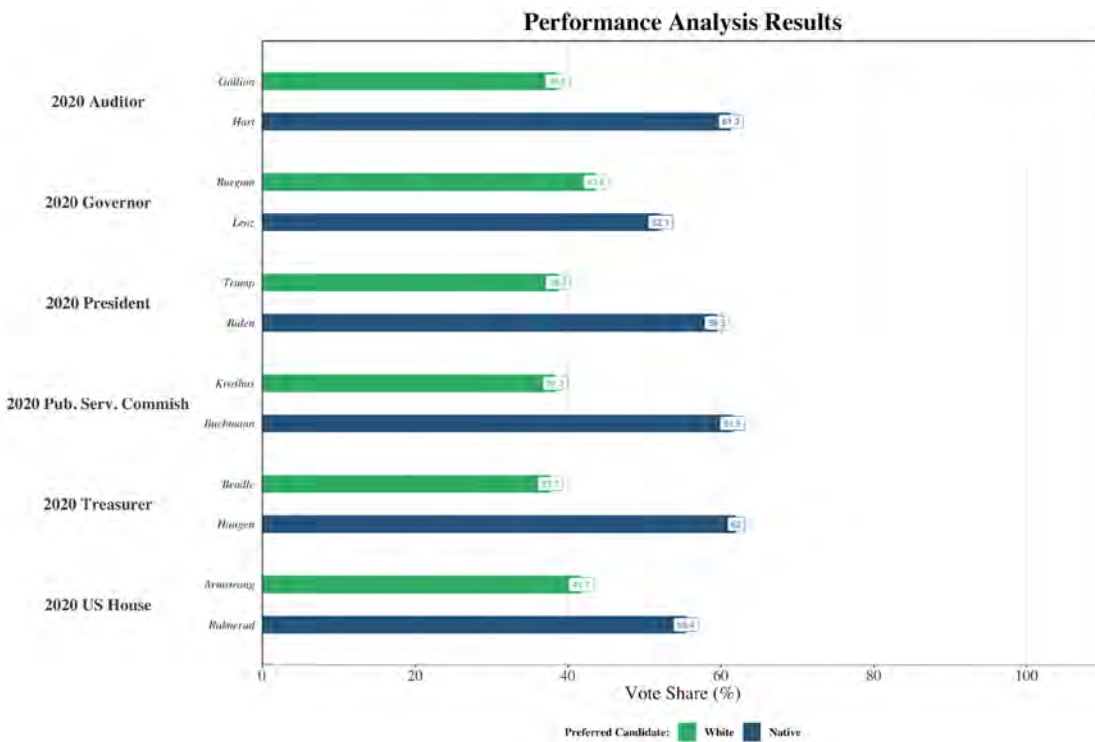


Figure 32. Performance analysis assessment in statewide contests subset to Demonstrative 2 boundaries, 2018 elections.

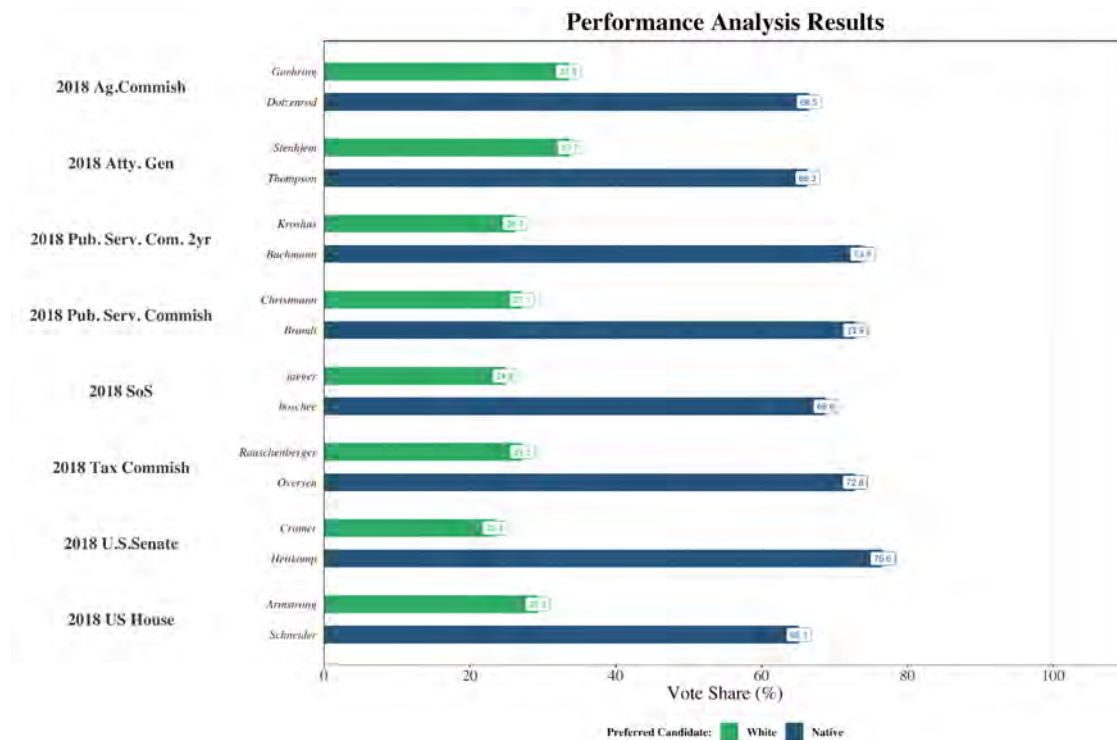
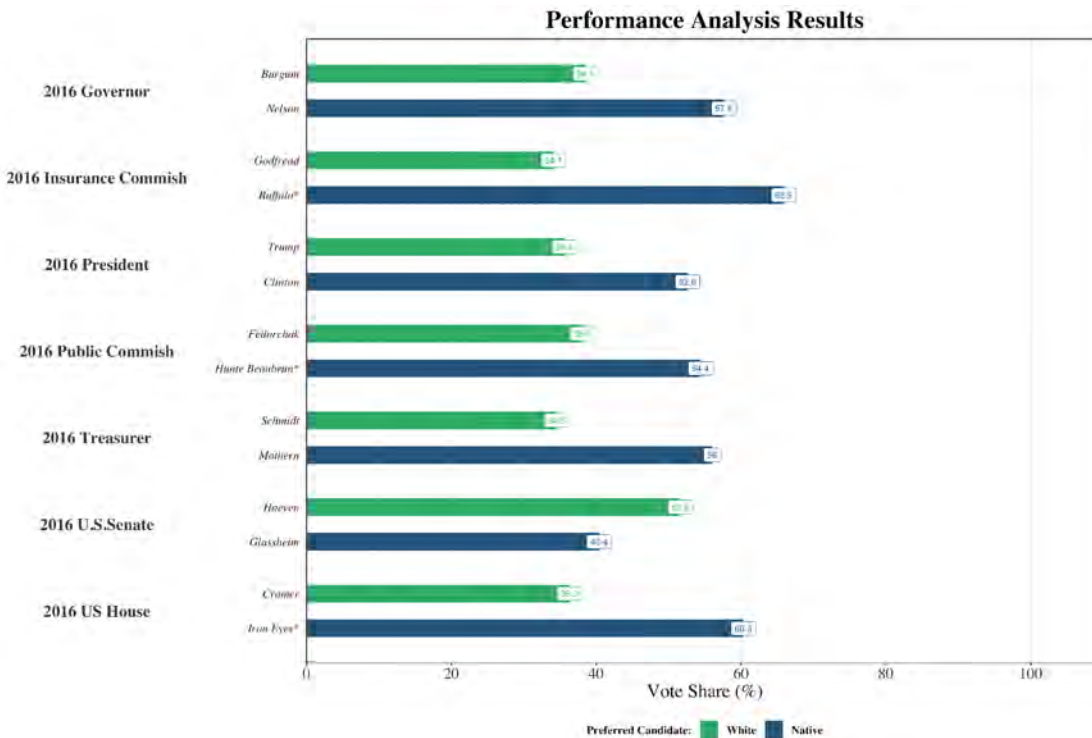


Figure 33. Performance analysis assessment in statewide contests subset to Demonstrative 2 boundaries, 2016 elections.



Overall, the alternative map shows that Native American-preferred candidates, as well as the Native American candidates, win relatively comfortably in both Demonstrative Plans 1 and 2.

Conclusion

In conclusion, without any doubt, racially polarized voting between Native Americans and non-Hispanic white voters is present in North Dakota broadly and specifically in the new District 9, subdistricts 9A and 9B, and District 15. RPV is especially clear in elections featuring Native American candidates – but is present across every single elections – save two – I analyzed across five election years (2014, 2016, 2018, 2020, and 2022). An analysis statewide reveals that whites are voting as a bloc to block Native Americans from electing candidates of choice. Narrowing in on the new District 9, white voters are voting as a bloc to prevent Native Americans from electing candidates of choice in recent elections, in endogenous elections (including the 2022 defeat of the longtime incumbent Native American state senator), and in the 60% of contests across all tested years in which the Native American preferred candidate was a Native American. In subdistrict 9A, Native-preferred candidates win 100% of the time. However, in subdistrict 9B, Native-preferred candidates rarely win meaning that they generally lose contests in that subdistrict. In District 15, Native American preferred candidates lost 97% (29/30) of the time across all tested contests, including in particular the endogenous 2022 contests featuring Native American candidates.

Finally, Plaintiffs' Demonstrative Plans 1 and 2 illustrate a reconfigured District 9 with a Native American VAP ranging between roughly 66-69%. While still a reduction from the 74.4% Native American VAP in the prior decade's map, this reflects a much less drastic reduction than in the 2021 enacted plan (54.5%). Demonstrative Plans 1 and 2 maintain the same overall population deviation as the enacted plan, respect communities of interest in reconfigured District 9, have similarly compact versions of District 9 compared to other districts enacted by the legislature, and similarly respect other traditional districting criteria compared to the enacted plan. Unlike the enacted plan, which reduced from 3 to 1 the number of Native American preferred legislators elected in northeastern North Dakota, Demonstrative Plans 1 and 2 would retain the ability of Native American voters in District 9 to elect three candidates of choice to the state senate and state house.

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Research Fields

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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.
-

Software

R package: **RTextTools**. This package uses supervised learning methods to automate text classification. Coauthors include Jurka, Boydstun, 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]

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

Hickel Jr., Flavio R., Kassra A.R. Oskooii, and **Loren Collingwood**. “Social Mobility Through Immigrant Resentment: Explaining Latinx Support for Restrictive Immigration Policies and Anti-Immigrant Candidates.” [Revise & Resubmit]

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 Boydston, 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 Boydston, 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; Campaign Legal Center; 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: *LOWER BRULE SIOUX TRIBE v. LYMAN COUNTY*, 2022

Expert Witness: *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, 2022

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

17

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.

EXHIBIT 2

Rebuttal Expert Report of Dr. Loren Collingwood

Loren Collingwood

2023-02-16

Executive Summary

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

Key Findings:

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

Background and Qualifications

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

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

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

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

LD-9 is not a functioning Native American opportunity district

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

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

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

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

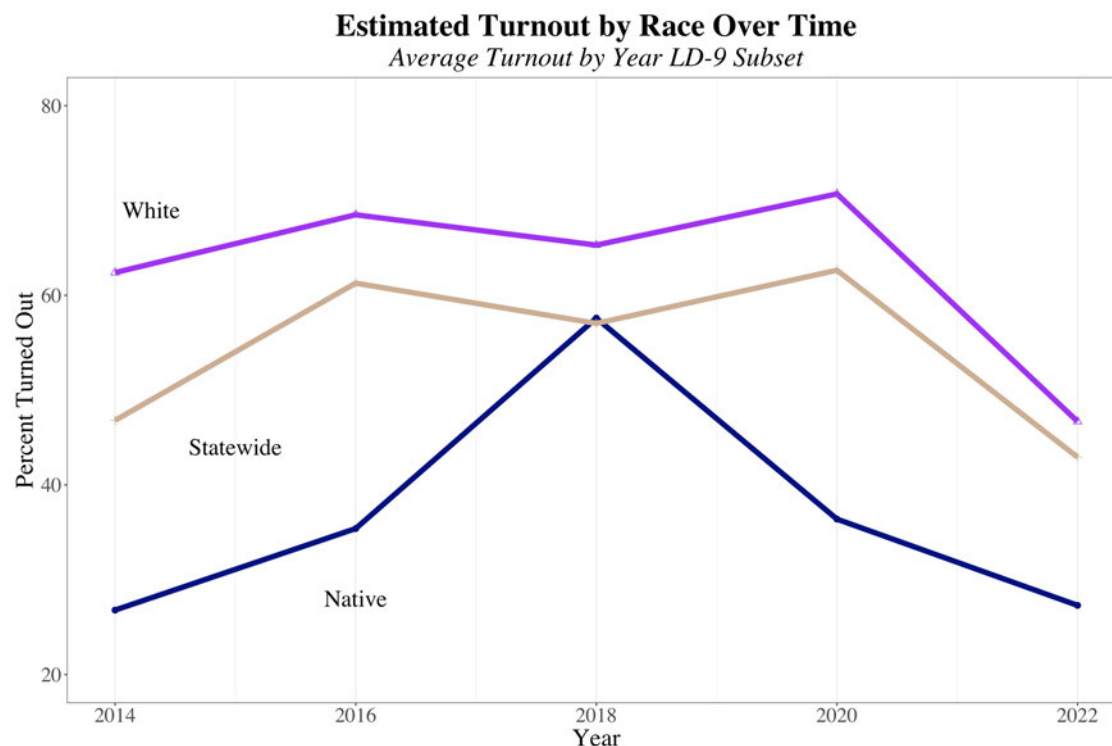
Unfortunately, these imbalances in turnout by race continue through today. For instance, in the 2020 general election, according to the Current Population Survey (CPS), non-Hispanic whites turned out at 70.9%, Blacks at 62.6%, Asians at 59.7%, and Hispanics at 53.7% (see data provided for reference).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

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

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

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

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



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

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

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

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

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

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

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

Dr. Hood's Gingles III Analysis Is Methodologically Flawed

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

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

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

A. Equally Weighing the Elections Is Methodologically Incorrect.

First, it is methodologically flawed to equally weigh elections when conducting a Gingles III analysis. It is well established in court opinion and in the academic literature—including in literature written by Dr. Hood that he references in his report³—that certain elections are more probative than others in ascertaining whether white voters usually defeat the minority voters’ preferred candidates. Endogenous elections (here, elections for the state legislature) are the most probative, and exogenous elections (*e.g.*, for President, Governor, U.S. Senator, etc.) are less probative. National and statewide candidates often are better funded and have elections decided on a different set of issues and circumstances than elections for lower office. In addition, recent elections are more probative than past elections. Finally, elections featuring a candidate of the race or ethnicity of the group bringing the Section 2 challenge are more probative than those featuring two white candidates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiffs' Demonstrative Districts

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

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

A. Population Deviation

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

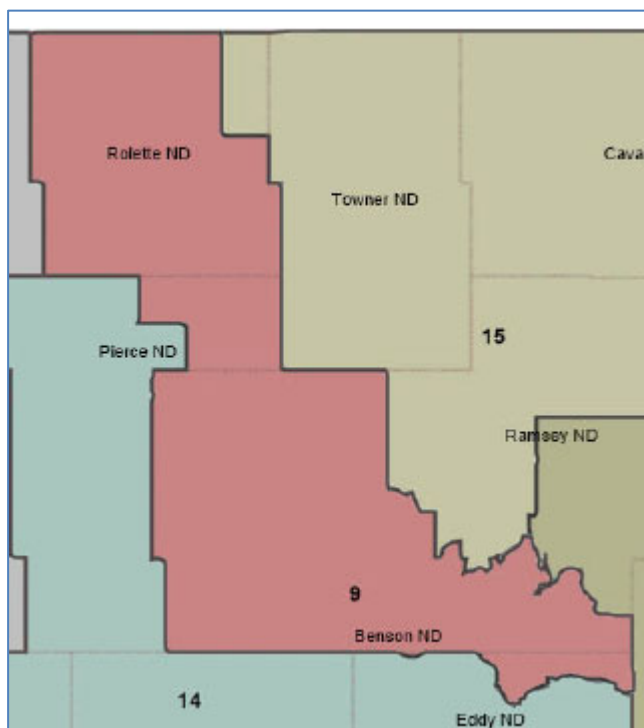
B. Compactness

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

1. The Effect of Water Boundaries

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

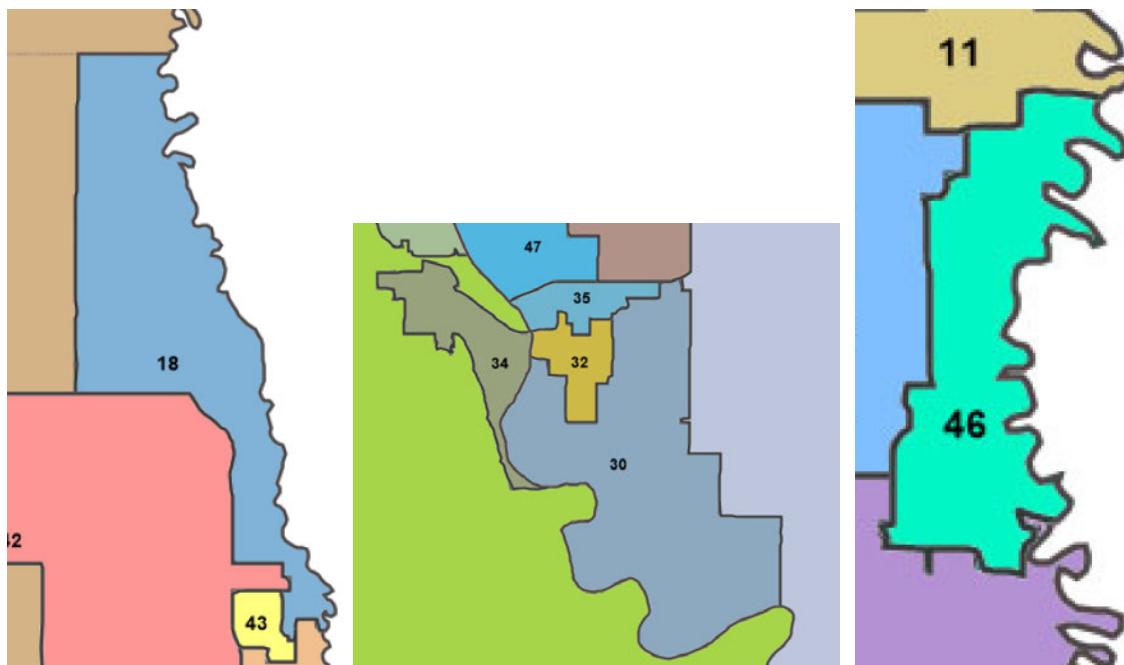
Plaintiffs' Demonstrative Plan 1 LD-9



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

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

Enacted North Dakota Legislative Plan Districts



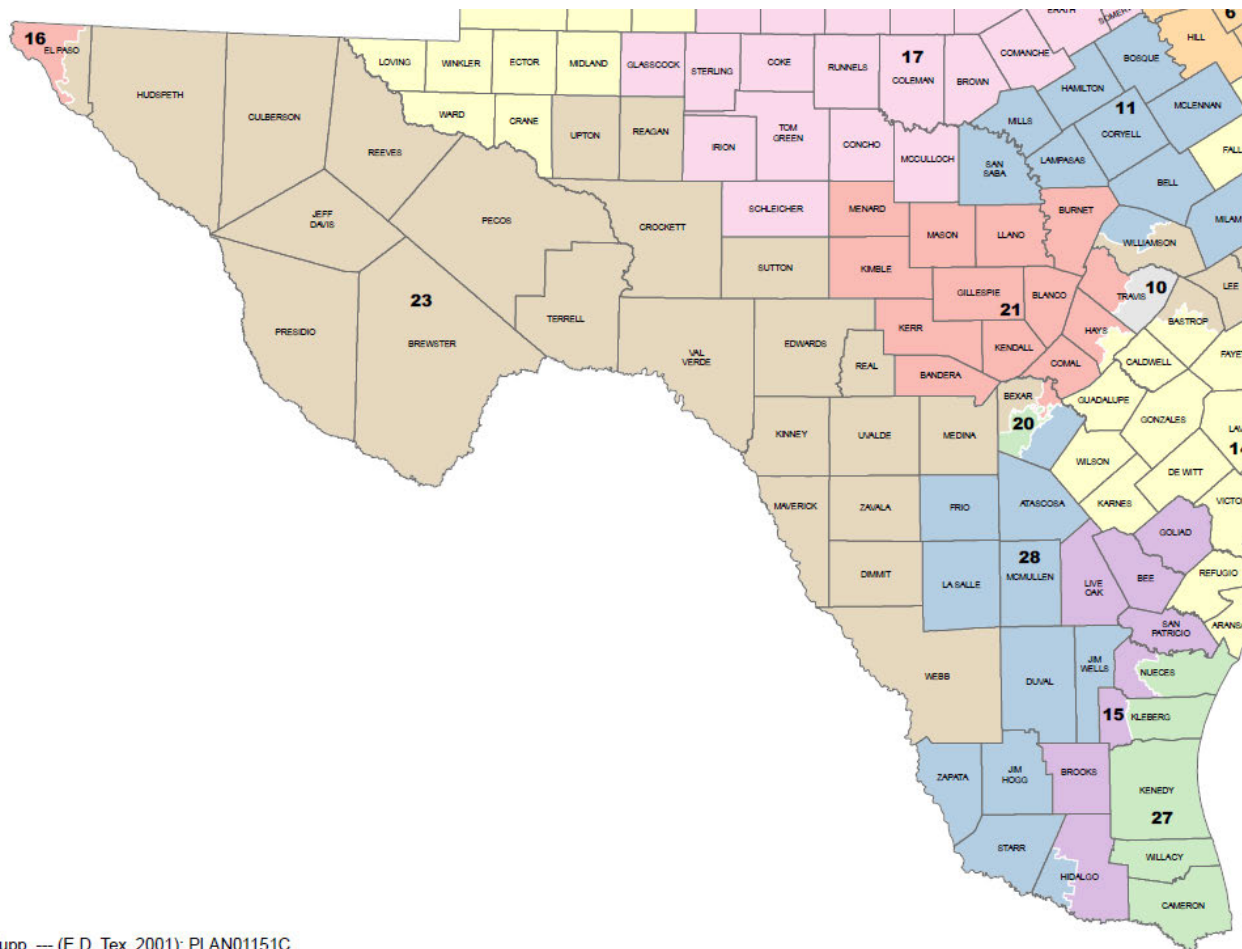
LD-18 in Grand Forks and LD-46 in Fargo are bordered by the Red River of the North and LD-34 is bordered by the Missouri River. While LD-35 is not bordered by water, it has a nearly equal Reock score to Plaintiffs’ Demonstrative Plan 1 LD-9. In his deposition, Dr. Hood acknowledged that all these districts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

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

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

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

Texas Plan 1151C



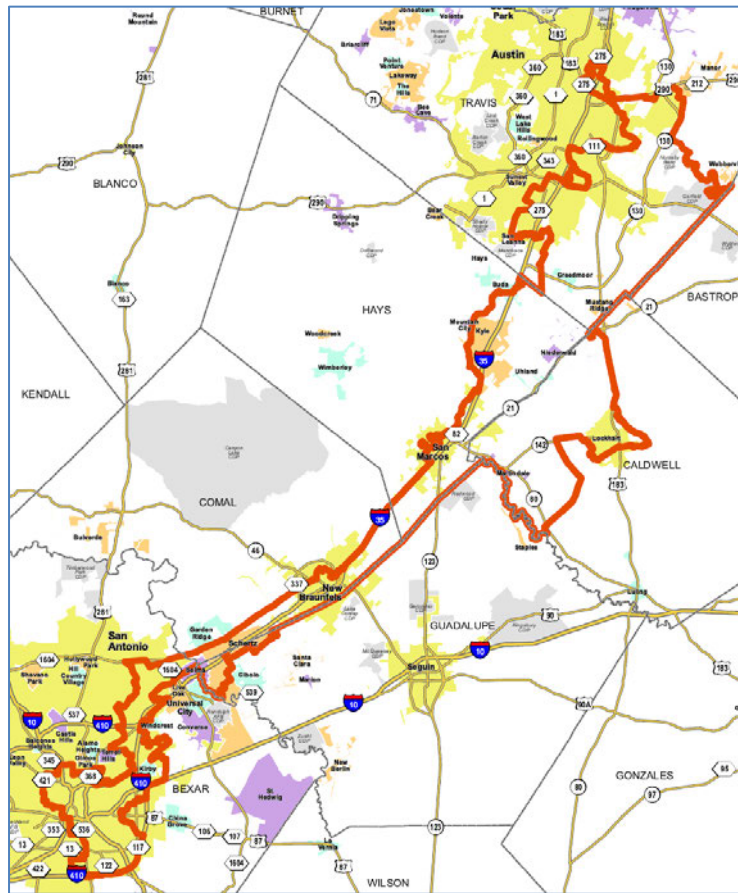
iupp. — (E.D. Tex. 2001); PLAN01151C

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

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

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

Texas Plan C235 District 35

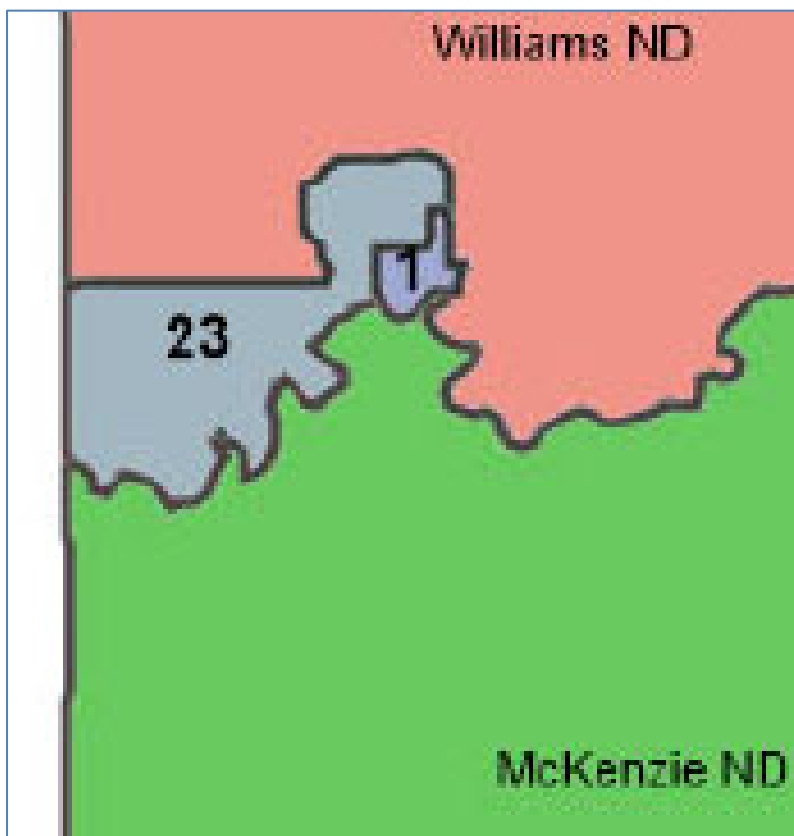


District 35 had a Reock score of .10 and a Polsby-Popper score of .05, substantially lower than Plaintiffs Demonstrative Plan 1 LD-9.

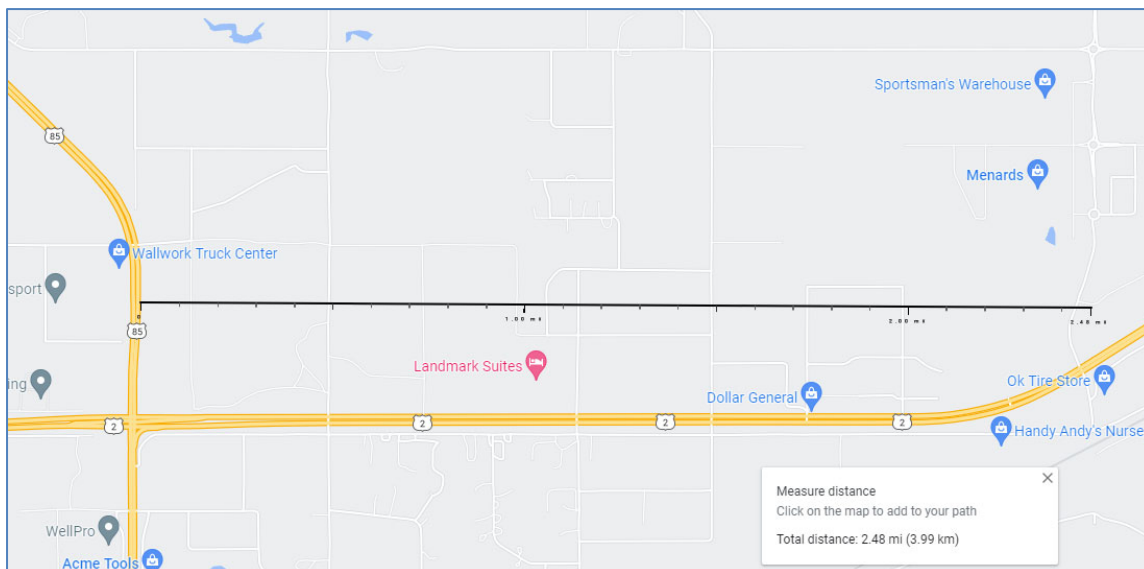
3. “Land Bridge”

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

North Dakota LD-23

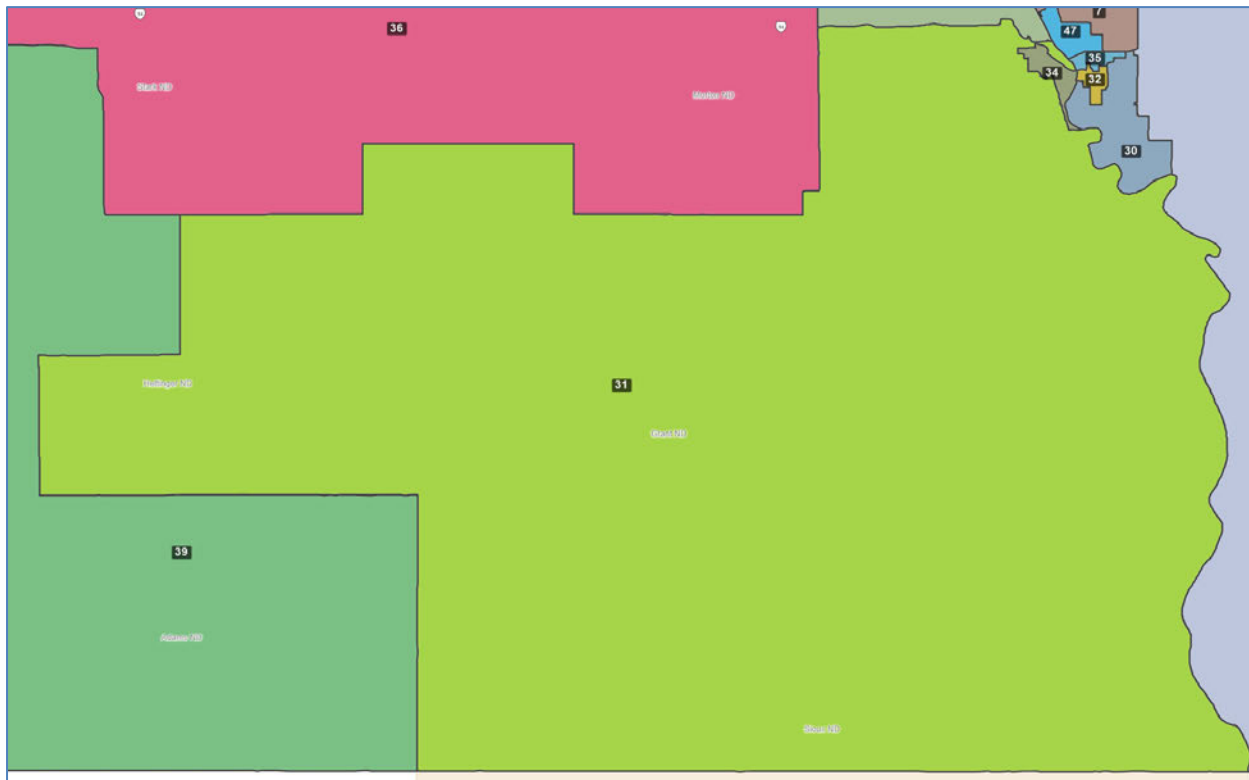


Distance Across LD-23 “Land Bridge”

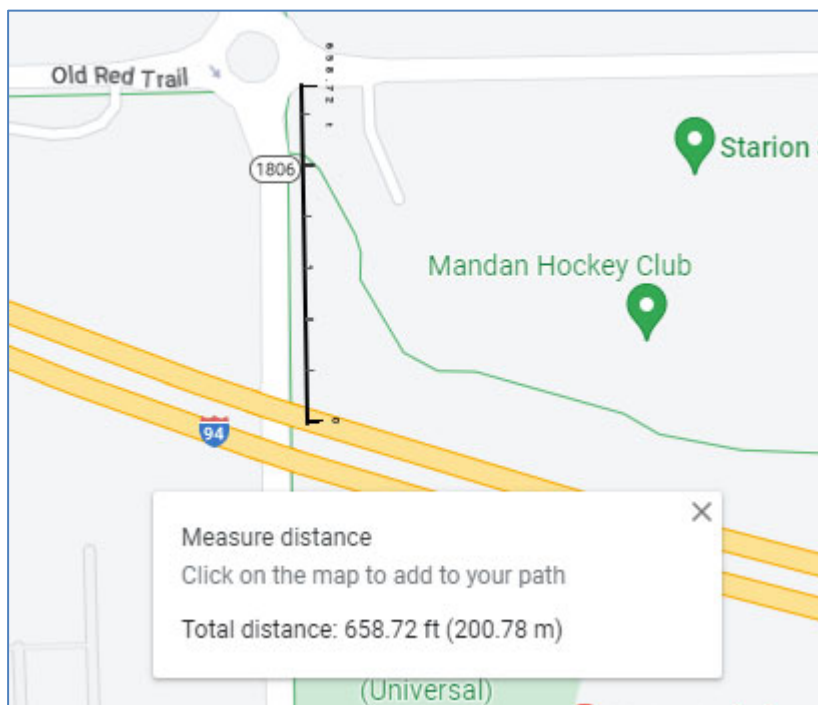


District 31, shown below, is a larger district that stretches from Mandan to the South Dakota border, but includes a narrow incursion through Mandan to the Missouri River that is just 659 feet across and likewise involved splitting then-existing voting precincts:

North Dakota Enacted LD-31



District 31 “Land Bridge” Distance



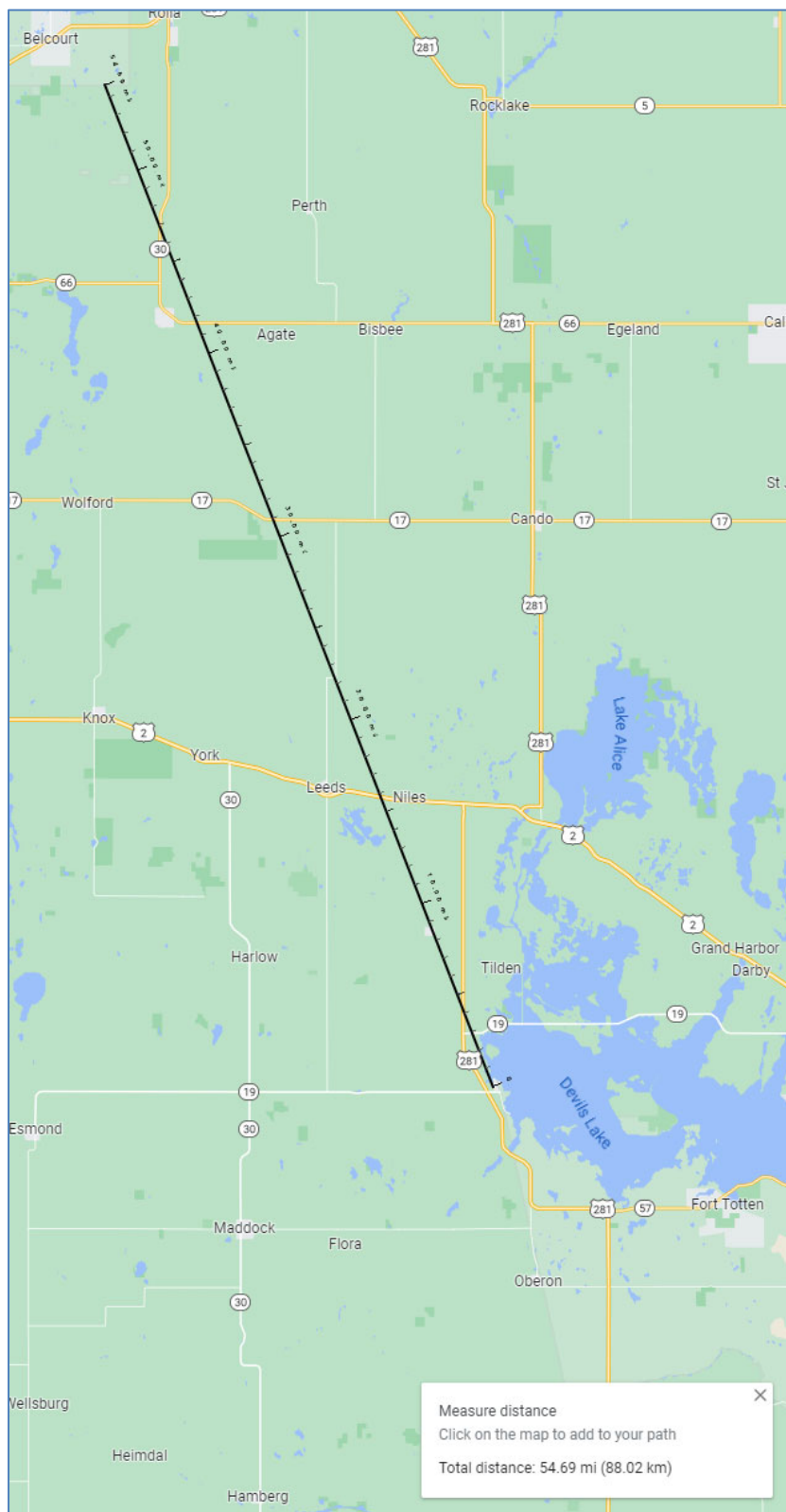
Notably, adherence to voting precincts is a generally acknowledged traditional districting criteria, and Plaintiffs’ Demonstrative Plan 1 contains no split precincts.

4. Distance

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

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

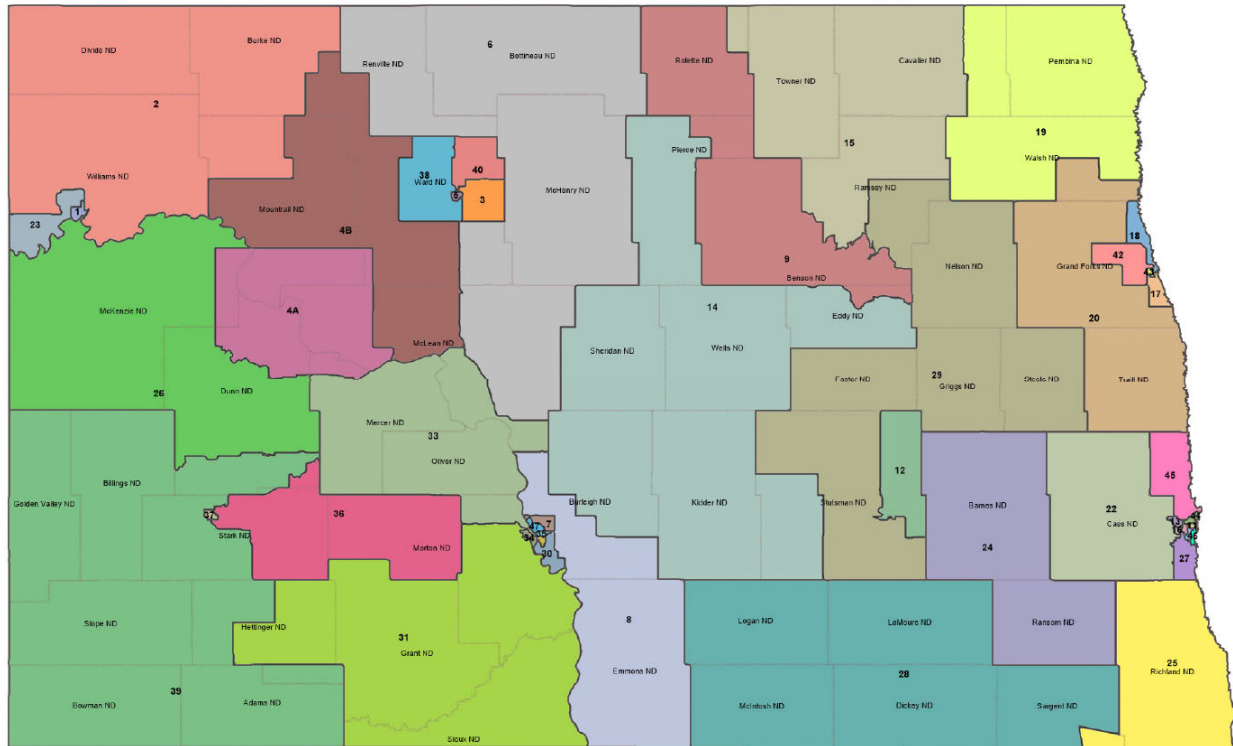
Distance Between Turtle Mountain and Spirit Lake Reservations



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

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

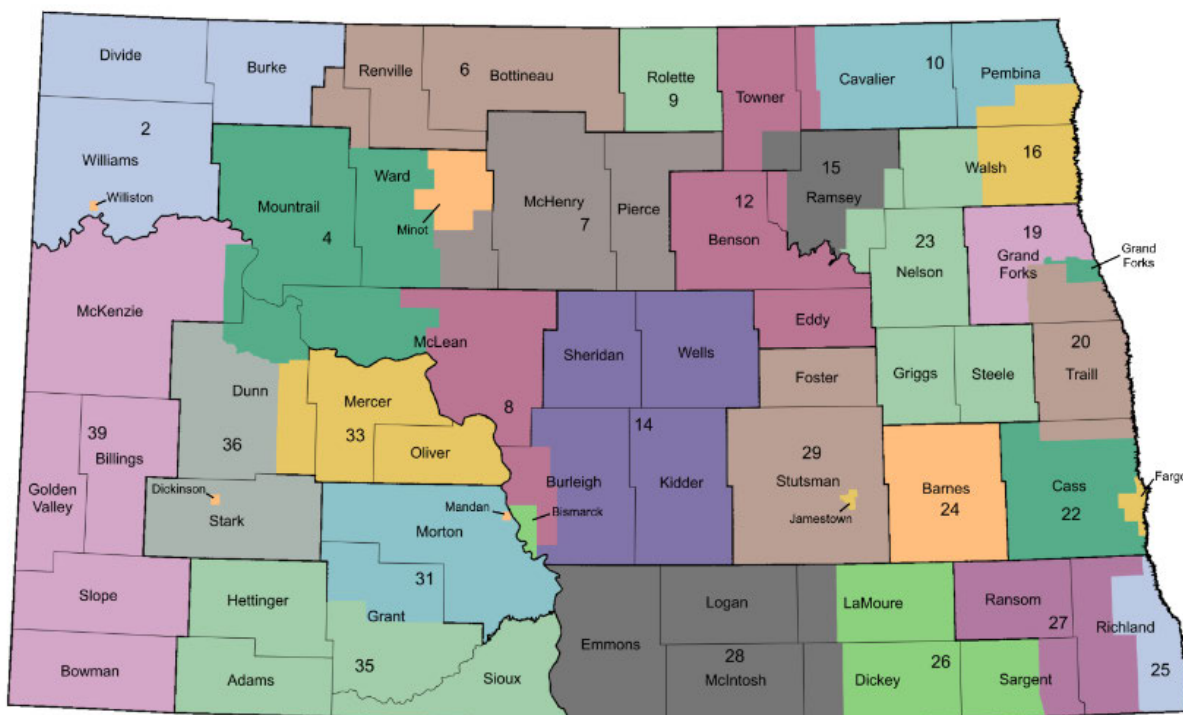
Plaintiffs’ Demonstrative Plan 1



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

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

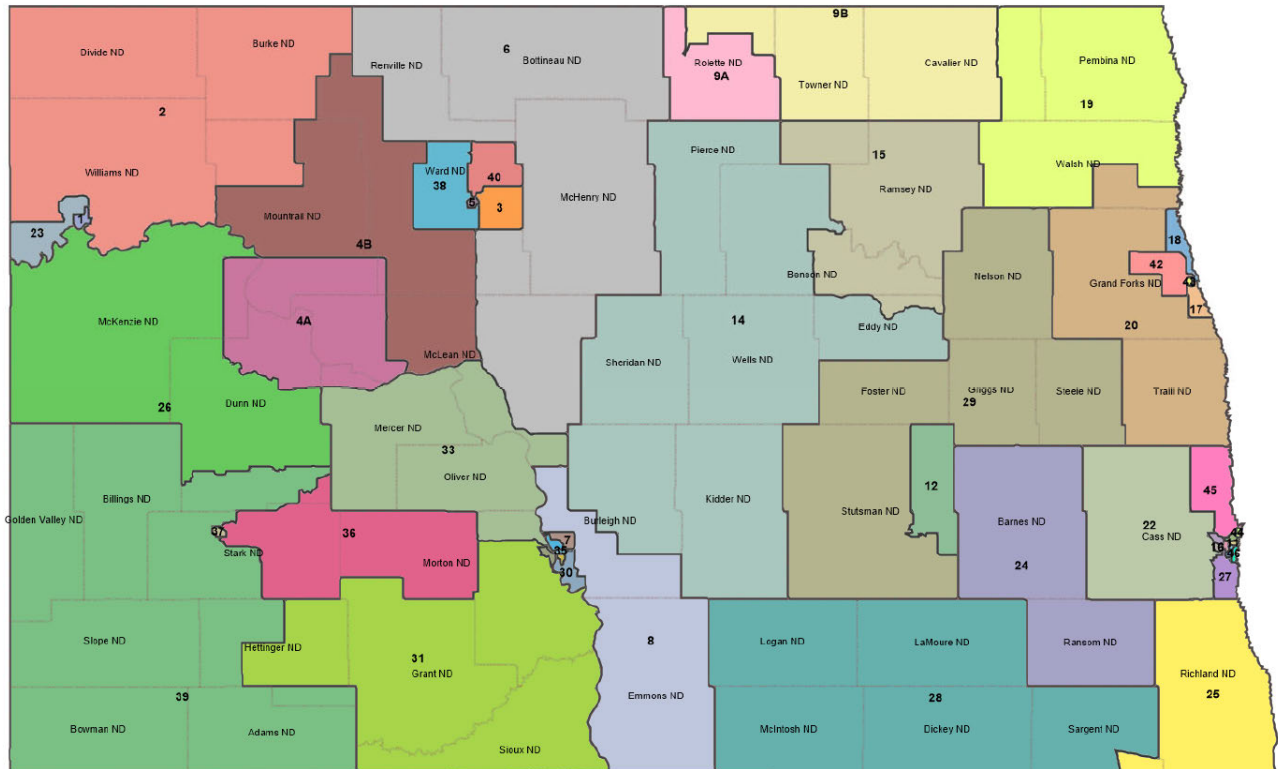
1993-2002 North Dakota Legislative Plan



C. Communities of Interest

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

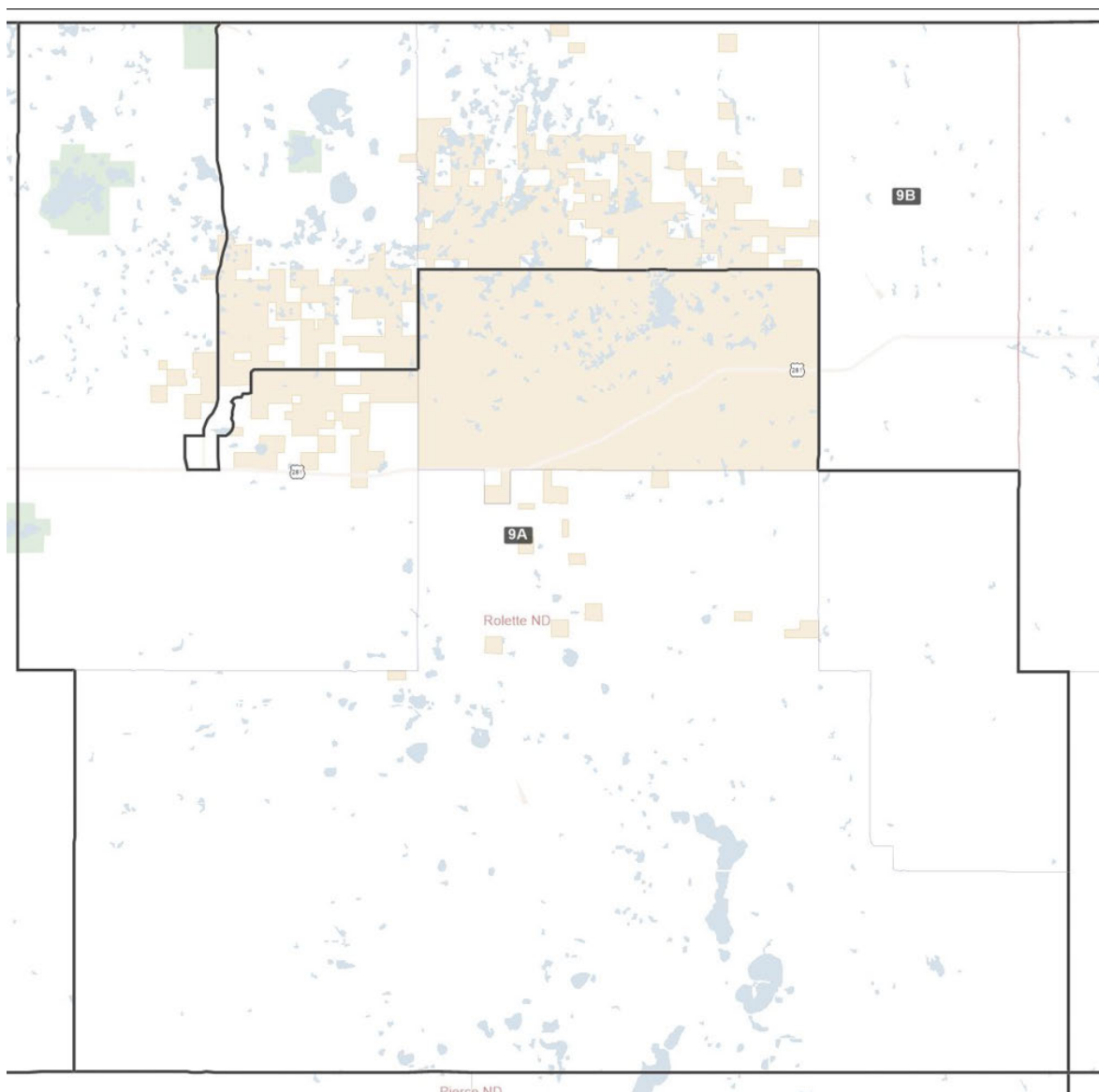
2021 Enacted North Dakota Legislative Plan



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

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

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

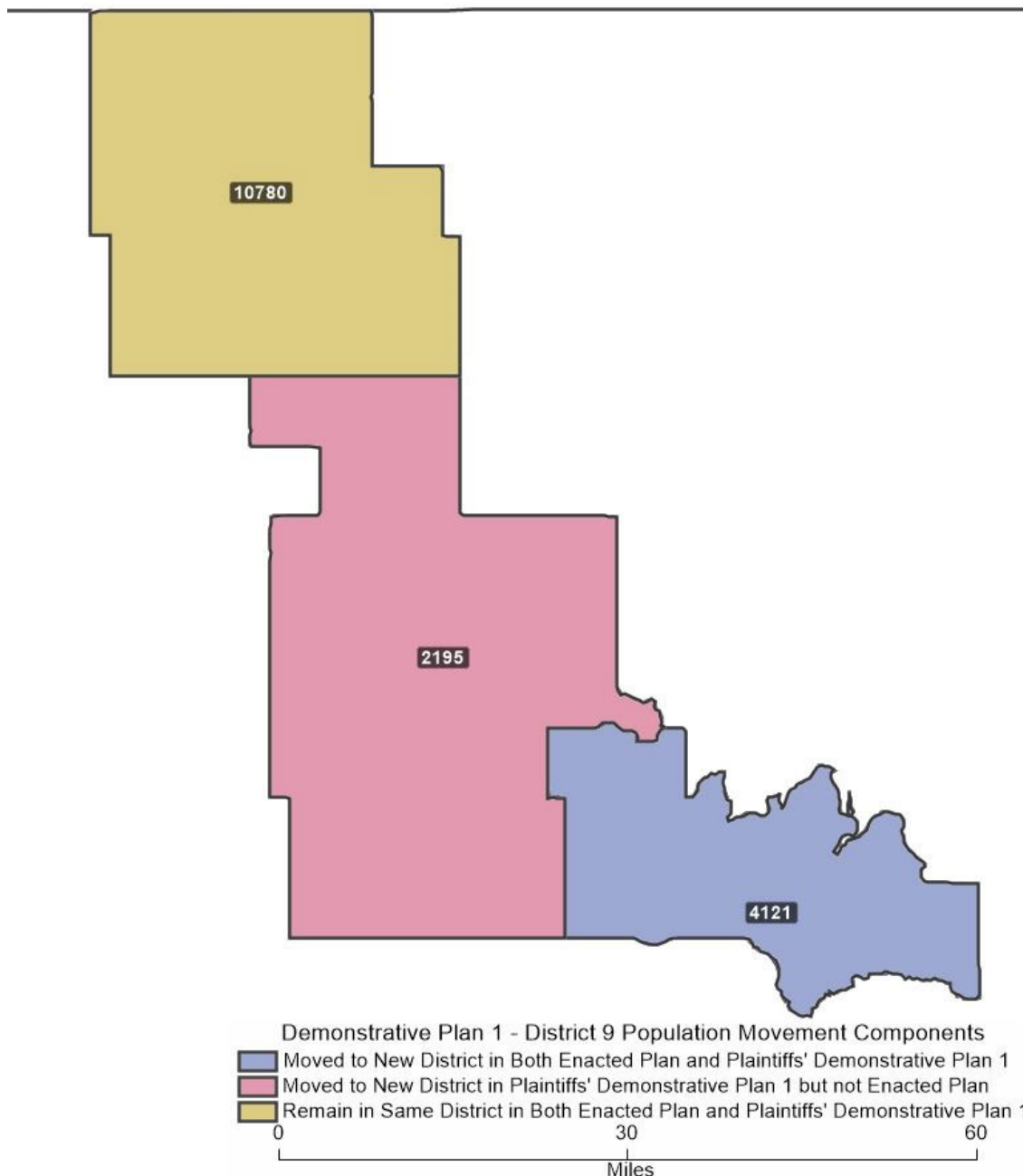


D. Core Retention

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

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

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



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

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

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

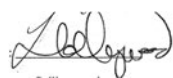
Conclusion

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

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

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

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



Loren Collingwood, 2/16/2023

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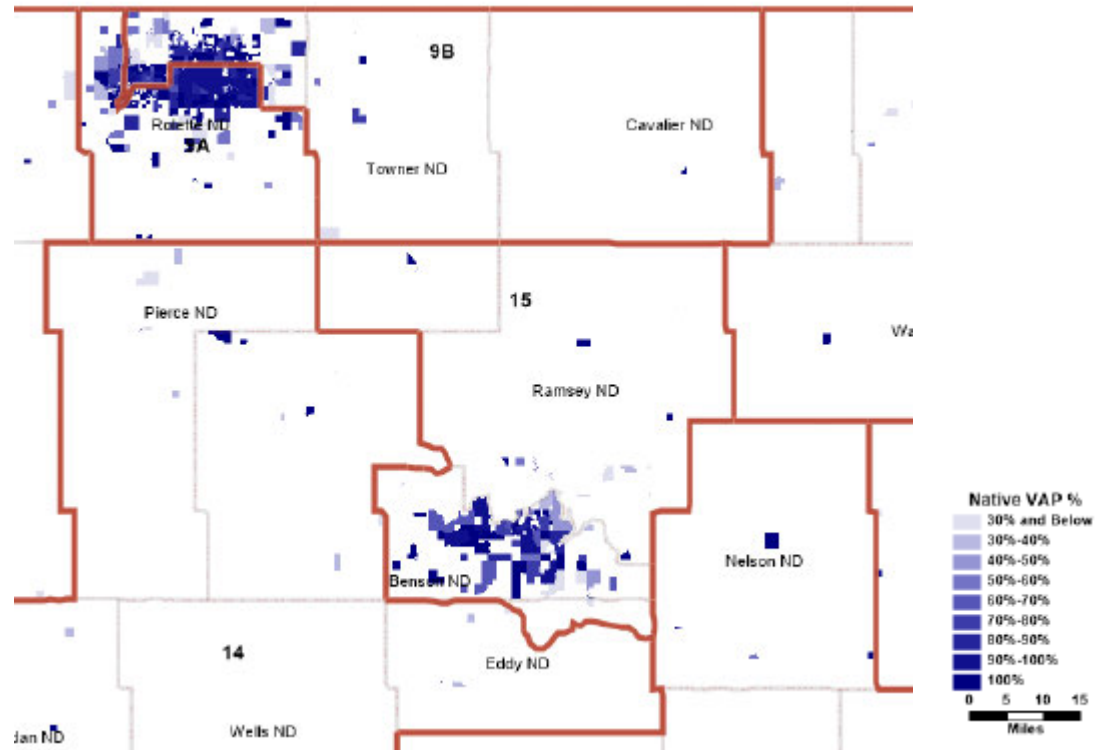
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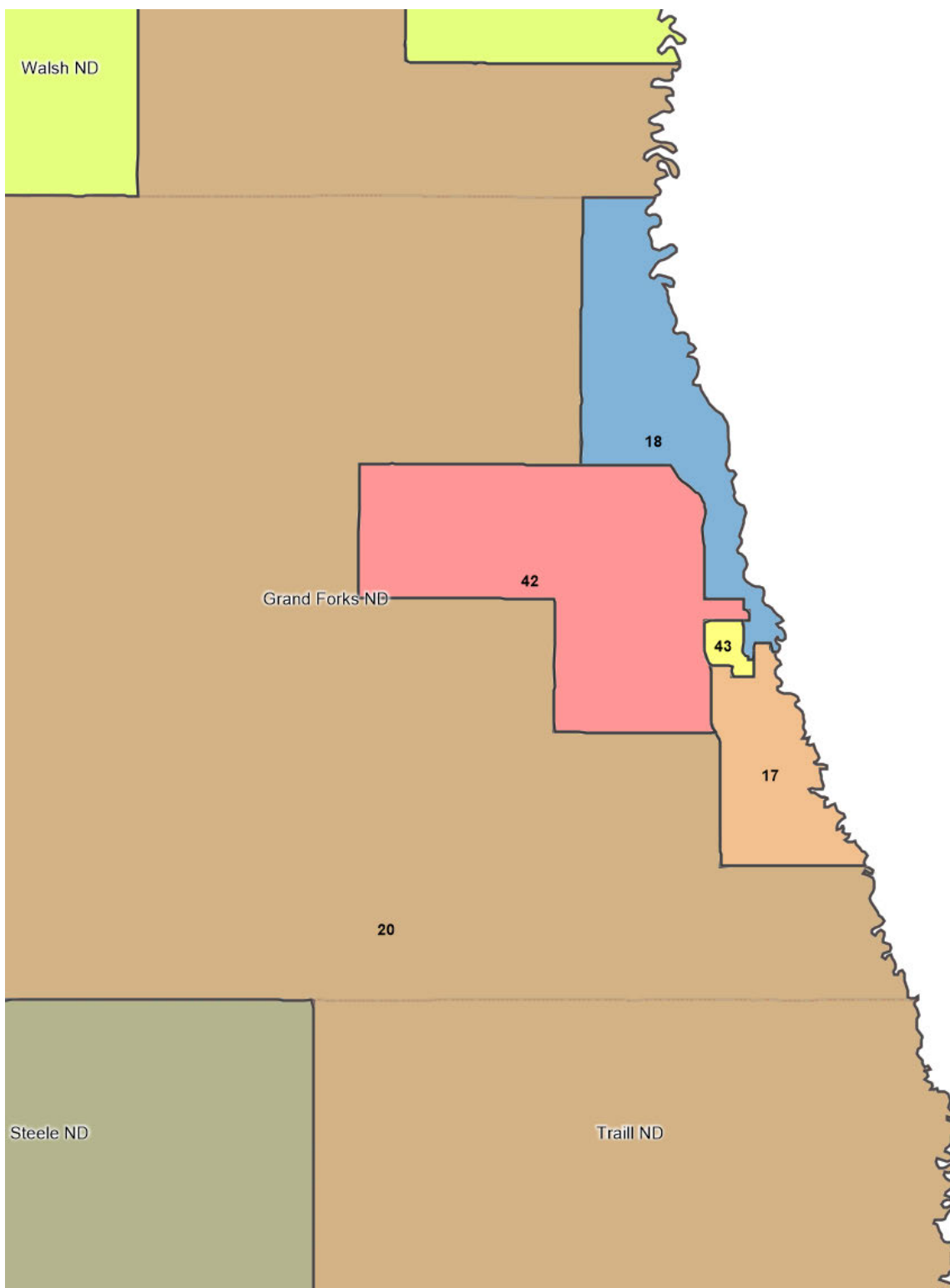
APPENDIX A

2021 Enacted Plan – Northeastern North Dakota Native American VAP Shading



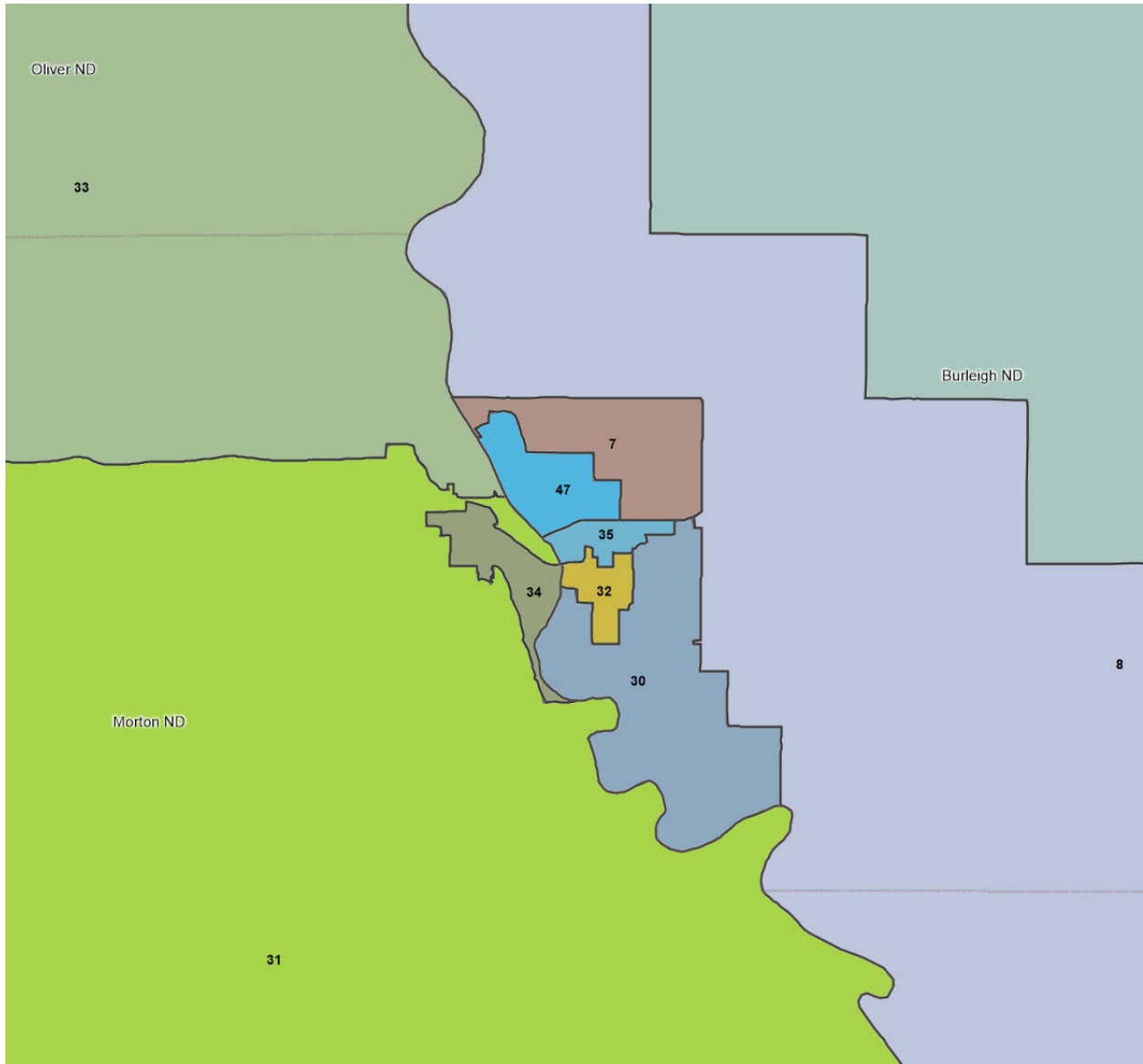
APPENDIX B

**2021 ENACTED ND LEGISLATIVE PLAN
GRAND FORKS CLOSE-UP VIEW**



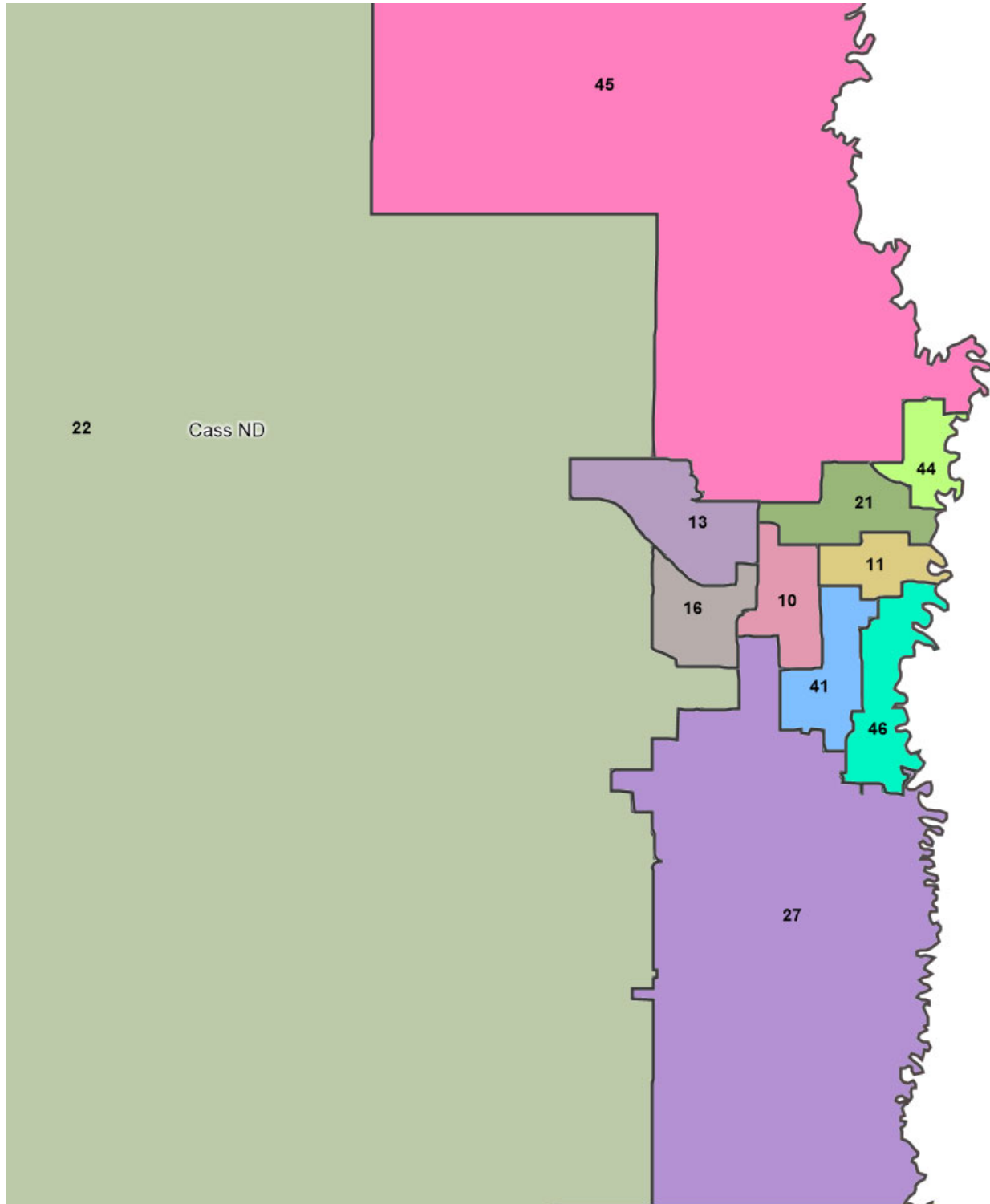
APPENDIX C

2021 ENACTED ND LEGISLATIVE PLAN BISMARCK AREA CLOSE-UP VIEW



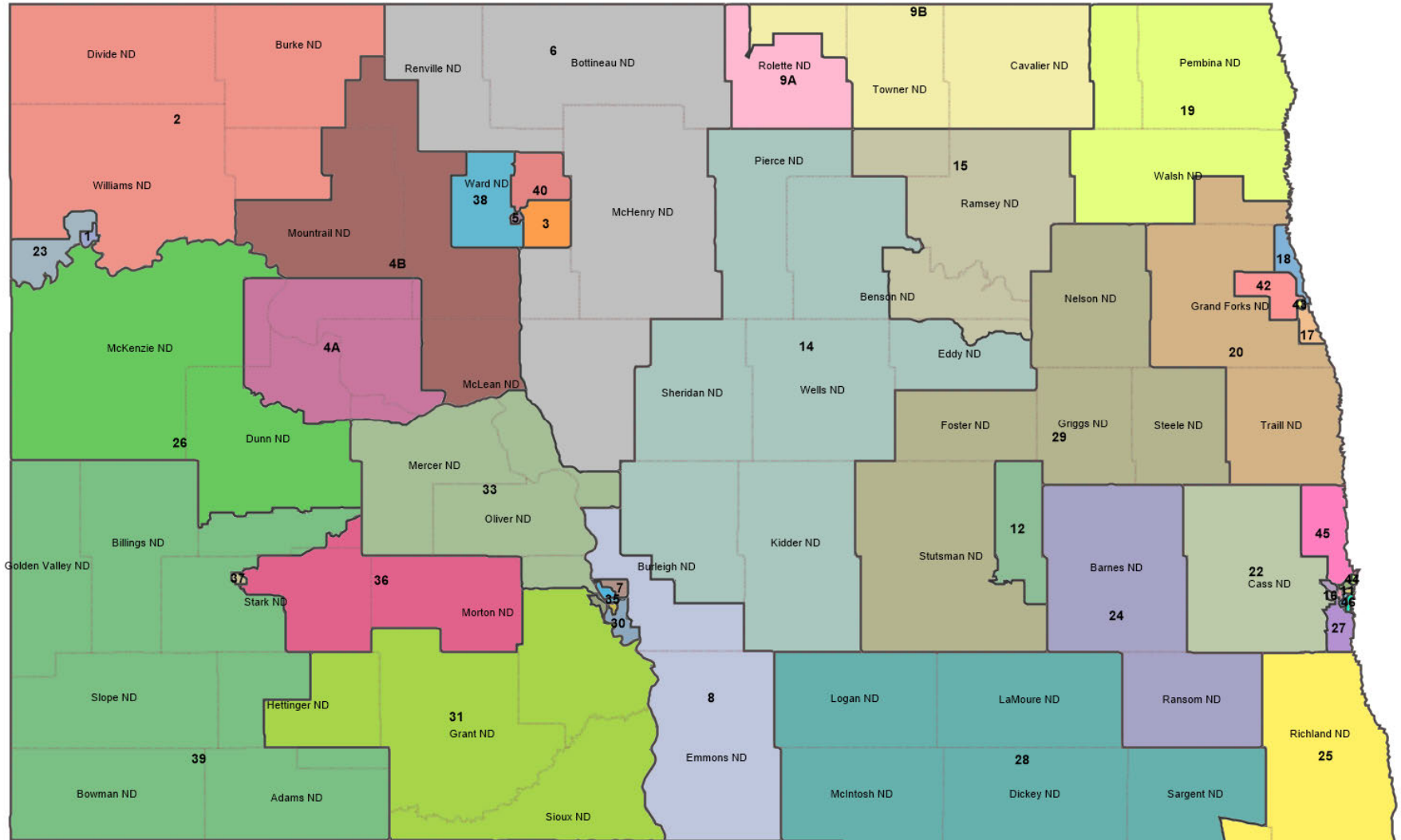
APPENDIX D

**2021 ENACTED ND LEGISLATIVE PLAN
FARGO CLOSE-UP VIEW**



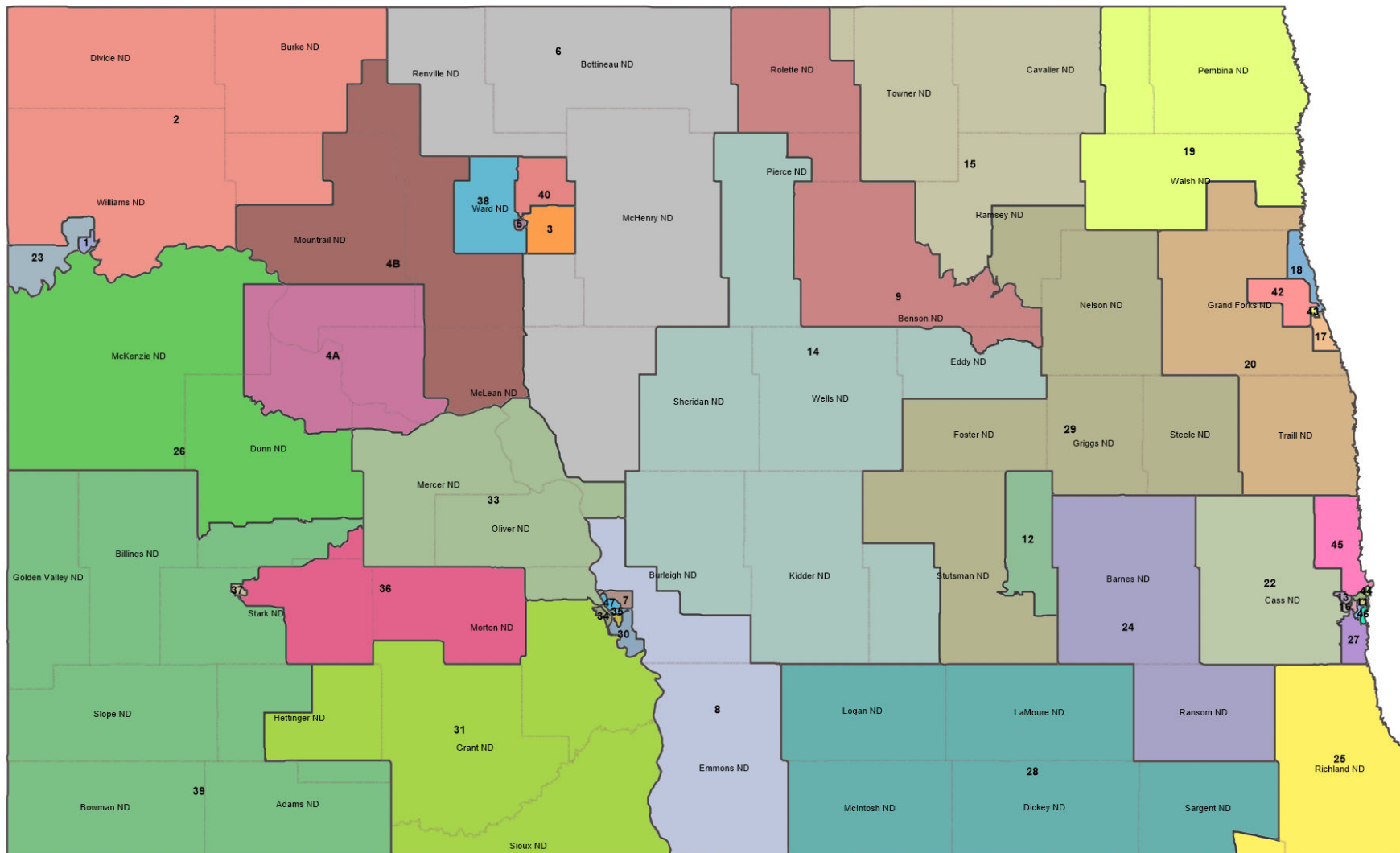
APPENDIX E

2021 ENACTED STATE LEGISLATIVE PLAN



APPENDIX F

PLAINTIFFS' DEMONSTRATIVE PLAN 1



APPENDIX G

2012-2020 LEGISLATIVE PLAN

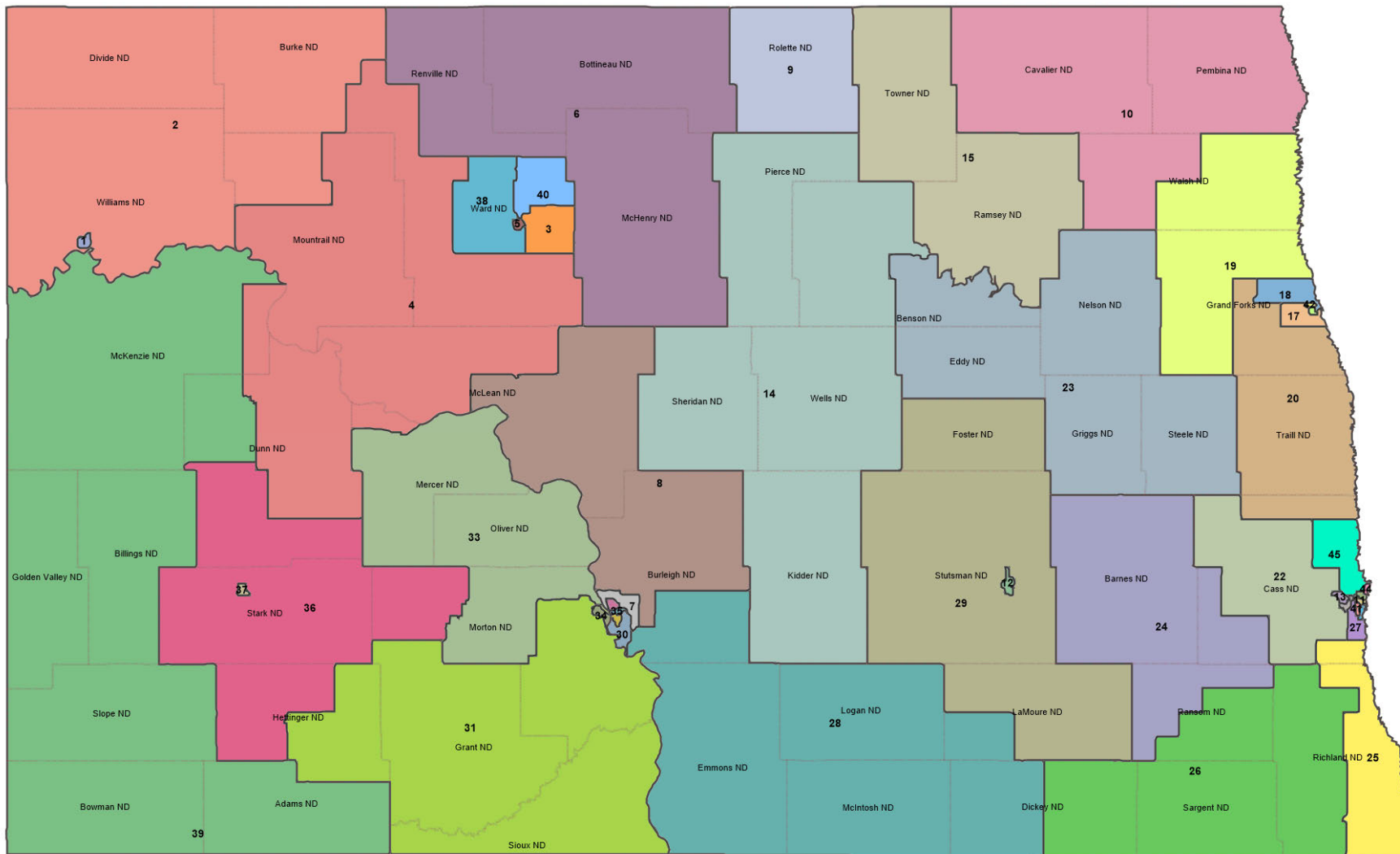


EXHIBIT 3



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Transcript of M.V. Hood, Ph.D.

Date: February 13, 2023

Case: Turtle Mountain Band of Chippewa Indians, et al. -v- Howe, et al.

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February 13, 2023

1	3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NORTH DAKOTA</p> <p>3 ----- x</p> <p>4 TURTLE MOUNTAIN BAND OF : 5 CHIPPEWA INDIANS et al., :</p> <p>6 Plaintiffs : Civil No.</p> <p>7 vs :3:22-cv-00022-PDW-ARS</p> <p>8 MICHAEL HOWE, in his official : 9 capacity as Governor of the : 10 State of North Dakota, et al.,:</p> <p>11 Defendants :</p> <p>12 ----- x</p> <p>13</p> <p>14 Oral deposition of 15 M.V. HOOD, Ph.D.</p> <p>16</p> <p>17 VIA VIDEO/TELECONFERENCE 18 MONDAY, FEBRUARY 13, 2023 19 10:35 a.m. EASTERN TIME</p> <p>20 21 22</p> <p>23 Job No.: 481134 24 Pages: 1 - 205 25 Reported by: Lisa V. Feissner, RDR, CRR, CLR</p>	<p>1 A P P E A R A N C E S:</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 MARK GABER, ESQUIRE 4 MOLLY E. DANAHY, ESQUIRE 5 NICOLE HANSEN, ESQUIRE 6 CAMPAIGN LEGAL CENTER 7 1101 14th Street NW 8 Suite 400 9 Washington, DC 20005 10 202.736.2222 11 mgaber@campaignlegal.org 12 mdanahy@campaignlegal.org 13 nhansen@campaignlegal.org</p> <p>14</p> <p>15 ON BEHALF OF DEFENDANTS:</p> <p>16 DAVID R. PHILLIPS, ESQUIRE 17 BAKKE GRINOLDS WIEDERHOLT 18 300 West Century Avenue 19 Bismarck, ND 58503 20 701.751.8188 21 dphillips@bgwattorneys.com</p> <p>22 23 24 25</p>
2	4
<p>1</p> <p>2</p> <p>3 Oral deposition of M.V. HOOD, Ph.D., 4 held remotely, via Zoom, on Monday, February 13, 5 2023, beginning at 10:35 a.m. Eastern time, 6 pursuant to Notice, before Lisa V. Feissner, RDR, 7 CRR, CLR, Notary Public.</p> <p>8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 A L S O P R E S E N T:</p> <p>2 LaVAR TAYLOR, A/V Technician 3 MICHAEL S. CARTER, ESQ., NARF 4 SAMANTHA BLENCKE KELTY, ESQ., NARF 5 ALLISON NESWOOD, ESQ., NARF 6 BRYAN L. SELLS, ESQ. 7 LAURIE STIRLING, paralegal, NARF</p> <p>8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

February 13, 2023

5	7
<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF M.V. HOOD, Ph.D. PAGE</p> <p>3 By Mr. Gaber 7</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6 (Attached to transcript)</p> <p>7 HOOD DEPOSITION EXHIBIT PAGE</p> <p>8 1 Expert Report of M.V. Hood III 18</p> <p>9 2 Expert Report of M.V. Hood III (Walen) 26</p> <p>10 3 LD9 Hypothetical 2020 President 29</p> <p>11 4 LD9 Hypothetical 2018 US Senate 33</p> <p>12 5 Rebuttal Declaration (Rios-Andino) 39</p> <p>13 6 HOOD-0244 - HOOD-0257 88</p> <p>14 7 Expert Report of M.V. (Trey) Hood III 118</p> <p>15 (Vesilind)</p> <p>16 8 Virginia 2012-2020 plans 127</p> <p>17 9 2021 Enacted ND Legislative Plan 132</p> <p>18 Fargo Close-Up View</p> <p>19 10 2021 Enacted ND Legislative Plan 135</p> <p>20 Grand Forks Close-Up View</p> <p>21 11 2021 Enacted ND Legislative Plan 137</p> <p>22 Bismarck Area Close-Up View</p> <p>23 12 Hood-00001 141</p> <p>24 13 Plaintiffs' Demonstrative Plan 1 154</p> <p>25 14 HOOD-0211 - HOOD-0240 159</p>	<p>1 P R O C E E D I N G S</p> <p>2 M.V. HOOD, Ph.D.,</p> <p>3 having been first duly sworn, was examined and</p> <p>4 testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. GABER:</p> <p>7 Q Good morning, Dr. Hood.</p> <p>8 My name is Mark Gaber. I am an attorney</p> <p>9 with the Campaign Legal Center, and I am counsel</p> <p>10 for the plaintiffs in this case. And I will be</p> <p>11 taking your deposition today.</p> <p>12 I suspect you've done this a number of</p> <p>13 times before, so this might just be more of a</p> <p>14 reminder for me.</p> <p>15 But it's important, obviously, that we</p> <p>16 not talk over each other to allow the court</p> <p>17 reporter to be able to get our answers down. And</p> <p>18 also important that we perhaps talk a little</p> <p>19 slower than we might otherwise, for Lisa's ease.</p> <p>20 If at any point today you need a break,</p> <p>21 please let me know. And again, I may need them</p> <p>22 before you do. I just ask that if there are any</p> <p>23 questions pending, that you provide the answer to</p> <p>24 that question, and then we'll proceed to the</p> <p>25 break.</p>
6	8
<p>1 E X H I B I T S (cont'd)</p> <p>2 (Attached to transcript)</p> <p>3 HOOD DEPOSITION EXHIBIT PAGE</p> <p>4 15 2021 Enacted State Legislative Plan 162</p> <p>5 16 2012-2020 Legislative Plan 178</p> <p>6 17 HOOD-0002 - HOOD-0013 180</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Does that sound good?</p> <p>2 A Yes, sir.</p> <p>3 Q And I know you've been deposed before.</p> <p>4 How many times would you say?</p> <p>5 A Unknown. More than 40, probably.</p> <p>6 Q How are you employed?</p> <p>7 A I'm currently a professor of political</p> <p>8 science at the University of Georgia.</p> <p>9 Q And how long have you held that</p> <p>10 position?</p> <p>11 A Well, not rank, but job here, since</p> <p>12 1999.</p> <p>13 Q And how long in that rank?</p> <p>14 A I think 2013. It's on my vita.</p> <p>15 Q Now, you're here today pursuant to a</p> <p>16 deposition -- a subpoena for a deposition and for</p> <p>17 documents.</p> <p>18 Is there anything from your file that</p> <p>19 you relied upon in your expert opinions that you</p> <p>20 have not produced?</p> <p>21 A No.</p> <p>22 Q Now, you're also a retained expert for</p> <p>23 the state in the parallel Walen versus Burgum</p> <p>24 proceeding.</p> <p>25 Is that right?</p>

February 13, 2023

<p>9</p> <p>1 A Correct.</p> <p>2 Q Now, aside from your expert retention in</p> <p>3 these two cases, have you ever been retained by</p> <p>4 any North Dakota entity before?</p> <p>5 A No.</p> <p>6 Q And in addition to these two cases, are</p> <p>7 you currently a retained expert in any other</p> <p>8 litigation?</p> <p>9 A Yes.</p> <p>10 Q And what cases is that?</p> <p>11 A Well, I don't know that there's a case.</p> <p>12 Q Okay. What matters?</p> <p>13 A It's a matter in New York state.</p> <p>14 Q And what is the topic of that matter?</p> <p>15 A Noncitizen -- actually -- well,</p> <p>16 noncitizen voting, or the ability of noncitizens</p> <p>17 to vote.</p> <p>18 Q And is that a case that's in litigation</p> <p>19 right now, or is it sort of a pre-litigation</p> <p>20 matter?</p> <p>21 A No, I don't believe it's in litigation.</p> <p>22 Q And who have you been retained by?</p> <p>23 A I'd have to look. This is very recent.</p> <p>24 Q Is it by folks who intend to file a</p> <p>25 lawsuit or by a governmental entity?</p>	<p>11</p> <p>1 In both those cases, though, you're</p> <p>2 defending the existing map against the challenges</p> <p>3 under Section 2 of the Voting Rights Act.</p> <p>4 Is that right?</p> <p>5 A Correct.</p> <p>6 Q When were you first retained by the</p> <p>7 State of North Dakota in this matter?</p> <p>8 A I would say last spring.</p> <p>9 Q And was that in relation to the</p> <p>10 preliminary injunction motion that was filed by</p> <p>11 the plaintiffs in the Walen case?</p> <p>12 A I believe so.</p> <p>13 Q And just to clarify, I'll use the terms</p> <p>14 Walen and Turtle Mountain, and we can use</p> <p>15 something else if that is easier for you. But</p> <p>16 when I refer to the Walen case, I'm referring to</p> <p>17 the challenge to subdistrict 4A in the MHA Nation</p> <p>18 and 9A in Turtle Mountain that was brought by</p> <p>19 plaintiffs alleging a racial gerrymander.</p> <p>20 Does that sound right to you?</p> <p>21 A Yes. Please just use the Walen matter.</p> <p>22 (Reporter interruption.)</p> <p>23 Q And then I'll refer to this matter</p> <p>24 challenging district 9 under Section 2 of the</p> <p>25 Voting Rights Act as either this matter or the</p>
<p>10</p> <p>1 A It's a plaintiff group.</p> <p>2 Q And what jurisdiction in New York?</p> <p>3 A I think the city.</p> <p>4 Q New York City?</p> <p>5 A New York City, yes.</p> <p>6 Q In addition to that matter, are there</p> <p>7 any other matters in which you're currently</p> <p>8 retained for existing or potential litigation?</p> <p>9 A Yes.</p> <p>10 Q And which ones is that?</p> <p>11 A Well, there are a number of cases that</p> <p>12 are just on hold currently. So the Alabama</p> <p>13 redistricting matter that's ongoing, which is a --</p> <p>14 before the U.S. Supreme Court currently. And a</p> <p>15 similar case in Louisiana involving redistricting.</p> <p>16 Q Any others?</p> <p>17 A No.</p> <p>18 Q And the Alabama and the Louisiana case,</p> <p>19 you're an expert for the state.</p> <p>20 Is that correct.</p> <p>21 A Some state entity, yes. Sometimes it's</p> <p>22 the secretary of state. Sometimes it's the</p> <p>23 legislature. It's difficult for me to keep it</p> <p>24 straight.</p> <p>25 Q It does change from state to state.</p>	<p>12</p> <p>1 Turtle Mountain matter, if that works for you.</p> <p>2 A Okay. "This matter" is fine.</p> <p>3 Q So you were retained around the time of</p> <p>4 the preliminary injunction proceeding in the Walen</p> <p>5 matter.</p> <p>6 Was that also at that time to be an</p> <p>7 expert in this matter?</p> <p>8 A I believe so, you know, if necessary.</p> <p>9 Q And who reached out to you to retain</p> <p>10 you?</p> <p>11 A Mr. Phillips.</p> <p>12 Q And had you previously corresponded with</p> <p>13 or known Mr. Phillips?</p> <p>14 A No.</p> <p>15 Q What was the scope of work that you were</p> <p>16 asked to perform?</p> <p>17 A Well, in this particular matter, the</p> <p>18 main scope was to respond to Prof. Collingwood's</p> <p>19 report.</p> <p>20 Q And prior to receiving</p> <p>21 Prof. Collingwood's report, had you done any work</p> <p>22 in this matter?</p> <p>23 A Well, I had done some consulting work,</p> <p>24 which I guess touched upon this matter.</p> <p>25 Q And for whom were you doing consulting</p>

February 13, 2023

13

1 work?
2 **A The state.**
3 Q And that was after your retention --
4 **A Yes.**
5 Q -- last spring?
6 **A Yes.**
7 Q Were you involved at all in advising the
8 North Dakota legislature about redistricting?
9 **A No.**
10 Q And how many times have you testified,
11 would you say, in redistricting cases?
12 **A I really don't know. Maybe half the**
13 **times I've testified in court involved**
14 **redistricting, which would include Section 2**
15 **cases, or I would include Section 2 cases. So...**
16 Q And as your expert testimony work
17 generally been on behalf of governmental entities
18 or defendants defending maps?
19 **A Typically, although I have testified for**
20 **plaintiffs. And I've testified for both**
21 **Democratic and Republican administrations. So...**
22 Q And in terms of your plaintiff work,
23 what were some examples of that?
24 **A There was a case in Dallas, a Section 2**
25 **case, involving the county court, which are like**

14

1 **county commissioners other places. So Dallas**
2 **County. I remember that case.**
3 **I worked for the Democratic**
4 **administration in the state of Virginia on a**
5 **redistricting matter.**
6 Q Any others that come to mind?
7 **A Not that are jumping out at me right**
8 **now.**
9 Q The Dallas case, that was the Harding
10 versus Dallas County case?
11 **A Correct, that sounds familiar.**
12 Q And the claim in that case was on behalf
13 of white voters who were alleging a Section 2
14 violation, that the minority voters were diluting
15 the white voters' vote.
16 Is that correct?
17 **A Yeah. In a nutshell, yes.**
18 Q And in Virginia, is that the Vesilind
19 case?
20 **A Yes.**
21 Q And one of the main topics of that case
22 was whether or not the Virginia 2011 state senate
23 districts complied with the compactness
24 requirement of the state constitution.
25 Is that right?

15

1 **A Yes. It was a very, very specific kind**
2 **of case.**
3 Q Have you testified in any case in which
4 the plaintiff was a minority group alleging a
5 violation of Section 2?
6 **A Yes. I mean, not -- again, if you**
7 **include a larger set of cases, yes.**
8 Q And what do you mean by that?
9 **A Well, outside of redistricting.**
10 Q Okay. In the context of redistricting,
11 when the claim has been on behalf of racial
12 minority groups, you've always been on the side of
13 the defendants in your expert work.
14 Is that right?
15 **A From what I recall, yes.**
16 Q Now, I gather from your CV that the bulk
17 of your scholarship has been about -- or the
18 specialty has been about politics in the south and
19 vote dilution in the context of southern states.
20 Is that a fair assessment?
21 **A Well, I would say big picture, I do**
22 **southern politics and election administration are**
23 **two of the sort of topical areas under American**
24 **politics that I study.**
25 Q And to the extent you focus in, it's

16

1 mostly in the south.
2 Is that correct?
3 **A Well, sometimes -- election**
4 **administration is not necessarily in the south.**
5 **But, you know, I mean, obviously southern politics**
6 **is in the south. So...**
7 Q It doesn't appear to me, and correct me
8 if I'm wrong, that you've written any articles,
9 books, or other scholarly works about Native
10 American voting patterns.
11 **A That would be fair, yes.**
12 Q And is the same true with respect to
13 tribal and state relations?
14 **A Yes.**
15 Q And Native American voting rights?
16 **A Correct.**
17 Q And I don't think I saw anything in
18 particular about North Dakota or the Great Plains
19 states in terms of their voting patterns or
20 political behavior.
21 Is that right?
22 **A Correct.**
23 Q So I gather you don't consider yourself
24 an expert in Native American politics?
25 **A No. I've never claimed that.**

February 13, 2023

<p>17</p> <p>1 Q And topics such as anthropology or 2 sociology or history related to Native Americans? 3 A No. No. I'm a political scientist. 4 Q Do you have any expertise related to the 5 Turtle Mountain band of Chippewa Indians? 6 A Not specifically. 7 Q And the same is true with respect to 8 Spirit Lake Nation? 9 A Correct. 10 Q Have you ever been to North Dakota? 11 A No. 12 Q Have you ever spoken to a member of the 13 Turtle Mountain or Spirit Lake tribes? 14 A No. 15 Q And so you're not opining on anything 16 related to those two tribes with respect to their 17 shared interests or common interests or 18 socioeconomic status or anything of the like. 19 Is that right? 20 A Correct. 21 Q And you wouldn't have any knowledge or 22 basis to do that, right? 23 A Correct. 24 Q You're also not providing any opinion 25 with respect to the totality of the circumstances</p>	<p>19</p> <p>1 A Yes. 2 Q You don't anticipate giving any opinions 3 that are not set forth in the report? 4 A I don't anticipate, you know, unless I'm 5 asked to perform some additional work, perhaps. 6 Q At this time, you haven't done. 7 Is that right? 8 A That's correct. 9 Q And you didn't do any additional 10 analysis in this case after submitting your 11 report? 12 A Correct. 13 Q I might, during today's deposition, ask 14 you to do a little math, too. 15 Do you have a calculator in your office? 16 A I do. 17 Q Okay. Good. Keep that nearby. I 18 promise it won't be too taxing. Nothing more than 19 I can do. So it's not going to be too hard. 20 A Okay. 21 Q So let's start, and I'm going to kind of 22 walk through -- we're going to bounce back and 23 forth between your report and some other exhibits, 24 but let's start on page 2 of your report, if you 25 don't mind. And I want to ask you about section 3</p>
<p>18</p> <p>1 factors for this case. 2 Is that right? 3 A That's correct. 4 Q And you have no opinion on that? 5 A I didn't offer an opinion in my report, 6 so no. 7 MR. GABER: I am going to mark as 8 Exhibit 1 the document Hood TM Expert Report. 9 (Exhibit Hood-1 marked for 10 identification and attached to the transcript.) 11 BY MR. GABER: 12 Q Do you have a copy? 13 A I do want to disclose I do have an 14 unwritten-on copy of my expert report so I can 15 look at that. 16 Q That's good. I'm happy about that. 17 We'll pull it up as well on the screen, but it 18 will be easier for you if you have it with you. 19 So we've pulled up on the screen your 20 expert report. 21 Do you recognize this as your expert 22 report in this case? 23 A Yes. 24 Q Now, are all of your opinions in this 25 matter contained in your expert report?</p>	<p>20</p> <p>1 at the top. 2 You set forth the Gingles factors there. 3 Is that right? 4 A Correct. 5 Q And I have it, so I don't need to see 6 it. But I think, LaVar, it's page 2, the numbered 7 page 2, which is probably the third page of the 8 PDF. In case anyone in the audience here wants to 9 follow along. 10 So in this section, you just set forth 11 the test under Thornburg versus Gingles for a 12 Section 2 claim. 13 Is that right? 14 A Yes. 15 Q And with respect to the first 16 precondition, the requirement is that the minority 17 group be sufficiently large and geographically 18 compact to form a majority in a new single-member 19 district. 20 Is that fair? 21 A Yes, yes. 22 Q Now, with respect to the first prong of 23 Gingles, the focus of the analysis is on a 24 potential alternative district. 25 Is that correct?</p>

February 13, 2023

<p>21</p> <p>1 A Well, yes, although it can be used to 2 analyze an existing district as well, I would say. 3 Q But to the extent someone is -- a 4 plaintiff is challenging an existing district as 5 being dilutive, the Court would look to see 6 whether there was an alternative district that met 7 the Gingles 1 threshold, right? 8 A An illustrative district, yes. 9 Q Now, the second factor is whether the 10 minority group is politically cohesive. I think 11 that, to my understanding, your -- you aren't 12 disputing Gingles prong 2 in this case. 13 Is that right? 14 A I am not. 15 Q And the third Gingles prong is about 16 whether or not the minority group's candidates of 17 choice are usually or typically defeated by the 18 candidate of choice of the majority bloc. 19 Is that right? 20 A Yes. 21 Q And in this case, the majority bloc is 22 white voters; the minority group is Native 23 American voters. 24 Right? 25 A Yes.</p>	<p>23</p> <p>1 Native American voting age population. 2 That figure -- the source for that is 3 the state legislature's website. 4 Is that right? 5 A Yes. 6 Q And your understanding is that the state 7 reported the demographic data based upon 8 single-member minority groups. So it's someone 9 who identified on the census as being exclusively 10 Native American? 11 A Single-race Native American. 12 Q And so that doesn't include -- 13 A I would say, just to be transparent, 14 that it's more than my belief; that I checked into 15 this, and that is how Native American is being 16 measured in this context. 17 Q And when you say that, you mean how the 18 State of North Dakota, the legislature, how they 19 measured it? 20 A Correct, yes. 21 Q Now, in the second sentence you say, As 22 such, under Section 2 of the Voting Rights Act, it 23 would be described as a minority, 24 opportunity-to-elect district. 25 Do you see that?</p>
<p>22</p> <p>1 Q So with respect to the third Gingles 2 prong, the focus of the analysis there is on the 3 districts that are alleged to be diluting Native 4 American votes, correct? 5 A Yes, that's correct. 6 Q And so to the extent there are claims 7 that districts are packed with too many Native 8 Americans, Gingles prong 3 is not focused on those 9 districts. 10 Is that your understanding of the law? 11 A Well, my understanding would not that 12 that would not be an effect that you would see 13 necessarily in a district that you describe like 14 that. 15 Q In a packed district, you would expect 16 the minority candidate of choice to almost always 17 win and probably by a large margin, right? 18 A Well, just in a generic sense, yes. 19 Q Now I want to move down into part 4 of 20 your -- on page 2, and focusing, to begin with, on 21 the first two sentences of that section. And this 22 is, I think, still on the same page, page 3 of the 23 PDF. Analysis of LD 9. 24 Now, you say that, LD 9 in the enacted 25 legislative plan is comprised of 51.7 percent</p>	<p>24</p> <p>1 A Yes. 2 Q What is the basis for your conclusion in 3 that regard? 4 A Just simply the fact that it's a 5 majority Native American district and is defined 6 by the Supreme Court under Bartlett v. Strickland. 7 That would be a minority opportunity-to-elect 8 district. 9 Q Now, with respect to the citation to 10 Bartlett, Bartlett is a case that required 11 plaintiffs raising Section 2 challenges to show 12 that they could draw an alternative district that 13 was 50 percent plus 1 of a minority group. 14 Is that right? 15 A It's been a while. I mean, from what I 16 remember, yes. But I do remember that the Court 17 set out, and there were definitions within that 18 case. And that's what I'm really referring to 19 there. 20 Q And those definitions were about 21 distinguishing between claims for crossover 22 districts or claims for influenced districts and 23 claims for coalition districts. 24 Is that your recollection? 25 A Yes.</p>

February 13, 2023

25

1 Q Now, whether or not a district actually
 2 functions to provide minority voters an
 3 opportunity to elect their candidate of choice is
 4 based upon more than just the demographics of the
 5 district.
 6 Do you agree with that?
 7 **A Yes.**
 8 Q And so a district that has a slight
 9 majority may not, in fact, function as an
 10 opportunity district based on factors such as
 11 turnout or other factors.
 12 Is that fair?
 13 **A Hypothetically, yeah, I think that's**
 14 **fair.**
 15 Q And the Supreme Court has addressed that
 16 issue in cases before, like the LULAC versus Perry
 17 case.
 18 Are you familiar with that?
 19 **A Yes.**
 20 Q And so to the extent you're calling it a
 21 minority opportunity-to-elect district, that's
 22 based just upon the 51.7 percent and nothing more.
 23 Is that correct?
 24 **A Well, that sentence is based on that**
 25 **fact, yes. Now, later, I do look at what**

26

1 **Prof. Collingwood analyzed for that district as a**
 2 **whole. So there's some evidence one way or the**
 3 **other there as well, I would say.**
 4 Q Okay. And we'll get into that there.
 5 But I just wanted to understand the -- sort of the
 6 nomenclature.
 7 **A That would be correct, yes.**
 8 Q The key, then, is combining the
 9 demographic data with election data to determine
 10 whether or not there's an actual opportunity to
 11 elect in the district.
 12 Is that correct?
 13 **A Well, yes, at some point, you have to**
 14 **look at some type of election data or -- you know,**
 15 **whether it's vote tallies or results or something**
 16 **related to an election, yes.**
 17 MR. GABER: I'm going to mark as
 18 Exhibit 2 the file Hood Walen versus Burgum expert
 19 report.
 20 (Exhibit Hood-2 marked for
 21 identification and attached to the transcript.)
 22 BY MR. GABER:
 23 Q Dr. Hood, do you recognize this -- and
 24 maybe we can scroll down a little bit to where it
 25 has the title.

27

1 Do you recognize this as your expert
 2 report in the Walen matter?
 3 **A Yes.**
 4 Q Do you have a copy of that one with you?
 5 **A No, I do not.**
 6 Q If I need to direct you somewhere, I'll
 7 do that. But we're probably going to set this one
 8 aside for a moment.
 9 But in the Walen case, it's my
 10 understanding that you did conduct a bit of an
 11 analysis about District 9 in terms of the Gingles
 12 preconditions.
 13 Is that right?
 14 MR. PHILLIPS: I'll just object to this
 15 question and probably line of questions to the
 16 extent it's outside the scope of Dr. Hood's
 17 opinion in this case.
 18 **A Well, I performed a functional analysis,**
 19 **what I called a functional analysis. I didn't**
 20 **coin that. I'm not arguing I coined that term.**
 21 **I'm just saying that's what I would call it.**
 22 Q Yeah. And that works. And I may
 23 have -- my question might have been a little off
 24 there.
 25 What you were doing was, you looked at

28

1 voter turnout; you analyzed that.
 2 Is that right?
 3 **A As part of this, yes.**
 4 MR. PHILLIPS: I'll object again.
 5 Mr. Gaber, can we agree to have a
 6 standing objection to this line of questioning --
 7 MR. GABER: Sure.
 8 MR. PHILLIPS: -- on the same basis as I
 9 stated before?
 10 MR. GABER: Yep.
 11 Q And you looked in particular at three
 12 elections from 2018, three state-wide elections,
 13 and three state-wide elections from 2020 to
 14 determine whether or not the Native American
 15 preferred candidates would have prevailed in the
 16 newly enacted District 9 in those elections.
 17 Is that right?
 18 **A That was part of it, yes. I also looked**
 19 **to see if there was racially polarized voting, for**
 20 **one thing, before that, before that step.**
 21 Q And you found that there was racially
 22 polarized voting in the district.
 23 Is that right?
 24 **A More often than not, yes. Can't**
 25 **remember without looking if it was a hundred**

February 13, 2023

29

1 percent, but...
 2 (Cross-talk.)
 3 A **Certainly more often than not. So...**
 4 Q I'll just represent, in the six
 5 elections you looked at, the Gingles prong 2, it
 6 appears, at least to me, was your opinion that it
 7 was established.
 8 Does that sound right?
 9 A **Yes. I mean, yeah, that's fair.**
 10 MR. GABER: I'm going to mark two more
 11 exhibits that relate to this. I'll mark as
 12 Exhibit 3 the file LD 9 Hypothetical 2020
 13 President.
 14 (Exhibit Hood-3 marked for
 15 identification and attached to the transcript.)
 16 BY MR. GABER:
 17 Q And I'll represent to you, Dr. Hood,
 18 this is one of the Excel spreadsheets for
 19 District 9 for the 2020 presidential race.
 20 I did -- because the spreadsheet didn't
 21 have any title within it, it was just a file name
 22 and, like, the folder it was saved in that was
 23 titled, I did add that title you see at the top of
 24 the page and then converted this to a PDF.
 25 But otherwise, does this look like the

30

1 spreadsheet you produced with data related to the
 2 2020 presidential election for District 9?
 3 A **Yes.**
 4 Q And in the first column -- the first
 5 column is about District 9; the second column is
 6 Subdistrict 9A; and the third column is
 7 Subdistrict 9B, correct?
 8 A **Correct.**
 9 Q And in column 1 for the full district, I
 10 guess two sort of sections down, you report the
 11 turnout percentage and then the number of voters
 12 by Native American, white, and other.
 13 Is that right?
 14 A **Yes, correct.**
 15 Q And so your analysis showed that in the
 16 2020 presidential election, within the boundaries
 17 of the new District 9, 38.8 or 38.9 percent of the
 18 electorate was Native American.
 19 Is that right?
 20 A **Yes, correct.**
 21 Q And -- I'm sorry.
 22 (Cross-talk.)
 23 Q That's wrong. The turnout among Native
 24 Americans was 38.9 percent.
 25 Is that right?

31

1 A **Yes, that's correct.**
 2 Q And then the turnout rate among white
 3 voters was 69.7 percent.
 4 Is that right?
 5 A **Correct, correct.**
 6 Q And among other voters, it was 50.0
 7 percent?
 8 A **Yes, correct.**
 9 Q And so this is where I'm going to ask
 10 you to do a little math. I have already done it,
 11 but if you want to check my work, I would
 12 encourage that.
 13 So you show the number of voters, and so
 14 then we can calculate by dividing by the total the
 15 percentage of the electorate that was of each
 16 racial group.
 17 Is that fair enough?
 18 A **That's fair, yes.**
 19 Q And so I have calculated that if we take
 20 the 2250 for Native American voters and divide it
 21 by the total of 5955, that yields 37.8 percent of
 22 the electorate in enacted District 9 for the 2020
 23 presidential race as being Native American.
 24 Does that sound right?
 25 A **Correct. That's what I'm getting, yes.**

32

1 Q And then if we do the same for white
 2 voters, that yields 57.7 percent of the electorate
 3 in the district being white voters.
 4 Is that correct?
 5 A **Correct.**
 6 Q And so in the presidential election,
 7 despite the fact that the district has 51.7
 8 percent Native VAP, voting age population, a
 9 substantial majority of the electorate was
 10 actually white voters, right?
 11 A **In this scenario, yes.**
 12 Q And this is the type of information that
 13 is important to consider in whether or not a
 14 district actually performs to elect -- or to
 15 provide an opportunity for Native American, or
 16 whatever the minority group is, to elect their
 17 candidate of choice, right?
 18 A **Well, there has to be some information**
 19 **like this. I mean, I guess different people may**
 20 **measure this factor in different ways. I mean,**
 21 **Prof. Collingwood doesn't do this.**
 22 **But yes, there has to be some**
 23 **information related to this.**
 24 MR. GABER: And I'm going to mark as
 25 well, as Exhibit 4, LD 9 Hypothetical 2018 U.S.

February 13, 2023

33

1 Senate.
 2 (Exhibit Hood-4 marked for
 3 identification and attached to the transcript.)
 4 BY MR. GABER:
 5 Q And so again, because there were --
 6 there wasn't a title within the Excel spreadsheet,
 7 and rather the folder had the title, I have added
 8 that to this PDF at the top and converted it to a
 9 PDF.
 10 Otherwise, do you recognize this as the
 11 backup files for your turnout analysis for the
 12 2018 U.S. Senate race in District 9?
 13 A Yes.
 14 Q And then just so the record is clear,
 15 this is District 9 as it was redrawn in the last
 16 redistricting cycle with the election results sort
 17 of reconstituted in the new lines.
 18 Is that fair?
 19 A Yes. **And same thing for the 2020 race**
 20 **we just talked about as well.**
 21 Q And so in the 2018 U.S. Senate race, if
 22 we look in column 1 at the turnout figures, we see
 23 that 60.4 percent of Native Americans eligible
 24 voters turned out in your analysis.
 25 Is that right?

34

1 A Correct.
 2 Q And 68.3 percent of white voters?
 3 A Correct.
 4 Q And 49.8 percent of other race voters?
 5 A Correct.
 6 Q And then -- so if we do the same
 7 calculations here, I show that Native American
 8 voters in the 2018 U.S. Senate election
 9 constituted 49 percent of the electorate.
 10 Does that look right to you?
 11 A Yes.
 12 Q And --
 13 A **49.0, I guess, if you round it off, yes.**
 14 Q And white voters, I show as 47.3 percent
 15 of the electorate.
 16 A Yes.
 17 Q So in neither the 2018 U.S. Senate race
 18 or the 2020 presidential race were Native American
 19 voters an actual majority of the electorate.
 20 Is that right?
 21 A Correct.
 22 Q Okay. I'm going to set these two
 23 exhibits aside virtually for the moment. But we
 24 will probably come back to that a little bit
 25 later.

35

1 I think I already asked you this, but I
 2 just want to confirm.
 3 You don't disagree with
 4 Prof. Collingwood that in Northeastern
 5 North Dakota and specifically in districts 9 and
 6 15, Gingles prong 2 is satisfied.
 7 Is that right?
 8 A **I don't disagree that racially polarized**
 9 **voting exists more often than not in that part of**
 10 **North Dakota.**
 11 Q Now, for your expert report in this
 12 matter, you did not conduct your own racially
 13 polarized voting analysis, right?
 14 A **Correct. I was just responding to what**
 15 **Prof. Collingwood had done.**
 16 Q Now, I know that you disagree with some
 17 of Prof. Collingwood's conclusions. But you don't
 18 have any criticism of the methodology or the way
 19 that he conducted his racially polarized voting
 20 analysis, right?
 21 A **No. That's correct. I mean, you know,**
 22 **again, at step 3 perhaps, or prong 3, as we just**
 23 **saw, you know, I don't do exactly what he did.**
 24 **But I recognize there are different ways to do the**
 25 **same thing, I guess is what I'm saying. So...**

36

1 Q So you don't -- it's not your opinion
 2 that his methodology for conducting ecological
 3 inference, for example, was flawed?
 4 A **No, no. I didn't say that.**
 5 Q And you don't have any issues with his
 6 data collection or the way that he inputted the
 7 data into his analysis?
 8 A **No, not that I saw.**
 9 Q Did you seek to replicate
 10 Dr. Collingwood's analysis using the data he
 11 produced?
 12 A **No, I did not, for a number of reasons.**
 13 **One, I was using election data from the state. He**
 14 **was apparently using election data from a slightly**
 15 **different source, Election Data Hub, I think. And**
 16 **so, I mean, it's not easy to exactly replicate**
 17 **things sometimes.**
 18 **And so, I mean, right off the bat there,**
 19 **we're using different election data.**
 20 **And again, at step 3, I would diverge a**
 21 **little bit anyway, and I'm estimating what turnout**
 22 **is and decomposing the electorate by racial group**
 23 **and then by vote and then recomposing it into**
 24 **that which partisan candidate would have won or not.**
 25 **So long answer to your question, no, I**

February 13, 2023

37

1 did not try to replicate what he did.
2 Q But you didn't see any -- basically,
3 you're not challenging the methodology or the
4 quality of his work as a matter of an expert
5 opinion?
6 A No. I mean, I use ecological inference
7 as well. So...
8 Q Now, the next part of your report on
9 pages 2 to 3 -- 2 to 4, actually, and that would
10 be PDF pages 3 to 5, I think, is your review of
11 Dr. Collingwood's Gingles prong 3 analysis for
12 District 9.
13 Is that right?
14 A Yes, that's fair.
15 Q And so my understanding of your analysis
16 here is essentially that you took the
17 reconstituted election results that
18 Dr. Collingwood showed for every election from
19 2014 through 2022, and then summed them up to see
20 whether the Native American candidate of choice
21 was -- or the percentage of elections in which the
22 Native American candidate of choice was defeated.
23 Is that fair?
24 A Yeah, that's through the end point.
25 So...

38

1 Q And the Table 1 -- you have two tables
2 in this section, right? Table 1, you combine the
3 races -- or the elections in District 9, 9A, and
4 9B, and then report the rate at which Native
5 American candidates were defeated when all three
6 of those districts are summed together.
7 Is that right?
8 A Correct.
9 Q In reporting this analysis, you weigh
10 each of the elections equally.
11 Is that right?
12 A Well, yes, that's true. I think that's
13 true. It does matter whether or not racially
14 polarized voting was present in the election in
15 question or not, so sort of backing up a step
16 there. But --
17 (Cross-talk.)
18 Q There's two elections that you took out
19 because there was not racially polarized voting,
20 right?
21 A Yes, according to Prof. Collingwood's --
22 Q But with respect to the -- I guess this
23 is across three districts, a total of 108
24 elections in which there's racially polarized
25 voting, each of those elections, your analysis

39

1 gives equal weight, correct?
2 A Yes, that's true.
3 Q Now, it's the case, isn't it, that
4 different elections in vote dilution contexts have
5 differing probative values, right?
6 A Yes, that's correct.
7 Q So for example, endogenous elections,
8 those are elections in which the election is for
9 the type of district that is at issue in the
10 challenge. Endogenous elections -- is that your
11 understanding of endogenous?
12 A Yes. So they would be legislative
13 elections in this particular matter.
14 Q So as a methodological matter,
15 academically and in your understanding of how
16 courts look at this, endogenous elections have a
17 much higher probative value in terms of Gingles
18 prong 3 than do exogenous elections.
19 Is that right?
20 A I think that's fair, yes. They have a
21 higher probative value.
22 MR. GABER: I'm going to mark as
23 Exhibit 5 the file Hood Rios-Andino versus Orange
24 County Expert Report.
25 (Exhibit Hood-5 marked for

40

1 identification and attached to the transcript.)
2 BY MR. GABER:
3 Q Dr. Hood, do you recall being a retained
4 expert in this case, Rios-Andino versus Orange
5 County?
6 A I do.
7 Q And I don't know if this is -- this
8 might be sort of a database version of your
9 report.
10 Does this -- or is this what your report
11 looked like?
12 A That was a long time ago. To be
13 honest -- I mean, it looks like something I would
14 have done --
15 Q Okay.
16 A -- but I can't -- you know, I haven't
17 looked at this in a long time.
18 Q This is something you still have?
19 A I probably could find it, yes --
20 Q Okay.
21 A -- with a little time.
22 Q Well, I'm not going to make you do that.
23 But if you have any reason to doubt the statements
24 here, we can obviously go and look for that.
25 But I want to direct your attention to

February 13, 2023

41

1 page 3, and then it's section E towards the bottom
 2 part of the document.
 3 And then in the first paragraph, you
 4 talk a bit about endogenous and exogenous
 5 elections.
 6 Do you see the second sentence says,
 7 Endogenous elections examine contexts from the
 8 same office as those under legal scrutiny and,
 9 because of their relevance, should be given more
 10 probative value?
 11 MR. PHILLIPS: I'll just -- I'm sorry.
 12 Go ahead and finish your question, then I'll
 13 insert my objection.
 14 Q Do you still agree with that statement?
 15 MR. PHILLIPS: I'll object that it's
 16 outside the scope of Dr. Hood's opinion and work
 17 in this case. And can we just agree to have a
 18 standing objection to this line of questioning
 19 about this report?
 20 MR. GABER: Sure.
 21 MR. PHILLIPS: You can go ahead and
 22 answer.
 23 **A I certainly seem to have written that**
 24 **statement.**
 25 Q And then we'll skip the next sentence.

42

1 But the sentence after that, you say, Exogenous
 2 elections, on the other hand, could include almost
 3 any other contest from local boards to
 4 presidential elections. As these elections are
 5 not as directly relevant to the question at hand,
 6 they should be accorded far less weight in
 7 reaching a conclusion concerning vote dilution
 8 claims.
 9 Do you recall having that opinion here?
 10 **A Yes.**
 11 Q And does that remain your opinion today
 12 methodologically, that exogenous elections have
 13 far less weight in reaching conclusions for vote
 14 dilution?
 15 **A I've written this more than once, I'm**
 16 **sure, in academic work. So yes, I have to stand**
 17 **by that statement.**
 18 MR. GABER: Okay. We can take down that
 19 exhibit.
 20 Q Now, in addition to endogenous elections
 21 being more probative than exogenous elections,
 22 there are other considerations that might make an
 23 election more or less probative.
 24 Is that right?
 25 **A Well, let's -- I guess let's discuss it.**

43

1 **It's possible. I mean, certainly, there is a**
 2 **distinction, I've agreed, between exogenous and**
 3 **endogenous elections.**
 4 Q So another example would be that more
 5 recent elections are generally considered more
 6 probative than elections that are further in time?
 7 **A True.**
 8 Q And elections that have a candidate who
 9 is a member of the same minority group of the
 10 group that is challenging the district are more
 11 probative than elections that are between, say,
 12 two white candidates.
 13 Is that also true?
 14 **A Yes, that can be true.**
 15 Q So in this case, elections where there
 16 is a Native American candidate are more probative
 17 to determine whether Gingles prong 3 exists than
 18 elections where both of the candidates are white,
 19 correct?
 20 **A Correct.**
 21 Q So with respect to the elections that
 22 Dr. Collingwood reported, the most probative
 23 contests would be the most recent for endogenous
 24 elections in which there was a Native American
 25 candidate.

44

1 Is that right?
 2 **A Correct.**
 3 Q And that sort of combination is about as
 4 probative as you can get because it ticks off all
 5 three of those factors that are considered more
 6 probative than other types of elections.
 7 Is that right?
 8 **A Correct.**
 9 Q And is it your -- I gather it's your
 10 understanding that incumbency adds another benefit
 11 to a candidate and their likelihood of success.
 12 Is that a fair statement, sort of
 13 generally, as a political science proposition?
 14 **A So we're talking about another topic**
 15 **here, right?**
 16 Q Yeah, yeah.
 17 **A Okay. Yes, incumbency typically**
 18 **benefits the incumbent officeholder, although in**
 19 **more recent history, what we call the incumbency**
 20 **advantage has diminished to some degree. This is**
 21 **an ongoing debate in political science. So...**
 22 Q But if you -- so moving back to looking
 23 at analyzing vote dilution, if you have an
 24 election that's an endogenous election, that is
 25 the most recent election, features a candidate of

February 13, 2023

45

1 the minority group that's challenging the
 2 district, and that candidate is also an existing
 3 incumbent, then if that candidate loses, that
 4 would be even more indicative of the effect of
 5 white bloc voting.
 6 Is that a fair statement?
 7 **A Well, I don't know that I would include**
 8 **incumbency in that list necessarily. Again, it's**
 9 **something that we're seeing some changes related**
 10 **to in terms of, you know, how much of an advantage**
 11 **it is or isn't in more recent history. So...**
 12 Q Okay. But the other three, you agree
 13 with?
 14 **A Yes, as we've discussed.**
 15 Q So in the context of the elections that
 16 Dr. Collingwood analyzed, would you agree that the
 17 single most probative contest would be the 2022
 18 election -- at least with respect to District 9,
 19 the 2022 election for the state senate in
 20 District 9, that's the most probative under
 21 Gingles prong 3 because it features an endogenous
 22 election with a Native American candidate and it's
 23 the most recent election?
 24 **A Yes.**
 25 Q And in District 9B, that -- for the 2022

46

1 election for the U.S. -- sorry -- for the state
 2 house, is also -- that's an endogenous context,
 3 right?
 4 **A 2022?**
 5 Q 2022.
 6 **A Yes, yes.**
 7 Q And that is the most recent contest for
 8 the state house in District 9B?
 9 **A Yes, correct.**
 10 Q And the difference between that election
 11 and the state senate is, the Native American
 12 preferred candidate was a white incumbent.
 13 Is that your understanding?
 14 **A I don't recall, just sitting here. I'm**
 15 **not saying that's incorrect.**
 16 Q The candidate was Marvin Nelson.
 17 Does that sound right?
 18 **A Well, I guess what I'm saying is, I**
 19 **don't -- in order to infer who the Native American**
 20 **preferred candidate is, there would have to be**
 21 **some analysis performed. I did not do that**
 22 **analysis in 2022.**
 23 Q You didn't have any reason to disagree
 24 or criticize Dr. Collingwood's determinations as
 25 to who the Native preferred candidates were in

47

1 2022?
 2 **A I don't remember that as being part of**
 3 **his report. I'm just not recalling.**
 4 MR. GABER: Okay. Let's mark as --
 5 well, I'm not going to mark it yet because I don't
 6 want to get my numbers out of order. But let's
 7 pull up, if we can, the file -- I think it's
 8 probably TM Collingwood report, or -- yeah, TM
 9 Collingwood Expert Report. And we won't mark it
 10 as an exhibit for now. We may not mark it.
 11 THE WITNESS: Okay.
 12 Q All right. And let me just find it in
 13 my copy.
 14 So if we can go to page 15 of the PDF.
 15 Do you see here that Dr. Collingwood reports the
 16 racially polarized voting assessment for all the
 17 statewide and the endogenous 2022 elections for
 18 District 9?
 19 **A Yes, I see that, yes.**
 20 Q And would you agree that from this
 21 table, you can identify who the candidates of
 22 choice were for Native American voters?
 23 **A Yes, that's fair.**
 24 Q And do you see in -- and this is for the
 25 full District 9. You see that Richard Marcellais

48

1 is the candidate of choice for Native American
 2 voters in the state senate race in 2022?
 3 **A Yes, I do.**
 4 Q And then do you understand -- I don't
 5 know if it says it on this page, but the asterisk
 6 next to his name indicates that he is himself a
 7 Native American.
 8 Do you understand that?
 9 **A Yes.**
 10 Q And then --
 11 MR. PHILLIPS: Mark, it's been about an
 12 hour. If we could take a small break when it
 13 makes sense in the near future.
 14 MR. GABER: Okay.
 15 Q And then if we pull up page 21 of the
 16 PDF and go to the paragraph underneath -- scroll
 17 down just a little bit. In that paragraph under
 18 the table, towards the bottom of that paragraph,
 19 do you see where Dr. Collingwood refers to the
 20 defeat of Marvin Nelson, the Native American
 21 preferred candidate, in Subdistrict 9B in 2022?
 22 **A Yes, I see that.**
 23 Q Do you have any reason to disagree with
 24 Dr. Collingwood's conclusion that Marvin Nelson or
 25 Richard Marcellais were the candidates of choice

February 13, 2023

49

1 of Native American voters in those two elections?
 2 **A Well, I think this is what I was**
 3 **remembering. I mean, so in terms of Marcellais, I**
 4 **mean, a statistical analysis was conducted that**
 5 **showed that he was the Native American preferred**
 6 **candidate of choice. The same statistical**
 7 **analysis was not conducted for Nelson. It's just**
 8 **being inferred.**
 9 **That's what I was remembering, yeah.**
 10 Q And part of the reason for that is that
 11 the subdistricts don't have a sufficient number of
 12 precincts to do a complete -- or at least the same
 13 type of RPV analysis that you would do in the
 14 district as a whole.
 15 Is that right?
 16 **A I would agree with that.**
 17 Q But what you can do is look at the
 18 election returns within the precincts and
 19 correlate them with the demographic data from that
 20 precinct and can make a reasonable inference as to
 21 who the candidates of choice are.
 22 Is that fair?
 23 **A Well, again, you know, that's why we**
 24 **test for these things, and that's not the**
 25 **procedure that we use to test to determine whether**

50

1 **or not racially polarized voting exists or not.**
 2 **So that's not the typical procedure.**
 3 **If there's not enough statistical power,**
 4 **there's just not enough statistical power. And I**
 5 **probably would agree there's not.**
 6 Q With respect to the Subdistrict 9B, it
 7 covers part of Rolette County and then parts of
 8 Towner and Cavalier County to the east of Turtle
 9 Mountain.
 10 Is that your understanding?
 11 **A So B is the one to the east, if I'm**
 12 **remembering right, yes.**
 13 Q Right. And so the Native American --
 14 are you familiar with the demographic makeup of
 15 District 9B geographically?
 16 **A A little bit, yes.**
 17 Q So is it your understanding that the
 18 populations of Cavalier and Towner counties are
 19 close to 100 percent white?
 20 **A Well, from my memory, this is what I**
 21 **would say, you know, outside of the reservation in**
 22 **that particular legislative district, in the areas**
 23 **right around the reservation, the rest of the**
 24 **district does not contain many, if any, Native**
 25 **Americans.**

51

1 Q So the -- for the most part, the only
 2 Native Americans in District 9B are all
 3 concentrated in the area that's in 9B but close to
 4 the border of 9A.
 5 Is that your understanding?
 6 **A From what I remember, yes.**
 7 Q And so to the extent those voting
 8 precincts have a high concentration of Native
 9 American voters and is also the precinct in which
 10 Marvin Nelson prevailed, and if Marvin Nelson lost
 11 by large margins, the precinct in the white
 12 counties, there is a fair inference that can be
 13 drawn as to who the candidate of choice is in
 14 those -- in that race.
 15 Wouldn't you agree?
 16 **A Well, I would respectfully, I guess,**
 17 **disagree. I mean, you know, there are different**
 18 **methods you can use to uncover racially polarized**
 19 **voting, one of those being homogeneous precinct**
 20 **analysis, which is a very old method.**
 21 **I didn't detect, from my memory at least**
 22 **sitting here, any precincts in the area where**
 23 **you're describing that had a high enough**
 24 **percentage of Native American population to make**
 25 **that kind of inference using, say, homogeneous**

52

1 **precinct analysis.**
 2 Q With respect to the white voters, there
 3 is homogeneous precincts --
 4 (Cross-talk.)
 5 **A That's true, yes. But there has to be**
 6 **homogeneous precincts for both groups or however**
 7 **many groups you're analyzing. So...**
 8 Q So to the extent -- so do you understand
 9 that Marvin Nelson was the incumbent state house
 10 rep from the prior District 9?
 11 **A Yes, I recall that.**
 12 Q And so one way to test whether he's the
 13 candidate of choice of Native American voters, to
 14 the extent you have a dispute over the correlation
 15 method, is to look in the past elections in which
 16 he's been elected to determine whether he was the
 17 candidate of choice using the more traditional
 18 statistical analysis.
 19 Is that fair?
 20 **A If it's possible. You know, I would**
 21 **have to see if it were possible in the past.**
 22 Q And if there's a consistent pattern of
 23 him being the Native American voters' candidate of
 24 choice, then you would expect that to be the case
 25 for 2022 as well, right?

February 13, 2023

53

1 **A Well, again, I'm going to just have to**
 2 **push back on that. I mean, that's why we test**
 3 **things.**
 4 **So it would make logical sense perhaps**
 5 **if that were the case. But again, we -- we don't**
 6 **just make inferences without testing for things.**
 7 **So...**
 8 Q If we combined that data showing that he
 9 was the candidate of choice in the prior state
 10 representative elections for District 9 Native
 11 American voters with the inferences that can be
 12 drawn from the demographics and the election
 13 results for the 2022 election, that would provide
 14 at least a preponderance of evidence that he was,
 15 in fact, the candidate of choice in 2022 as well.
 16 Wouldn't you agree with that?
 17 **A I don't -- I mean, I'm not trying to be**
 18 **flippant. I don't know that what you just said is**
 19 **all that much different from what we just talked**
 20 **about previously. So...**
 21 Q Are you aware that former Representative
 22 Nelson was the Democratic candidate for governor
 23 in the 2016 election?
 24 **A No, I was not aware of that.**
 25 Q And Dr. Collingwood reports that he was

54

1 the candidate of choice of Native American voters
 2 in the region.
 3 Do you have any reason to disagree with
 4 that?
 5 **A Not on its face.**
 6 Q And it's your view that in the entire
 7 District 9, there's a clear pattern of the
 8 Democratic candidate being the candidate of choice
 9 of Native American voters, right?
 10 **A That's true, yes.**
 11 Q And so -- and that's true regardless of
 12 where they are -- where the Native American voters
 13 reside in District 9. There's no evidence to
 14 suggest that there's a difference among candidates
 15 of choice.
 16 Is that right?
 17 **A I'm not following -- I didn't follow**
 18 **what you just said.**
 19 Q Well, if Native American voters are --
 20 have a clear candidate of choice in District 9,
 21 then there is not a basis to conclude that that
 22 fact varies depending on where in District 9
 23 you're looking?
 24 **A Well, I don't know that that's the case**
 25 **or not. I just don't know.**

55

1 Q Okay. If all the Native American voters
 2 are essentially in one county, then we can look at
 3 that county, and if it's possible, perform an
 4 analysis to try and make that determination.
 5 Is that right?
 6 **A Well, again, if the data are present to**
 7 **make that determination, I don't know. You know,**
 8 **there would have to be -- even if we were looking**
 9 **at a single county, there would have to be enough**
 10 **precincts within the county to make a proper**
 11 **inference, I guess. So...**
 12 Q You haven't done that analysis in your
 13 report.
 14 Is that right?
 15 **A That's correct.**
 16 Q And you don't have any -- you don't
 17 opine anything with respect to Dr. Collingwood's
 18 selection of who the candidates of choice of white
 19 or Native American voters are in his report,
 20 correct?
 21 **A Well, except for this example we're**
 22 **talking about where he's making an inference about**
 23 **a subdistrict where there's not been statistical**
 24 **testing that's been performed. Otherwise, no.**
 25 Q Okay. But for your report, you don't,

56

1 in your report, make any criticism of
 2 Dr. Collingwood's analysis of Subdistricts 9A or
 3 9B, right?
 4 **A I don't believe I do specifically, no.**
 5 Q And you haven't done any analysis to
 6 show that he's incorrect in his conclusions?
 7 **A No.**
 8 Q Sorry, I missed that. What was that
 9 answer?
 10 **A No. It was just "no."**
 11 Q And you don't dispute in your report
 12 that Dr. Collingwood's conclusion that in the
 13 endogenous elections in District 9, there is a
 14 100 percent defeat rate for the Native American
 15 candidates of choice?
 16 **A Well, again, with the caveat that if we**
 17 **can determine specifically who the Native American**
 18 **candidate of choice is, then yes.**
 19 Q And for District 9 as a whole, you agree
 20 with Dr. Collingwood's analysis that Richard
 21 Marcellais is the candidate of choice of Native
 22 American voters in the 2022 election?
 23 **A I didn't dispute that. So yes.**
 24 Q And so that is -- that's a 100 percent
 25 defeat rate for that -- for endogenous elections

February 13, 2023

57

1 in District 9?
2 **A Well, that's, yes, one race, yes.**
3 Q And in your report, you don't dispute
4 Dr. Collingwood's similar analysis for endogenous
5 elections in District 9B?
6 **A Well, again, I don't think he did the**
7 **testing for racially polarized voting in either**
8 **subdistrict.**
9 Q But if he's correct in identifying who
10 the candidate of choice is in those elections,
11 then he would also be correct that there was a
12 100 percent defeat rate in District 9B for the
13 endogenous election?
14 **A Well, if he's correct, yes. But, you**
15 **know, I guess I would argue we don't know if he's**
16 **correct or not without testing.**
17 Q So is it your view, then, that it's not
18 possible to determine who the Native American
19 preferred candidate in District 9A is either?
20 **A From what I recall, I don't believe --**
21 **and again, I think Prof. Collingwood said this as**
22 **well -- that there are enough precincts to yield a**
23 **useable analysis in the subdistricts, in either**
24 **subdistrict.**
25 Q Well, to do a racially polarized voting

58

1 analysis using ecological inference, right?
2 **A Correct. Or even homogeneous precinct**
3 **analysis, perhaps.**
4 Q In District 9A, do you agree that there
5 is homogeneous Native American precincts?
6 **A Yes, although I have typically defined**
7 **homogeneous as being 90 percent of a single racial**
8 **group. So I don't know -- I don't recall -- I**
9 **don't believe that any of the precincts reached**
10 **that level for Native Americans, that I can recall**
11 **sitting here. And that's the typical sort of**
12 **cutoff I've used.**
13 Q We'll take a break in a moment. I just
14 want to check something.
15 And I'm just representing this to you.
16 The Belcourt, which is the city that is contained
17 within the Turtle Mountain reservation or
18 precinct, has a 2022 Native voting age population,
19 according to Dave's Redistricting App --
20 Are you familiar with that website?
21 **A I am.**
22 Q Have you used it before?
23 **A Yes.**
24 Q And do you --
25 **A I've not used it for a court case.**

59

1 Q Okay.
2 (Cross-talk.)
3 **A But I've fiddled around with it.**
4 Q And you understand that they import the
5 demographic data from the census bureau?
6 **A That's my understanding, yes.**
7 Q And then they combine that together with
8 the precinct boundaries as set by the local
9 jurisdictions or the state?
10 **A Well, this is where things can get a**
11 **little fuzzy. Sometimes I believe they're using**
12 **precinct boundaries that have been identified by**
13 **the census bureau as VTD boundaries, which at**
14 **times may or may not be congruent with present**
15 **precinct boundaries, if I'm making sense. So...**
16 Q So the precinct, according to Dave's, is
17 93.7 percent Native VAP.
18 If that's correct or roughly correct,
19 that would count as a homogeneous Native American
20 precinct under your understanding of that.
21 Is that true?
22 **A Yes. But it would just be one. And we**
23 **usually want more than one precinct to do some**
24 **analysis with. So...**
25 Q Okay. So is it your opinion that

60

1 there's no way to determine whether the Native
2 American who won the state representative race in
3 Subdistrict 9A is the candidate of choice of the
4 Native American voters in the district?
5 **A Well, given conventional methods, I'm**
6 **not sure how it would be done, I guess is what I**
7 **would say.**
8 Q That's important information to
9 determine whether the candidate of choice is being
10 elected in District 9A?
11 **A That's true. I mean, that's how we**
12 **would make that determination.**
13 Q But in the absence of enough precincts,
14 you can certainly make inferences that may not
15 have the same high level of rigor as the EI
16 analysis would, but at some point, it just is
17 common sense, right?
18 If there's essentially only one
19 demographic group in the district, then the
20 candidate who wins by a large majority would
21 necessarily be that group's candidate of choice.
22 Does that seem fair?
23 **A Again, I mean, I'm just going to have to**
24 **differentiate between common sense or what may**
25 **appear on the face to be something versus, again,**

February 13, 2023

61

1 rigorous statistical testing that we usually go
2 through in these types of cases. I mean,
3 sometimes the data are just not there to make
4 inferences with.
 5 Q In your report in the Walen case, you
 6 reached the conclusion, based on six statewide
 7 elections, that Native American voters in
 8 District 9A were able to elect their candidates of
 9 choice.
 10 Am I right about that?
11 A Yes.
 12 MR. PHILLIPS: I'll object to the extent
 13 that it is outside of Dr. Hood's opinion and work
 14 in this case.
 15 Q How did you make that determination?
16 A Well, I think I specifically said I was
17 making an inference from District 9 at large, and
18 you apply that to the subdistrict.
 19 Q And the inference there was that the
 20 Democratic candidate was the candidate of choice
 21 of Native American voters in District 9, and so,
 22 therefore, it stood to reason that that person was
 23 the candidate of choice in District 9A as well,
 24 correct?
25 A That was the inference I was making,

62

1 yes.
 2 Q And do you stand by that inference?
3 A Well, it's in writing, so I have to,
4 yes.
 5 Q And so applying that same inference to
 6 Dr. Collingwood's report, we would reach the
 7 conclusion that -- we can infer that the
 8 Democratic candidate in these races for the state
 9 senate and the state house is the Native American
 10 candidate of choice, and the Republican candidate
 11 is the white voters' candidate of choice, correct?
12 A Correct.
 13 Q And so, therefore, Marvin Nelson, in
 14 District 9B, would be the Native American
 15 candidate of choice, correct?
16 A Well, he would be the Democratic
17 candidate, correct. So yes.
 18 Q And his white Republican opponent in
 19 that election would be the white voters' candidate
 20 of choice in District 9B?
21 A Correct.
 22 MR. GABER: Let's take a break now.
 23 (Recess from 11:53 a.m. until 12:09
 24 p.m.)
 25 MR. GABER: Let's go back on the record.

63

1 THE WITNESS: I do want to just clarify
 2 my position on that last line of questioning in
 3 that I think it's very important to be able to
 4 statistically determine, using rigorous testing,
 5 who the candidate of choice is for various groups.
 6 BY MR. GABER:
 7 Q But nevertheless, in your Walen report,
 8 you found it reliable and sufficient to draw the
 9 inferences, given the clear pattern in the
 10 district as a whole with respect to District 9?
 11 MR. PHILLIPS: I'll object to the extent
 12 that reference to the Walen report is outside of
 13 Dr. Hood's opinion and work in this case. I'll
 14 just have a standing objection on that line of
 15 questioning.
16 A I did do that in that particular matter,
17 and perhaps I should have relied more on
18 statistical testing before I made those inferences
19 as well. So...
 20 Q But nevertheless, you made those
 21 inferences, and that's your opinion in that
 22 report, correct?
23 A Yes, it is.
 24 Q And you don't see any evidence to
 25 suggest that those inferences are wrong, right?

64

1 A Well, again, not necessarily wrong, but
2 based on, you know, my own position, which I don't
3 think has changed over the years, that sort of
4 mandates more rigorous statistical testing, you
5 know, maybe I shouldn't have gone that far in that
6 particular -- making that inference in that
7 particular matter, I guess. So...
 8 Q We can talk about it a little bit. I
 9 don't think you should be so down on yourself. If
 10 you -- if all of the Native American voters are
 11 concentrated in one part of District 9 as a whole,
 12 and we're able to apply the statistical analysis
 13 to the district as a whole, then the component
 14 parts must add up to that district as a whole,
 15 right?
16 A True, they do add up. But as I talked
17 about previously, sometimes we don't know how they
18 add up under the surface.
 19 Q Given the high level of polarization
 20 that Dr. Collingwood reports and that you find
 21 with respect to Native American voting preferences
 22 in District 9 as a whole, it would be surprising
 23 if the data showed the opposite within either of
 24 the subdistricts, right?
25 A Well, that would be counter to the

February 13, 2023

65

1 pattern uncovered at the district level. That's
2 true. I can say that.
 3 Q Okay. And would you agree with me that
 4 it would be unlikely that the subdistricts would
 5 have a different voting pattern than the district
 6 as a whole?
 7 MR. PHILLIPS: Objection, calls for
 8 speculation.
 9 A **Again, I guess this is where I -- you**
10 know, it's difficult to make inferences without
11 testing.
 12 Q But that is -- and we've agreed, that is
 13 the inference that you found reliable to make in
 14 the Walen report?
 15 A **I made that inference, yes.**
 16 Q Now, given that endogenous elections,
 17 more recent elections, and elections featuring a
 18 Native American candidate are more probative than
 19 other elections -- exogenous elections, more
 20 distant elections, and elections featuring only
 21 white candidates -- would you agree with me that
 22 equally weighing them in an analysis is not
 23 methodologically correct?
 24 A **Well, again, I freely admit endogenous**
25 elections are more probative, certainly. I mean,

66

1 Prof. Collingwood provided these same sort of
2 global stats that I do in this report that I
3 turned in. So...
 4 Q But in terms of interpreting the
 5 election results, the proper methodology is to
 6 accord greater weight to the endogenous elections,
 7 the elections featuring Native American
 8 candidates, and the more recent elections.
 9 Do you agree with that?
 10 A **Yes, as we've discussed.**
 11 Q And so when we get to the point of
 12 reaching a conclusion about Gingles prong 3,
 13 either an academic or a court should not weigh the
 14 elections equally?
 15 MR. PHILLIPS: Objection to the
 16 extent -- I'll say speculation and calls for a
 17 legal conclusion.
 18 A **Well, I can't speak for the Court,**
19 but -- and again, this sort of gets into another
20 issue we have sometimes in vote dilution cases of
21 how many, you know, endogenous elections there are
22 to compare with the rest of the elections out
23 there.
 24 **If there's -- I'm just saying**
25 hypothetically, if there's two, then that's hard

67

1 to really make an inference from that. So...
 2 Q But nevertheless, you would give greater
 3 weight to that -- when you're looking individually
 4 at each election, you would give significantly
 5 greater weight to the endogenous election, to the
 6 extent it points in a different direction than the
 7 exogenous election?
 8 A **I think someone like the Court would be**
9 better positioned to do that than I would,
10 necessarily. So...
 11 Q And so the Court would need to be the
 12 one to make those determinations about probative
 13 value between the elections?
 14 MR. PHILLIPS: Objection, calls for a
 15 legal conclusion.
 16 A **Well, yes, and again, to the extent of**
17 which how many elections are -- how many
18 endogenous elections do we have versus exogenous,
19 what type of exogenous elections, you know, what
20 time period. I mean, there's a lot of factors to
21 weigh here.
 22 **So I typically don't -- I guess what I'm**
23 saying is, as a political scientist, I typically
24 am looking for a pattern, not for, you know, a
25 detailed dive into a single election, per se.

68

1 Q If there's a limit to the number of
 2 endogenous elections and there are more recent
 3 exogenous elections available, you would agree
 4 that the better approach -- or a good approach
 5 would be to go to those first because they have
 6 more probative value than more distant exogenous
 7 elections, correct?
 8 A **Yeah. I mean, typically, in these kinds**
9 of analyses -- and I've written about this
10 academically -- I typically don't go back more
11 than ten years, just as sort of a general rule. I
12 mean, that's not -- there's no principle on that.
13 But I typically don't go back further than ten
14 years. So...
 15 Q And you would agree, within that ten
 16 years, the probative value increases as you get
 17 closer to today?
 18 A **Yes, as we've discussed, yes. I think**
19 that's fair.
 20 Q Now, if the endogenous election and the
 21 more recent exogenous elections and the elections
 22 in which there are Native American candidates of
 23 choice point in favor of a Gingles prong 3
 24 finding, and the less probative elections point in
 25 the opposite direction, then the Court would need

February 13, 2023

69

1 to consider more probative, in your view, or
 2 academics would need to consider more probative
 3 the elections pointing in favor of a Gingles
 4 prong 3 conclusion.
 5 Is that a fair statement?
 6 MR. PHILLIPS: Objection, speculation,
 7 calls for a legal conclusion, and object to form.
 8 **A So this is -- I guess this is what I**
 9 **would say. As a researcher, you know, looking**
 10 **into a vote dilution matter, I would make a**
 11 **determination of what elections I'm going to**
 12 **analyze up front.**
 13 **And, you know, I don't disagree, legally**
 14 **speaking, that some elections may be more**
 15 **probative than others. But a researcher has**
 16 **chosen a set of elections, and you can't just pick**
 17 **and choose at that point which ones are going to**
 18 **be included or not.**
 19 **So if -- we have to, like -- you know,**
 20 **if we're going to make an argument not to include**
 21 **certain elections in our analysis that we've**
 22 **already analyzed, or we're saying that they're**
 23 **less probative for whatever, I mean, that's really**
 24 **a matter for the Court to weigh, if that makes**
 25 **sense.**

70

1 Q So another way of saying that is that
 2 that's a factual determination about how much
 3 probative value to give each particular election?
 4 **A Yes. That's not something I think I can**
 5 **do or any other researcher can do necessarily. I**
 6 **mean, Prof. Collingwood chose these races to**
 7 **analyze, and yes, within that subset, some may be**
 8 **more probative than others, as we've discussed. I**
 9 **don't disagree with that.**
 10 **But nevertheless, he analyzed all these**
 11 **races, and so they should be included in the**
 12 **prong 3 component of the Gingles analysis. I**
 13 **guess that's what I would say. So...**
 14 Q And the question then is how much weight
 15 to give each particular election in terms of what
 16 it says about whether white voters are usually
 17 defeating the Native preferred candidates.
 18 **A Yes. Which is, I think, outside the**
 19 **scope of what I normally would do personally.**
 20 Q But in order to make a determination
 21 about whether Gingles prong 3 is satisfied or not,
 22 that's a necessary part of that determination,
 23 right, how much probative value to give the
 24 individual elections?
 25 **A Well, if a court decided to give certain**

71

1 **cases more or less weight, then yes. But at that**
 2 **point, that's the Court making that determination,**
 3 **not a researcher.**
 4 Q And the Court, in doing so, would be
 5 following, however, the generally accepted
 6 methodology, which, as we've discussed, involves
 7 placing, I think in your words, far greater weight
 8 on endogenous elections and more probative value
 9 to more recent elections and to racially contested
 10 elections, right?
 11 **A Yeah. I don't disagree with those**
 12 **points, as we've discussed. I've written about**
 13 **that academically, in fact. So...**
 14 Q Now, Dr. Collingwood, in his report,
 15 though he presented the -- all of the election
 16 results from 2014 to 2022 for the statewide
 17 contests reconstituted in the new districts, did
 18 provide opinion and discussion about how to
 19 interpret that for purposes of Gingles prong 3,
 20 given the differences in the probative value of
 21 different types of elections.
 22 Do you recall reading that?
 23 **A He provided some -- he provided some**
 24 **context, yes.**
 25 Q And you don't -- in your report, you

72

1 didn't dispute any of that, correct?
 2 **A I don't think I disputed it directly. I**
 3 **may have disputed it indirectly in the way that I**
 4 **treated that set of races that he analyzed.**
 5 Q And that was by equally weighing the
 6 races that he analyzed, correct?
 7 **A That's correct.**
 8 Q But as we've discussed, the Court will
 9 have to ferret out what probative value to give
 10 those races to make a Gingles prong 3 conclusion,
 11 right?
 12 **A Yes.**
 13 Q And it's your view that, given the
 14 differing probative values that should be afforded
 15 different types of elections, you can't make that
 16 Gingles prong 3 determination for the Court,
 17 correct?
 18 **A Well, I mean, yes, that's correct.**
 19 **So, you know, a similar example would be**
 20 **hypothetically, and I'm speaking just**
 21 **hypothetically here, if we had two experts in a**
 22 **particular vote dilution case like this present**
 23 **the Court with two different sets of elections**
 24 **they had analyzed, maybe some overlap in a Venn**
 25 **diagram, but some don't, same thing. The Court**

February 13, 2023

73

1 would have to determine which elections analyzed
2 by those researchers were more probative than the
3 others.
 4 Q And that type of determination is
 5 probably all the more important when there's mixed
 6 signals, right, where the endogenous, the more
 7 recent, and the racially contested elections, say,
 8 point in favor of white bloc voting, and the other
 9 types of elections that are given less probative
 10 weight point in the other direction. That's a
 11 factual determination for the Court to make with
 12 respect to Gingles prong 3?
13 A I would say --
 14 MR. PHILLIPS: Objection, calls for a
 15 legal conclusion.
16 A I would say that the Court would have to
17 make that determination.
 18 Q You don't have any reason -- or you
 19 don't, in your report, dispute Dr. Collingwood's
 20 conclusion that within District 9 as a whole, the
 21 elections in which there's a Native American
 22 candidate, that the Native American candidate is
 23 defeated in 60 percent of those contests.
 24 Is that right?
25 A I don't remember that fact in

74

1 particular, just sitting here. I did not dispute
2 it in my report, I can say that.
 3 Q Okay. And in your report in the Walen
 4 case, you analyzed six elections to -- six
 5 statewide elections to reach your conclusion.
 6 Is that right?
7 A That's correct.
 8 MR. PHILLIPS: I'll object to this line
 9 of questioning in a standing objection, outside
 10 the scope.
 11 Q And that was a sufficient number, you
 12 thought, to reach your conclusion regarding vote
 13 dilution there?
14 A That's how many I got done. You know,
15 certainly, I probably would have wanted to have
16 done more. That's how many I got completed. Some
17 of this is pretty time-intensive sometimes. So...
 18 Q But as a methodological matter, you were
 19 able to draw a conclusion from six elections?
20 A Well, that's how many elections were
21 utilized in that report, that's true.
 22 Q And you felt comfortable reaching that
 23 conclusion?
24 A I probably would have liked to have
25 gotten more done, to be honest.

75

1 Q How did you select those six contests?
 2 A Well, they were from -- not 2022, but
 3 when I had been working on those, 2022 had not
 4 occurred yet. And so they were recent, you know,
 5 2020, 2018, high-profile statewide elections, even
 6 though I was sort of cutting it down to the
 7 district, you know.
8 But that's how I choose those elections.
9 And they were some of the same elections,
10 obviously, that Dr. Collingwood had also utilized.
 11 Q Am I correct that none of the six that
 12 you chose for the Walen report included elections
 13 in which there was a Native American candidate on
 14 the ballot?
15 A I don't think so.
 16 Q You don't think I'm correct, or you
 17 don't think --
18 A No, I think you're correct. I don't
19 think I did.
 20 Q Is there a particular reason why you
 21 didn't analyze the 2022 elections?
22 A Just time.
 23 Q Now, you don't dispute, I believe,
 24 Dr. Collingwood's analysis of the 2022 elections
 25 reconstituted into the District 9.

76

1 Am I right about that?
 2 A Well, he used the same method he had
 3 used previously for the, you know, subsequent
 4 election cycles that were before that. So...
5 And again, as we've talked about,
6 there's different ways to do that. And that's
7 certainly one of the ways that some researchers
8 utilize.
 9 Q So -- and there's eight elections that
 10 he reports for 2022.
 11 Do you recall that?
12 A I think that's correct.
 13 Q And that includes -- one of those is an
 14 endogenous race for the state senate district
 15 itself, right?
16 A That's correct. That's correct.
 17 Q And in all eight of those contests from
 18 2022, the Native American preferred candidate
 19 loses District 9 as a whole.
 20 Is that your recollection?
21 A I don't remember. I believe that's
22 correct. I mean, we could look at it again.
 23 Q Yeah. If we want to pull up, again,
 24 it's TM Collingwood expert report which we have
 25 not marked as an exhibit, and may not until the

February 13, 2023

77

1 end.
 2 And it's page 17 of the PDF. So if you
 3 go to the far right tab at the top there, TM
 4 Collingwood, page 17, and then show that graphic.
 5 So you see the full District 9 is
 6 reported on the far left column, and the Native
 7 American preferred candidate is shown in blue, the
 8 white preferred candidate is shown in green.
 9 Do you see that the white preferred
 10 candidate wins all eight elections within the
 11 bounds of District 9 for the 2022 elections?
 12 **A Yes, I do.**
 13 Q So this is actually more elections than
 14 you analyzed in your Walen report, correct?
 15 **A Correct.**
 16 Q And so on the basis of this, we could
 17 reach the opposite conclusion that you reached in
 18 your Walen report with respect to Gingles prong 3
 19 in District 9 as a whole?
 20 MR. PHILLIPS: Object to form, calls for
 21 speculation.
 22 **A Well, I haven't analyzed these**
 23 **specifically. But, you know, on its face, yes.**
 24 Q Now, in addition to the varying -- we
 25 can take this down for a moment so we can see each

78

1 other better.
 2 In addition to the varying probative
 3 values that different types of election contests
 4 have, when we -- when an academic is analyzing
 5 vote dilution cases with respect to Gingles
 6 prong 3, it's also possible that certain elections
 7 could be characterized by special circumstances
 8 that make them less relevant to the determination.
 9 Do you agree with that?
 10 **A Well, again, we've talked about what may**
 11 **make an election more or less probative. And I**
 12 **stand by that.**
 13 **I think, as a researcher, if you're**
 14 **going to include an election, you know, it's more**
 15 **of a statistical matter at that point as opposed**
 16 **to assigning some kind of qualitative factors to**
 17 **the race to increase its significance or decrease**
 18 **it. That's not typically what I do. So...**
 19 Q You understand, though, that courts, in
 20 reviewing the presence of Gingles prong 3, part of
 21 the test is whether the election has the absence
 22 of special circumstances, correct?
 23 **A Correct.**
 24 Q Now, Dr. Collingwood in his report talks
 25 about the 2018 elections and discusses that those

79

1 elections featured special circumstances that
 2 caution against equally weighing them or
 3 potentially weighing them at all.
 4 Do you recall that discussion?
 5 **A I do. I do.**
 6 Q In your report, you don't dispute that,
 7 correct?
 8 **A Not directly. Again, I guess indirectly**
 9 **dispute that by including the elections. I don't**
 10 **really agree with his -- respectfully agree with**
 11 **his line of reasoning about 2018.**
 12 Q You don't express that opinion in your
 13 report, correct, other than to --
 14 **A Not directly, no.**
 15 Q So you haven't studied the 2018
 16 North Dakota elections, correct?
 17 **A Not specifically, no. Well, I mean,**
 18 **outside of what I've done and disclosed in this**
 19 **case and the other case that we're discussing,**
 20 **clearly.**
 21 Q Right. So the extent of your study was
 22 to gather the election data and report it for
 23 2018?
 24 **A And analyze it, I would say, yes.**
 25 Q And by "analyze," you mean analyze the

80

1 results in terms of what the numbers report -- the
 2 vote totals report within the district?
 3 **A Well, I mean, the racially polarized**
 4 **voting analysis is part of that.**
 5 Q Right. I guess what I mean is, you
 6 didn't study anything about the underlying
 7 campaigns or the voter turnout. I take that back.
 8 You did actually look at the voter
 9 turnout, right?
 10 **A Correct.**
 11 Q But you didn't analyze the facts
 12 surrounding the campaigns or why that might have
 13 affected the turnout.
 14 Is that correct?
 15 **A That's fair.**
 16 Q And you didn't study any of the
 17 get-out-the-vote efforts for the 2018 elections?
 18 **A No, I did not.**
 19 Q Are you familiar with any of the
 20 get-out-the-vote efforts that occurred during the
 21 2018 elections in North Dakota?
 22 **A Well, just from what I've read.**
 23 Q And what have you read?
 24 **A Well, that there was a larger effort on**
 25 **the -- with Native Americans, especially in terms**

February 13, 2023

81

1 of that kind of effort in that election cycle.
2 That's my understanding, sitting here.
3 Q And is that from Dr. Collingwood's
4 report, or did you have independent awareness of
5 that?
6 A Probably from his report.
7 Q Beyond reading what Dr. Collingwood
8 wrote, have you done any other examination to test
9 whether or not you think there were unique
10 circumstances in the 2018 election in North
11 Dakota?
12 A No.
13 Q So you're not offering an opinion one
14 way or the other whether there were special
15 circumstances that made it unique from another
16 election or the usual election in North Dakota?
17 A Well, not outside of the generic things
18 I've said about, you know, including or not
19 including elections, for instance.
20 Q Now, as a political scientist, I assume
21 you agree with this statement, that voter turnout
22 is typically higher in presidential elections than
23 it is in midterm elections.
24 A Most of the time, yes.
25 Q And it's pretty unusual for more voters

82

1 to turn out in a midterm election than turn out in
2 a presidential election?
3 A Most of the time, yes, that's true. I'm
4 just saying that generically.
5 Q Right. It would not be the usual fact
6 pattern to encounter higher turnout in a midterm
7 election than in a presidential election?
8 A Not typically. That's correct.
9 Q Now I want to go back a little bit to
10 Exhibits 3 and 4, which are the calculations of
11 the voter turnout for District 9 that you did for
12 the 2018 and the 2020 elections. And let's start
13 with Exhibit 3 to refresh our recollection.
14 And again, this -- I don't remember
15 whether this is Exhibit 3 or 4, but what I do know
16 it is is the 2018 U.S. Senate election data that
17 was reconstituted in the new District 9 and your
18 internal analysis.
19 Is that right?
20 A Yes.
21 Q So in the midterm 2018 election, we see
22 that Native American voters in District 9 turned
23 out at a rate of 60.4 percent compared to 68.3 for
24 white voters and 49.8 for other, right?
25 A That's correct.

83

1 Q And then let's pull up Exhibit 3, which
2 is the 2020 presidential election.
3 And do you see that the Native American
4 turnout in District 9 dropped from over 60 percent
5 to 38.9 percent?
6 A Correct. By those estimates, yes.
7 Q And at the same time, in the 2020
8 presidential election, we see that white turnout
9 and other turnout ticked up slightly in the 2020
10 presidential election compared to the 2018
11 election.
12 A Correct.
13 Q Can you identify -- or does any example
14 come to mind anywhere else in the country where
15 you've seen a particular group have over
16 20 percent higher turnout -- or 20 percentage
17 points more turnout in a midterm election than in
18 a presidential election?
19 A I mean, I can't think of an example,
20 just sitting here.
21 Q You study elections frequently, right?
22 A I do, yes.
23 Q That's what you do all day long?
24 A Some days.
25 Q So it's 20 percentage points higher

84

1 turnout in 2018 for Native Americans in the
2 district than in 2020.
3 That's unusual, right?
4 A Well, I mean, as a general
5 proposition -- I mean, I haven't -- this is the
6 only study I've done of this particular
7 legislative district and turnout.
8 As we discussed, as a general
9 proposition, among most groups, you know, turnout
10 in presidential elections is typically higher than
11 midterm elections.
12 Q And I'm going to ask you to do a little
13 math with me again.
14 A Okay.
15 Q So it's 20 percentage points higher, but
16 we can calculate the percentage increase, right,
17 if we take the -- let's see here. Going to the
18 other exhibit, the Exhibit 4, which is the 2018.
19 So if we take the difference between
20 Native turnout in 2018, 3493, and then subtract
21 the Native turnout in 2020, which is 2250, we see
22 that, as a raw number, there's 1,243 more
23 estimated Native Americans who turned out in 2018
24 in District 9 than turned out in 2020?
25 Is that correct?

February 13, 2023

85

1 **A Yes.**
2 Q And then if we divide 1243 by the 2020
3 turnout, which is 2250, we see that there's a
4 55 percent higher turnout rate among Native
5 American voters in the 2018 midterm than there was
6 in the 2020 presidential election in District 9.
7 Does that -- did I do that right?
8 **A Well, I mean, I guess there are**
9 **different ways to do this. If you're calculating**
10 **a rate of increase or decrease, it's -- it would**
11 **be 2020 minus 2018 divided by 2018.**
12 **So, I mean, that's how I would calculate**
13 **a rate of increase or decrease.**
14 Q So you would take -- say that again.
15 You would take 2020 minus 2018?
16 **A Right.**
17 Q And is that because 2020 happened after
18 2018?
19 **A Yes.**
20 Q You see what I'm getting, like, that
21 would be a negative number, then, right?
22 **A Well, it is a negative rate of increase**
23 **because turnout --**
24 Q Decreased.
25 **A I mean, it just did.**

86

1 Q So -- but it's correct --
2 **A It would be a negative. It would be a**
3 **negative in that case. That would be correct,**
4 **though.**
5 Q Okay. But it is also correct to say
6 that the turnout in 2018 among Native American
7 voters was 50 percent higher than it was in the
8 2020 presidential election?
9 **A So it's 60.4, and what was the other --**
10 Q 38.9 percent.
11 **A Okay. So what did you -- how did you**
12 **want to calculate this, I guess?**
13 Q What I did is the raw number of Native
14 American voters in 2018 minus the raw number in
15 2020 to get the difference. And then I divided by
16 the total number in 2020 to see what the
17 percentage increase is.
18 **A Well, you could do that. But we have**
19 **the percentage. We have the turnout rate, or at**
20 **least an estimate of that. So...**
21 Q So it should be the same either way,
22 right? It's a 55 percent increase?
23 **A Yeah.**
24 Q You would agree that that's a pretty
25 striking and unusual characteristic, comparing the

87

1 midterm to the presidential election for this
2 district?
3 **A Well, again, I would agree that**
4 **typically turnout in presidential election years**
5 **is higher than in midterm years, for most groups.**
6 Q Actually, that was the case for -- in
7 District 9 for white voters and for other voters,
8 right?
9 **A Yes.**
10 Q And sitting here, you're not able to
11 think of another example elsewhere in the country
12 where you've seen a turnout difference that high
13 where the midterm turnout among a racial group is
14 so much higher than it was in a presidential
15 election?
16 **A Well, I can't recall an example. That**
17 **doesn't mean that there's not one that exists, but**
18 **I can't recall of one.**
19 Q And you would agree that given the fact
20 that courts that study vote dilution cases -- or
21 that adjudicate vote dilution cases are tasked
22 with determining whether special circumstances
23 make a certain election or set of elections ones
24 that should not be given great weight, that this
25 is the type of information that would be relevant

88

1 to that determination?
2 MR. PHILLIPS: Objection, calls for a
3 legal conclusion.
4 **A I would agree that's the Court's**
5 **decision to weigh, yes.**
6 Q And would you agree that your own
7 analysis shows significant evidence that should --
8 the Court should consider, this unusual pattern of
9 turnout with respect to the 2018 election for
10 Native American voters in District 9?
11 **A Well, it shows a turnout differential,**
12 **that's true. It's in black-and-white numbers**
13 **here.**
14 Q And that's -- those numbers are relevant
15 to the ultimate Gingles prong 3 determination?
16 MR. PHILLIPS: Objection, calls for a
17 legal conclusion.
18 **A They could be.**
19 MR. GABER: I'm going to mark as
20 Exhibit 6 the file that's titled Hood Notes.
21 (Exhibit Hood-6 marked for
22 identification and attached to the transcript.)
23 BY MR. GABER:
24 Q Do you recognize these as some of your
25 notes that you produced in this case?

February 13, 2023

89

1 **A Yes.**
2 Q It would be the second to the last page
3 of the PDF, which is going to be 13, that's Bates
4 stamped HOOD-0256.
5 Now, is this the sort of underlying work
6 that you did to create the table for your report
7 that is on page 3?
8 **A It should be, yes.**
9 Q So what you show here is that -- and
10 this is, again, LD 9, LD 9A, LD 9B, and the total,
11 the total being the number of elections that were
12 available statewide or for endogenous in that
13 given election year?
14 **A Yes, yes.**
15 Q And so just looking at LD 9, there's
16 eight elections available to be analyzed in 2022,
17 correct?
18 **A Yes.**
19 Q And the Native American preferred
20 candidate lost all eight of those, right?
21 **A Yes.**
22 Q If we add the 2020 elections to the 2022
23 elections, then we have 14 total contests.
24 Is that right?
25 **A Yes, correct.**

90

1 Q And that would include a mix of at least
2 one endogenous race and then the most recent two
3 election cycles of statewide contests?
4 **A Correct.**
5 Q And so if the time period we're looking
6 at is 2022 and 2020, then the Native preferred
7 candidate would have won 4 out of the 14 contests.
8 Is that correct?
9 **A Based on these notes, yes.**
10 Q And then if we skip over 2018 but add in
11 the 2016 to the 2020 and the 2022, then there are
12 nine contests for those three election cycles in
13 which the Native preferred candidate prevailed.
14 Am I right?
15 **A Yes, that's correct.**
16 Q And that's 9 out of 21 contests, right?
17 **A Yes.**
18 Q So setting aside 2018, for the other
19 most recent three election cycles, the white
20 candidate prevailed in District 9 in the majority
21 of the elections in those three election cycles,
22 correct?
23 **A That would be correct.**
24 Q And that's -- we said -- is that 21
25 contests, right?

91

1 **A I believe so.**
2 Q You would agree that's a larger sample
3 size than the six that you analyzed for your Walen
4 report?
5 **A That's true, yes.**
6 Q And, in fact, just the 2022 contests
7 alone would be a larger sample size than what you
8 looked at in the -- in your Walen report?
9 **A Correct.**
10 Q And as a general matter, the more
11 elections -- looking at more elections is better
12 than looking at fewer elections.
13 Is that a generally fair statement?
14 **A Typically. Again, you know, as long as**
15 **they're somewhat probative.**
16 Q Well, in fact, if you're looking at --
17 **A I'm not saying 2022 wasn't. I'm just**
18 **adding that qualifier to that general statement.**
19 **(Inaudible) any election at any time, you know.**
20 **So...**
21 Q Yeah. And, in fact, as we discussed,
22 the more probative elections would be the more
23 recent, endogenous, and those featuring a minority
24 candidate of the minority group challenging the
25 map?

92

1 **A Yes.**
2 Q Now, both in these notes but also in
3 your report on page 3, Table 1 on page 3 -- so I
4 guess what you've done here is, you have combined
5 District 9, District 9A, and District 9B and
6 summed up all the elections in those three
7 districts to report the defeat rate for Native
8 American preferred candidates across these five
9 election cycles.
10 Is that right?
11 **A In Table 1, yes. That's correct.**
12 Q So there's 108 elections where there's a
13 clear Native American candidate of choice.
14 Is that right?
15 **A Yes.**
16 Q And that's -- you get there by adding up
17 District 9, District 9A, and District 9B, right?
18 **A Correct.**
19 Q Now, we've discussed a bit that
20 District 9A has a very high Native American voting
21 age population.
22 Would you agree with that?
23 **A Yes.**
24 Q It's nearly 80 --
25 (Reporter interruption.)

February 13, 2023

93

1 Q It's nearly 80 percent.
 2 Is that your understanding?
 3 **A It's high. I don't remember the**
 4 **exact -- I mean, unless I put it in my report**
 5 **somewhere, I don't remember the exact number. But**
 6 **it's high.**
 7 Q Okay.
 8 **A Subdistrict 9A is 77.0 percent Native**
 9 **American VAP. That's what I wrote.**
 10 Q Okay. Now, we talked a bit earlier when
 11 we were talking about sort of your presentation of
 12 the three Gingles factors that one typically would
 13 not include a district with such a high minority
 14 population in the Gingles prong 3 analysis because
 15 the purpose of the Gingles prong 3 analysis is to
 16 determine whether white voters are blocking Native
 17 preferred candidates in an area where there aren't
 18 enough Native voters.
 19 Is that correct?
 20 **A Well, I mean, I included this because I**
 21 **was responding to Prof. Collingwood, and he**
 22 **included it.**
 23 Q But Dr. Collingwood didn't add 9A, 9B,
 24 and 9 together, right? You did that.
 25 **A I did that, yes.**

94

1 Q Okay. And so do you agree with me,
 2 though, that in a district with a large minority
 3 population, well above a majority and over
 4 three-quarters of the population of voters, that
 5 conducting a Gingles prong 3 analysis doesn't even
 6 make sense for that district?
 7 **A Well, it makes sense insofar as it**
 8 **confirms that where there's racially polarized**
 9 **voting and the district contains that many of a**
 10 **racial group, the time their preferred candidate**
 11 **of choice should win.**
 12 Q Do you understand the plaintiffs to be
 13 alleging that District 9A is packed with Native
 14 American voters, and the surrounding districts,
 15 there's cracked Native American voting population?
 16 **A I mean, are you representing that that**
 17 **is the case?**
 18 Q Yes. So the allegation is that
 19 District 9A is packed; there is cracked population
 20 in District 9B and in neighboring District 15.
 21 **A So it's not District 9 is packed, then.**
 22 Q The allegation is that District 9 is
 23 dilutive because it has an insufficient effective
 24 Native population, but the allegation is that 9A
 25 is packed and Native voters are cracked in the

95

1 surrounding voters.
 2 Does that make sense?
 3 **A Yes, yes.**
 4 Q So you would not -- the Gingles prong 3
 5 doesn't get at whether white voters are defeating
 6 the Native candidate of choice in a packed
 7 district, right? The purpose is to look at the
 8 districts where there's allegedly too few Native
 9 American voters, given the way that the lines were
 10 drawn?
 11 MR. PHILLIPS: Objection, calls for a
 12 legal conclusion.
 13 **A Well, again, I mean, I guess I would say**
 14 **it's just something that can be analyzed. That's**
 15 **probably not going to be the case where the Native**
 16 **American preferred candidate of choice is losing**
 17 **in a district that's packed in a hypothetical**
 18 **sense, no.**
 19 Q And, in fact, when we look at your notes
 20 here that are on the screen, which I think is
 21 Exhibit 6, on page 13 of the notes, you show that
 22 the Native preferred candidate wins 100 percent of
 23 the tested elections in District 9A, right?
 24 **A Yes.**
 25 Q And so that doesn't tell us what's

96

1 happening in the cracked -- the allegedly cracked
 2 populations outside of District 9A, right?
 3 **A That's correct.**
 4 Q And so if we're trying to determine
 5 whether or not white voters usually defeat Native
 6 preferred candidates in those areas outside of the
 7 packed district, we would most appropriately
 8 confine our Gingles prong 3 analysis to those
 9 areas outside the packed district.
 10 Do you agree with that?
 11 MR. PHILLIPS: Objection, calls for a
 12 legal conclusion.
 13 **A Again, I don't disagree necessarily.**
 14 **But to the extent to which 9A is part of this set**
 15 **of districts that's being analyzed, I included it.**
 16 Q Yeah, I get that.
 17 And it is being challenged insofar as
 18 the allegation is that it's been packed so heavily
 19 that that's the only district in which a Native
 20 preferred candidate would win.
 21 But to examine whether white bloc voting
 22 is usually defeating the candidates of choice in
 23 more districts than what was drawn, you would not
 24 look at the allegedly packed district for Gingles
 25 prong 3?

February 13, 2023

97

1 MR. PHILLIPS: Same objection.
 2 **A Well, I would just say that the district**
 3 **under challenge, I did look at it.**
 4 Q Okay. But let's take my proposition and
 5 assume that's true. And I think you've said you
 6 didn't necessarily disagree with that, right?
 7 **A Correct.**
 8 Q And if we exclude District 9A, the
 9 allegedly packed district, and look just at
 10 District 9 and District 9B in combination, then
 11 there are -- across the five analyzed years, there
 12 are -- is it 72 total elections?
 13 **A I guess it would be.**
 14 Q And among those 72 elections, the Native
 15 preferred candidate wins 30, and the white
 16 preferred candidate wins 40.
 17 Is that correct? Or 42, rather.
 18 **A Yes. 40, right? If I'm looking at this**
 19 **right.**
 20 Q Maybe it's 40. So it's -- I'm just
 21 trying to help myself do math here.
 22 So there's 23 Native -- you counted 23
 23 Native victories in LD 9. And is that 7 in 9B?
 24 **A Yes, looks like 7 to me.**
 25 Q So that's 30 for the Native preferred

98

1 candidates. And there's -- there are 72
 2 elections. Maybe it's the case -- we're trying to
 3 get at whether it's 40 or 42 victories for the
 4 white preferred candidate. It's possible that
 5 those are the two elections that didn't feature a
 6 racially polarized voting, perhaps. But --
 7 (Cross-talk.)
 8 **A I don't think those two races are being**
 9 **counted in this table I drew out by hand.**
 10 Q Okay. So then it would be 42 contests
 11 in which the white preferred candidate prevailed
 12 when we sum up District 9 and District 9B, and 30
 13 in which the Native preferred candidate prevailed?
 14 **A I believe that's correct, yes.**
 15 Q So that would be 58 percent of the time
 16 when we look at the districts that are alleged to
 17 have too little Native population to provide an
 18 equal opportunity to elect; 58 percent of the
 19 time, the white preferred candidate is winning,
 20 and 42 percent of the time, the Native preferred
 21 candidate is winning.
 22 Is that correct?
 23 **A Based on those calculations, that would**
 24 **be correct, yes.**
 25 Q And that would be indicative of a

99

1 Gingles prong 3 being present that the white
 2 preferred candidate is usually defeating the
 3 Native preferred candidate?
 4 MR. PHILLIPS: Objection, calls for a
 5 legal conclusion.
 6 **A In 9 and 9B added together, yes.**
 7 Q Okay. Now, you understand, based on our
 8 discussion earlier -- did you review the Complaint
 9 and the supplemental Complaint that were filed by
 10 plaintiffs in this case?
 11 **A I probably did. I can't tell you that I**
 12 **can remember much from it.**
 13 Q But you understand and you did some
 14 analysis -- or rather, you reviewed
 15 Dr. Collingwood's analysis and understand that
 16 District 15, the neighboring district, is also
 17 part of the claim in this case, right?
 18 **A Yes, yes.**
 19 Q And to the extent that plaintiffs claim,
 20 which I can represent it is, is about vote
 21 dilution as a regional matter, and not with regard
 22 to, you know, the particular district lines,
 23 because the challenge is to the lines, one could
 24 also add in District 15's results to District 9
 25 and District 9B to get a full picture of the

100

1 racially polarized voting and the Gingles prong 3
 2 factors for the whole challenged area, correct?
 3 MR. PHILLIPS: Object to the form,
 4 compound question.
 5 Q That was very compound. Let me break it
 6 down.
 7 So to the extent -- given that
 8 plaintiffs are challenging the regional drawing of
 9 the districts, then it would be -- it would make
 10 sense to -- as you did to some extent, to add
 11 together the challenged election results from both
 12 Districts 9 and 15?
 13 **A Well, I mean, one could make that**
 14 **argument. I don't know that two -- I mean, we're**
 15 **using this term "region." I don't know that two**
 16 **legislative districts are a region, per se.**
 17 **I mean, you can do what you're saying,**
 18 **certainly. I mean, it's just a matter of**
 19 **arithmetic.**
 20 Q And given the results that you saw in --
 21 given what we just saw with respect to District 9
 22 and District 9B, if we add in the results in
 23 District 15, there's an even stronger indication
 24 of the presence of Gingles prong 3 using that
 25 approach, correct?

February 13, 2023

101

1 MR. PHILLIPS: Object to form, calls for
 2 speculation.
 3 **A From what I remember in terms of the**
 4 **outcome of those races in LD 15, yes.**
 5 Q And, in fact, in your report, you don't
 6 dispute that Gingles prong 3 exists in LD 15,
 7 correct?
 8 **A Correct.**
 9 Q Now, in your notes, you have the 2022
 10 election results. I think it's perhaps the
 11 page -- let's see -- it's Bates stamped 0252, and
 12 it would be pages 9 to 10 of the PDF, I believe.
 13 So you see here on page 9, you write
 14 down the general election results for the 2022
 15 election in District 9, 9A, and 9B?
 16 Do you see that?
 17 **A Yes, yes.**
 18 Q And then on page -- well, just stick
 19 with this page. Is there a reason why you didn't
 20 include this most recent and endogenous election
 21 results in your Walen report?
 22 MR. PHILLIPS: Objection. To the extent
 23 it applies to the Walen case, it's outside the
 24 scope of Dr. Hood's opinion and work in this case.
 25 **A I did not get to a full analysis. I**

102

1 **mean, these are just some notes I took down off of**
 2 **the Secretary of State's election website. I did**
 3 **not -- I will state, I did not perform any kind of**
 4 **statistical analysis on the 2022 elections.**
 5 Q The reason for that was just simply a
 6 matter of the timing you had available before you
 7 had to submit the report?
 8 **A Yes, yes.**
 9 Q And do you agree that it would have been
 10 preferable to include all of the 2022 elections in
 11 that report, given that they're the most recent
 12 and some of them contain endogenous elections
 13 including endogenous elections with Native
 14 American candidates?
 15 **A Well, as we discussed, they certainly**
 16 **are the most recent set of elections held, yes.**
 17 Q And your report would have been more
 18 complete or would have been more fulsome had it
 19 added in these -- the eight 2022 contests for
 20 District 9?
 21 **A Well, I don't know that I would have**
 22 **done eight. I mean, Prof. Collingwood did eight.**
 23 **But some 2022 elections.**
 24 Q Which of the 2022 elections would you
 25 have included, if you had had time?

103

1 **A I would have to honestly look at that.**
 2 **I'm sure I would include some of the statewide**
 3 **races. Probably the -- probably LD 9 as a whole.**
 4 Q So the 2022 LD 9 endogenous election is
 5 one that you would have included?
 6 **A Yes, probably so.**
 7 Q The 2022 public service commissioner
 8 race had a Native American candidate, Ms. Moniz.
 9 Is that an election that it would have made sense
 10 to include?
 11 **A I certainly would have considered that**
 12 **factor, yes.**
 13 Q There were statewide elections for the
 14 U.S. Senate in 2022 and the U.S. House in 2022.
 15 Would those be ones that would have made sense to
 16 include?
 17 **A Probably so. I mean, probably the**
 18 **senate race.**
 19 Q Not the house race?
 20 **A Well, again, I didn't do this, so I will**
 21 **just say that I certainly would have included some**
 22 **statewide races. In the case of North Dakota, the**
 23 **house is a statewide race. So...**
 24 Q I think you had included the 2018
 25 Attorney General race.

104

1 Is that right?
 2 **A Yes, I think that's correct.**
 3 Q I assume it would have made sense, then,
 4 to also include the 2022 Attorney General race?
 5 **A Yes, and perhaps the gubernatorial race.**
 6 Q I can tell you, North Dakota elects the
 7 governor in the presidential cycle.
 8 **A Okay. Well, scratch that, then.**
 9 Q So then the other option is the 2022
 10 agricultural commissioner race, there was a second
 11 public service commissioner race in addition to
 12 the one that featured the Native American
 13 candidate, and the secretary of state rate race.
 14 Are there any among those that you have
 15 any reason to believe that you would not have
 16 included?
 17 **A I don't know that I would or wouldn't**
 18 **have included some of those other races. I guess**
 19 **it would just depend. So...**
 20 Q What would it depend on?
 21 **A Well, I mean, usually, if I'm doing a**
 22 **statewide race, I would probably start out with**
 23 **the higher profile statewide races like U.S.**
 24 **Senate, for instance. So...**
 25 Q So just so I can get a sense here, the

February 13, 2023

105

1 U.S. Senate race, you definitely would include
 2 that?
 3 **A Well, I guess if we were going back in**
 4 **time, yes.**
 5 Q And you included the U.S. Senate race
 6 from 2018, right?
 7 **A Yes.**
 8 Q So there's no reason not to include the
 9 2022?
 10 **A No. Certainly, if I had included a race**
 11 **from a previous analysis, from a previous election**
 12 **cycle, I probably would include it again. As long**
 13 **as it's contested. I mean, we don't learn a lot**
 14 **from uncontested races in these types of analyses.**
 15 **So...**
 16 Q And do you understand from
 17 Dr. Collingwood's report that all of these
 18 eight -- or sorry -- seven statewide elections
 19 from 2022 were contested that he included?
 20 **A I think in 2022, there were, yes. I**
 21 **guess I would say I typically use a two-party**
 22 **contested. So, you know, there's a Democrat and**
 23 **Republican candidate running.**
 24 Q Okay. So the U.S. House race, my
 25 understanding, featured an independent candidate

106

1 who had the backing of the Democratic party.
 2 Does that match your understanding?
 3 **A Well, it's not -- these are choices that**
 4 **a researcher is going to make. Again, I probably**
 5 **would not have included that if there was an**
 6 **independent candidate versus it being two-party**
 7 **contested.**
 8 Q But what if the RPV analysis showed that
 9 that candidate was the candidate of choice of the
 10 Native American voters in the district?
 11 **A Well, it could. But I mean, I'm making**
 12 **decisions about what races to analyze up front, I**
 13 **mean, is the way I do it.**
 14 Q So you start by excluding races that
 15 don't have a Democratic or Republican candidate?
 16 **A I typically -- I think I've been pretty**
 17 **consistent in these types of analyses in saying**
 18 **that I typically don't include races that aren't**
 19 **two-party contested.**
 20 Q But you agree, right, that if there is a
 21 clear candidate of choice and racially polarized
 22 candidates of choice in an election that doesn't
 23 have both political parties represented, there's
 24 nothing wrong with including that?
 25 **A I didn't say that. I'm just telling you**

107

1 **how I would go about doing this. That's what we**
 2 **were talking about.**
 3 Q So I have the U.S. Senate race from
 4 2022, the Attorney General race from 2022, the
 5 endogenous District 9 election, and then we also
 6 discussed that the statewide race featuring the
 7 Native American candidate for the public service
 8 commission would also be one that would be one to
 9 include.
 10 Is that right?
 11 **A Probably in that case, yes. I'm**
 12 **assuming, without knowing, that that was a**
 13 **two-party contested race.**
 14 Q It was, yes. The Republican candidate
 15 prevailed statewide, and then the Democratic
 16 candidate was Ms. Moniz, the Native American.
 17 So that would be one to include? Did
 18 you agree that that would be one to include?
 19 **A Yes, yes.**
 20 Q What about the Secretary of State
 21 position?
 22 **A You know, certainly, it would be a**
 23 **possibility if it's two-party contested.**
 24 Q And it was.
 25 **A Okay.**

108

1 Q So that would be one to include as well?
 2 **A Well, it would be one to consider**
 3 **including, certainly.**
 4 Q Any reason you can think of not to
 5 include it?
 6 **A Well, I mean, we're moving down ballot**
 7 **at this point. So...**
 8 Q So if we had done as we just discussed
 9 and added the 2022 U.S. Senate, the 2022 Attorney
 10 General, the endogenous District 9 state senate
 11 election, and the public service commissioner
 12 election featuring the Native American candidate,
 13 that would add four additional races to the six
 14 that you analyzed in the Walen report.
 15 Is that right?
 16 **A Yes.**
 17 Q And do you understand, from
 18 Dr. Collingwood's report, that the Native
 19 preferred candidates lost all four of those 2022
 20 elections?
 21 **A According to his report, yes.**
 22 Q And you don't have any reason to dispute
 23 that?
 24 **A Well, I don't have any reason to dispute**
 25 **the calculations that he made. Again, I guess I**

February 13, 2023

109

1 had a little more detailed calculation I would
2 make at that stage. So...
 3 Q In your Walen report, you found that of
 4 the six elections that you analyzed, that the
 5 Native preferred candidate won four of those six.
 6 Is that your recollection?
 7 **A That's my recollection sitting here,**
8 yes.
 9 Q And so the Native preferred candidate
 10 would have lost two of them, right, won four and
 11 lost two?
 12 **A Right. Yes, yes.**
 13 Q So if we were to add the elections that
 14 we discussed that you agreed would make sense to
 15 add from 2022, that would be six elections in
 16 which Native preferred candidates lost and the
 17 four elections in which the Native preferred
 18 candidate won in District 9, correct?
 19 **A Well, again, the losses are based on**
20 Prof. Collingwood's report. I mean, I would,
21 again, go through my calculations, as we detailed
22 in the spreadsheets, before -- I mean, I could
23 come to the same conclusion; I might not. So...
 24 Q Well, assume for me that Dr. Collingwood
 25 has accurately determined for the 2022 elections

110

1 which candidate would have prevailed in
 2 District 9. Assuming he's correct about that,
 3 then that would yield six elections for your -- to
 4 add to your -- six total elections in which the
 5 Native preferred candidate lost in the district,
 6 and the four elections that you already reported
 7 in which the Native preferred candidate prevailed,
 8 correct?
 9 **A Correct.**
 10 Q And so that would be 60 percent of the
 11 time, the white preferred candidate would have
 12 defeated the Native preferred candidate in the
 13 district?
 14 **A Well, under those calculations, yes. I**
15 mean, with the caveat that I didn't do that.
16 So...
 17 Q So the caveat is that -- is whether or
 18 not Dr. Collingwood is correct about the results.
 19 But you agree that it would make sense to add
 20 those elections to the analysis you already
 21 conducted?
 22 **A I would agree they could be added,**
23 certainly, yes.
 24 Q And to the extent Dr. Collingwood is
 25 right about who won in District 9 in those 2022

111

1 elections, then that would show 60 percent defeat
 2 rate for the Native American preferred candidates
 3 in District 9?
 4 **A Well, if I went -- again, with the**
5 caveat that I went through the same exercise and
6 made my calculations and came to the same
7 conclusion he did, then yes.
 8 Q And a 60 percent defeat rate for Native
 9 preferred candidates would constitute usually
 10 being defeated by white bloc voting, correct?
 11 **A Well, I guess it would meet the**
12 definition of more typically than not.
 13 Q And that's the definition that you apply
 14 to your Gingles prong 3 analysis?
 15 **A Correct, yes.**
 16 Q Now, when we discussed that if you add
 17 District 9 and District 9B together, the districts
 18 that are alleged to have insufficient voting
 19 population for Native American voters, and we
 20 found that 42 out of the 72 elections, the white
 21 preferred candidates prevailed -- do you recall
 22 that exercise we did just before this one?
 23 **A Yes.**
 24 Q That was just equally weighing each
 25 election, right? So from 2016 -- or rather,

112

1 equally weighing each election across all five
 2 years?
 3 **A That's correct.**
 4 Q And so if we were to give more weight to
 5 the more recent 2022 elections, more weight to the
 6 elections in which there was Native American
 7 candidates, and more weight to the endogenous
 8 elections, then the evidence showing white bloc
 9 voting usually defeating the Native preferred
 10 candidates would be even greater, correct?
 11 **A If you subset those elections based on**
12 those criteria, then I believe that's correct.
 13 Q For 9 and 9B together, it's 42 out of 72
 14 where the white preferred candidate wins,
 15 including all of the 2018 elections that
 16 Dr. Collingwood has opined feature special
 17 circumstances that warrant excluding them?
 18 **A If we were not excluding those, yes. I**
19 mean, I think we came to those calculations. I
20 don't disagree with the calculations as they were
21 made in that exercise. So...
 22 Q And if we were --
 23 **A The numerical result of those**
24 calculations. So...
 25 Q If we were to take out the 2018

February 13, 2023

113

1 elections, then the evidence in favor of white
 2 bloc voting would be even higher than the 42 out
 3 of 72 that we see including those elections,
 4 right?
 5 **A If we took out 2018, there would be**
 6 **fewer Native preferred candidates who would have**
 7 **won under those criteria, so yes.**
 8 MR. GABER: I think this is a good time
 9 for us to break.
 10 (Recess from 1:25 p.m. until 2:02 p.m.)
 11 MR. GABER: Back on the record.
 12 BY MR. GABER:
 13 Q Dr. Hood, welcome back from lunch. Did
 14 you have a chance to get something to eat?
 15 **A I did. Thank you.**
 16 Q So I'm going to shift gears this
 17 afternoon, but just a couple more points on the
 18 racially polarized voting topic.
 19 Is it your understanding that the state
 20 legislature adopted subdistricts in District 9 and
 21 in District 4 because of its belief that the
 22 Voting Rights Act would have required -- or might
 23 have been violated had elections occurred with the
 24 full district?
 25 MR. PHILLIPS: Objection, calls for

114

1 speculation and outside the scope of Dr. Hood's
 2 opinion and work on this case.
 3 **A Well, I mean, all I have to rely on in**
 4 **regard to that particular question is the**
 5 **legislative record and the transcripts I read from**
 6 **meetings that were held with the redistricting**
 7 **committee and various groups around the state.**
 8 **And I mean, again, this is just my**
 9 **opinion, obviously, from the outside looking in.**
 10 **But yes, I believe that the redistricting**
 11 **committee thought they were complying with the**
 12 **Voting Rights Act by creating these subdistricts.**
 13 Q And the reason for that is, the concern
 14 that in the absence of the subdistricts, if the
 15 state house elections were conducted in the full
 16 district, the Native American voters in the full
 17 district would not have the opportunity to elect
 18 their candidate of choice?
 19 MR. PHILLIPS: Objection. You're asking
 20 him to just speculate about what the legislature
 21 did and why. The question is pure speculation.
 22 **A I'm not sure if I can answer the second**
 23 **question as to what they believed. I was able to**
 24 **glean enough from the records I read on the first**
 25 **point, but I honestly am not very comfortable with**

115

1 **trying to discern what, you know, a group of**
 2 **people were thinking exactly. So...**
 3 Q Doesn't that just -- isn't it just
 4 purely logical? So if what you did glean was that
 5 they believed they needed to draw the subdistrict
 6 to comply with the Voting Rights Act and the
 7 subdistricts are a portion of the full districts,
 8 the only reason to do that would be because there
 9 was concern that the full district would not
 10 provide an opportunity and, therefore, there
 11 needed to be at least one state house seat, or
 12 there was that opportunity.
 13 Is there any other reason why one would
 14 do that to comply with the Voting Rights Act?
 15 MR. PHILLIPS: I'll object that it
 16 misstates his testimony and that it's a compound
 17 question and calls for speculation.
 18 **A Well, you know, splitting the**
 19 **legislative district as a whole into subdistricts**
 20 **in this case does provide for two single-member**
 21 **house districts, as we know.**
 22 **And given the fact that the Native**
 23 **American population is geographically sort of**
 24 **close to each other in terms of where they're**
 25 **located, you know, if you draw a subdistrict -- in**

116

1 **a lot of cases, I guess there are many different**
 2 **possibilities or permutations.**
 3 **But if you draw a subdistrict like the**
 4 **legislature did or the redistricting committee**
 5 **did, then you're certainly going to increase the**
 6 **odds that a Native American candidate of choice**
 7 **can be elected from a subdistrict.**
 8 Q But if it's the case that the rationale
 9 was to comply with the Voting Rights Act, then the
 10 belief would have to be that there's a problem
 11 under the Voting Rights Act with the full
 12 district, right? There's no other explanation, at
 13 least with respect to the VRA rationale?
 14 MR. PHILLIPS: I'll object to the extent
 15 it misstates his testimony.
 16 I believe his testimony was that it did
 17 comply with the Voting Rights Act and that the
 18 legislature thought it was in compliance with the
 19 Voting Rights Act. I think you've sort of
 20 misstated his testimony.
 21 So that's my objection.
 22 Q I'm not trying to state your testimony
 23 at all. What I'm trying to ask is, to the extent
 24 the VRA is the reason that the legislature adopted
 25 the subdistricts, then it follows that the concern

February 13, 2023

117

1 was that the full district with respect to
 2 District 9 and with respect to District 4 would be
 3 potentially in violation of the VRA.
 4 Do you understand what I'm saying?
 5 **A I guess you can infer that, you know.**
 6 **Again, I'm not -- I didn't interview this group of**
 7 **people, for instance. So...**
 8 Q But that would be -- if the VRA is the
 9 purpose and if the purpose is being logically
 10 applied, then the rationale is because there is
 11 concern that the full district might violate the
 12 VRA?
 13 MR. PHILLIPS: Objection, calls for
 14 speculation.
 15 He has not opined on this issue in his
 16 report. So you're veering pretty far off into
 17 what other people believe, and these are things
 18 that Dr. Hood has not opined on.
 19 That's my objection.
 20 **A Okay. So what was the last -- sorry.**
 21 **What was the last question?**
 22 Q I think it's the point that if you're
 23 logically applying the purpose to comply with the
 24 VRA to draw the subdistrict, then the necessary
 25 antecedent is that there's a belief that the full

118

1 district is a problem under the VRA?
 2 MR. PHILLIPS: Same objection.
 3 **A I guess you could say could be a**
 4 **problem, potentially. Not an absolute that it is**
 5 **a problem.**
 6 Q So let's shift gears. I think we
 7 discussed a little earlier, you have testified as
 8 an expert about the compactness of districts in
 9 previous cases, right?
 10 **A Yes.**
 11 MR. GABER: So I'm going to mark as
 12 Exhibit 7 the document Hood Vesilind versus
 13 Virginia State Board of Elections Expert Report.
 14 (Exhibit Hood-7 marked for
 15 identification and attached to the transcript.)
 16 BY MR. GABER:
 17 Q Dr. Hood, do you recognize this as your
 18 expert report in the Virginia State court case,
 19 Rema Ford Vesilind versus Virginia State Board of
 20 Elections?
 21 **A Yes.**
 22 Q And you were retained by the
 23 Commonwealth of Virginia there to defend them for
 24 the 2011 state senate plan as compliant with the
 25 Virginia constitution's requirement that districts

119

1 be compact.
 2 Is that right?
 3 **A Yes.**
 4 MR. PHILLIPS: I'll just object to the
 5 whole line of questioning to the extent that it
 6 exceeds Dr. Hood's opinion and work in this case.
 7 And if we can just agree that there's a
 8 standing objection for the whole line of
 9 questioning.
 10 MR. GABER: Yeah, I'll agree to the
 11 standing objection. I don't agree to the
 12 objection.
 13 MR. PHILLIPS: Understood. I don't want
 14 to object after every question.
 15 MR. GABER: Fair enough.
 16 Q So Dr. Hood, do you recall that the crux
 17 of the plaintiff's case in Vesilind was a
 18 challenge to six particular state senate districts
 19 as being non-compact as contrary to law?
 20 **A From what I -- I guess contrary to the**
 21 **Virginia state constitution. I think that's what**
 22 **it was technically.**
 23 Q Okay. And your ultimate opinion in that
 24 case was that the six districts that the
 25 plaintiffs challenged were, in fact, compact.

120

1 Is that right?
 2 **A I honestly have not looked at this in**
 3 **quite some time. I'm sure I have some kind of**
 4 **summary statement in the report.**
 5 **I think I argued that the districts**
 6 **certainly were not -- that the districts were not**
 7 **compact to the extent to which it was a violation**
 8 **of the state constitution, I guess. But again, I**
 9 **haven't looked at this in a while.**
 10 Q Let's turn to page 6 of the report,
 11 which I think is probably page -- no, it's page 6
 12 of the PDF as well.
 13 And one of the things you note is
 14 that -- so you have two tables here. They list
 15 the districts that are being challenged, right?
 16 **A Yes, correct.**
 17 Q And those were -- and this is the 2011
 18 Virginia state senate plan, Districts 19, 21, 28,
 19 29, 30, and 37, correct?
 20 **A Correct.**
 21 Q And so looking at -- you have the
 22 baseline plan, the one that preceded the 2011
 23 plan, and then you have the 2011 plan, right?
 24 **A Correct.**
 25 Q And you note that there was a decrease

February 13, 2023

121

1 in the compactness of these particular districts
 2 from the prior plan to the 2011 plan?
 3 **A That's correct.**
 4 Q Now, the Reock -- so you report the
 5 Reock scores, the Polsby-Popper scores, and the
 6 Schwartzberg scores.
 7 Is that right?
 8 **A Correct.**
 9 Q And am I correct that Reock compares the
 10 area of the district to the -- basically the
 11 smallest circle that will encompass the district?
 12 Is that a fair --
 13 **A Certainly, cliff note version, yeah.**
 14 **That's fine.**
 15 Q And Polsby-Popper does the same thing
 16 except it compares the length of the perimeter of
 17 the district to the area of the circle that
 18 encompasses it?
 19 **A Yes.**
 20 Q And the Schwartzberg one, I'm not going
 21 to remember.
 22 What is that?
 23 **A It's a perimeter to perimeter, compares**
 24 **the perimeter of the district to the perimeter of**
 25 **a circle with equal area.**

122

1 Q Okay. With respect to the six districts
 2 that were challenged in this case, the 2011
 3 versions, the Reock scores ranged from 0.15 to
 4 0.22.
 5 Is that correct?
 6 **A Looks like it, yes.**
 7 Q And the Polsby-Popper scores ranged from
 8 0.08 to 0.14.
 9 Is that right?
 10 **A Yes.**
 11 Q And the Schwartzberg scores ranged from
 12 0.1 to 0.16.
 13 Is that right?
 14 **A Yes. Yes.**
 15 Q Now, one of the -- there were three
 16 basic methodologies that I gathered that you
 17 followed in reaching the conclusion that these
 18 districts were compact.
 19 The first is that you compared the --
 20 each of the districts to previous districts that
 21 courts had upheld as compact, and then compared
 22 their compactness scores.
 23 Do you recall that?
 24 **A Yes.**
 25 Q And that would be -- in your view,

123

1 that's an appropriate, reliable methodology for
 2 determining whether an enacted district satisfies
 3 a compactness requirement?
 4 **A Well, I mean, if that scenario exists.**
 5 **Sometimes that scenario would not exist. But if a**
 6 **court in a particular state has spoken to this**
 7 **question, then yes, I think that's probative.**
 8 Q And that's with respect to a state law
 9 requirement of compactness, so you'd look to that
 10 state's courts to see what it had previously
 11 approved, right?
 12 **A Well, I mean, this particular case was a**
 13 **state case.**
 14 Q Right.
 15 **A So yes.**
 16 Q And along a similar vein, if the -- if
 17 federal courts or if the U.S. Supreme Court has
 18 deemed a particular district to be reasonably
 19 compact for purposes of the Voting Rights Act,
 20 then that would be a probative comparison to make
 21 in determining whether a proposed district, under
 22 the VRA, is reasonably compact?
 23 **A Well, yes, I think, but with the caveat**
 24 **that in this particular case, a court had spoken**
 25 **to some actual numbers, not just a district as**

124

1 **being compact, but, you know, what is compactness.**
 2 **What's compact and what's not compact.**
 3 **Again, I'm trying to remember what I did**
 4 **here. This was a while ago. But I think there**
 5 **was some particular numbers that were actually**
 6 **laid out by a court.**
 7 Q Okay. And the second sort of
 8 methodology that you employed was to compare the
 9 challenged districts to see whether there were
 10 other districts in the plan that had similar or in
 11 some cases lower compactness scores.
 12 Is that right?
 13 **A Yes, correct.**
 14 Q And then third methodology was to apply
 15 a metric that was from the scholarship from
 16 Profs. Pildes and is it Niemi?
 17 **A "Niemi."**
 18 Q "Niemi."
 19 Do you recall that?
 20 **A Yes.**
 21 Q And since it's kind of specific, I want
 22 to just draw your attention to the Pildes and
 23 Niemi method, and that's on page 13 of the
 24 Vesilind report. And then so we can see the
 25 bottom paragraph, please.

February 13, 2023

125

1 And I'll let you take a look at those.

2 **A Okay.**

3 **Okay.**

4 Q The methodology that you applied here

5 and that's written about in the Profs. Niemi and

6 Pildes report is in response to the racial

7 gerrymandering line of cases, right?

8 **A Correct, correct.**

9 Q And the methodology here is that if the

10 Reock score is above 0.16, or if the Polsby-Popper

11 score is above 0.06, or if the sum of those two is

12 above 0.22, then the district is considered

13 compact.

14 Is that correct?

15 **A Well, that's not how I would term it. I**

16 **would term it as what these two political**

17 **scientists are saying is that if it's below -- if**

18 **it's at this level or below, it's certainly**

19 **non-compact. I guess that's how I would phrase**

20 **it.**

21 Q The conclusion you reached -- an example

22 here is Senate District 28 from Virginia. You

23 noted that it had a Reock score of 0.15, which was

24 below the cutoff for compactness for the Reock

25 measure alone, but you concluded that it was, in

126

1 fact, compact because it satisfied the composite

2 index that they propose.

3 Is that right?

4 **A I'm reading.**

5 Q Sure.

6 **A Well, again, it's -- compactness is hard**

7 **to judge. We know it ranges on a lot of these**

8 **measures from 0 to 1.**

9 **So what's being said here is that this**

10 **particular district, at least under a composite**

11 **score, didn't reach a point to where these**

12 **researchers, Pildes and Niemi, would say that it**

13 **was not compact. So it was above that threshold.**

14 **It doesn't mean that it's compact, I**

15 **mean, because you can go quite further up the**

16 **scale, right. But it doesn't meet this threshold**

17 **that they're talking about here.**

18 Q And you considered this threshold and

19 this article by these professors to be a reliable

20 methodology that you used in your -- as one of the

21 bases for your conclusion in the Vesilind case,

22 right?

23 **A I did make use of it, yes.**

24 Q And, in fact, with respect to that

25 Senate District 28, it was only through the

127

1 composite score, that that alone allowed you to

2 opine, with respect to this methodology, that it

3 was a compact district, because if you'd just

4 looked at the Reock cutoff point, it would have

5 been in the non-compact category, right?

6 **A Yes, yes, yes. Using these various**

7 **cutoff points that are provided for this**

8 **particular methodology, yes.**

9 MR. GABER: I'm going to introduce as

10 Exhibit 8. Exhibit 8 will be the file Virginia

11 2012 to 2020 Maps.

12 And David, I will send that to you now.

13 (Exhibit Hood-8 marked for

14 identification and attached to the transcript.)

15 BY MR. GABER:

16 Q Dr. Hood, in the appendix to your

17 Vesilind report, you included sort of composite

18 maps that showed in that case the plaintiffs'

19 alternative plans overwritten over the enacted

20 ones. And we can look at those, too, if it's

21 necessary. But I've pulled the 2011 enacted plan

22 without that alternative map mapped onto it so we

23 could see it better.

24 Do you recognize this as -- we can zoom

25 in if you need to -- but as the 2011 Virginia

128

1 state senate plan?

2 **A From what I remember. I mean, again,**

3 **it's not -- I haven't looked at this lately.**

4 Q Okay. I assume you spent a fair bit of

5 time with it at the time.

6 **A Well, yeah, at the time.**

7 Q Okay.

8 **A There's been many maps drawn since then.**

9 **So...**

10 Q Yeah. So the -- let's scroll down to

11 the second page of this, please. And Districts 19

12 and 21 were among the maps -- or among the

13 districts that were challenged by the plaintiff in

14 the case.

15 Is that right?

16 **A From what I remember, yes.**

17 Q And your opinion was that Districts 19

18 and 21 were compact districts.

19 Is that correct?

20 **A Well, I don't know exactly what I said**

21 **about them without looking at the report.**

22 Q We can come back to it, but -- give me

23 one second.

24 MR. PHILLIPS: Just to be clear, my

25 standing objection relating to this prior case

February 13, 2023

129

1 applies to this exhibit as well as any others
 2 related to this former case.
 3 Q For the moment -- we're going to come
 4 back to this in a second, but can you go back to
 5 the Vesilind report, which is the previous
 6 exhibit. And then if you can go to page 24 and
 7 scroll down so the whole -- to the bottom part of
 8 this page in the overall opinion, the last
 9 sentence there.
 10 So Dr. Hood, your ultimate opinion was
 11 that after conducting your own analysis, it was
 12 your opinion that the 2011 Senate plan creates
 13 districts which are sufficiently compact and
 14 contiguous as required by the Virginia
 15 constitution.
 16 Is that your opinion?
 17 A Okay. I'm not saying it wasn't; I
 18 just -- I don't remember what I said.
 19 Q Sure, sure. And this was 2017, it looks
 20 like.
 21 Does that sound right?
 22 A I know it was pre-pandemic. So...
 23 Q Yeah. The next page says it was
 24 executed on January 12th, 2017.
 25 Okay. So let's go back -- now that

130

1 we've seen that, let's go back to the maps.
 2 So as part of your opinion, given that
 3 Districts 19 and 21 were among the six that were
 4 being challenged, your opinion was that they were
 5 sufficiently compact?
 6 A They would have had to have been, yes,
 7 based on what we just read.
 8 Q And if we could scroll down to the next
 9 page, please. This is getting close to where I am
 10 right now, to the D.C. area, and this view shows
 11 Districts 28, 29, 30, and 37, among others, but
 12 all four of those were among the ones that were
 13 challenged by the plaintiffs in the district as
 14 non-compact.
 15 Is that correct?
 16 A Yes.
 17 Q And do you see District 28 there?
 18 A Yes.
 19 Q That is a district that you opined was
 20 sufficiently compact, correct?
 21 A Correct.
 22 Q And do you see District 29?
 23 A Yes, yes.
 24 Q That's also a district that you opined
 25 was sufficiently compact, correct?

131

1 A Correct.
 2 Q And do you see District 30?
 3 A Yes.
 4 Q And that one, you can see it swings
 5 around -- what is that -- District 36.
 6 That's a district that you also opined
 7 was sufficiently compact?
 8 A Yes.
 9 Q What word would you use to describe how
 10 the southernmost part of that district is
 11 connected to its northernmost part?
 12 A Possibly duck continuity. But I don't
 13 know, and I don't remember specifically.
 14 Q Would you characterize that as a narrow
 15 connecting point?
 16 A Yes, it is.
 17 Q And is the same true with respect to
 18 District 28 where it -- where 29 has a finger that
 19 comes into it?
 20 A Yes.
 21 Q Nevertheless, that wasn't too much of an
 22 incursion or a thinness of connection for you to
 23 conclude that the districts were sufficiently
 24 compact, right?
 25 A Correct. I mean, that was my conclusion

132

1 in this case.
 2 Q And then do you see District 37 here as
 3 well?
 4 A Yes.
 5 Q And your conclusion there was that
 6 District 37 was sufficiently compact as well,
 7 correct?
 8 A Yes.
 9 Q And I think there -- is this the last
 10 page? Yeah. So that's the four were on this
 11 page, and the two were on the previous page.
 12 And all six of these districts were ones
 13 that you opined to be sufficiently compact?
 14 A Correct.
 15 Q And you haven't changed that opinion
 16 since you testified to that in court at the time?
 17 A No.
 18 MR. GABER: I'm going to mark as
 19 Exhibit 9 the document titled Fargo Close Up
 20 Enacted Plan.
 21 And I will send that to you now, David.
 22 (Exhibit Hood-9 marked for
 23 identification and attached to the transcript.)
 24 BY MR. GABER:
 25 Q Now, Dr. Hood, one of the North Dakota

February 13, 2023

133

1 legislature's stated goals in the committee report
2 that you included -- or that you cited to was that
3 districts be compact, correct?
4 **A Yes.**
5 Q And is it your view that the legislature
6 satisfied that goal?
7 **A Well, I did not do a complete state**
8 **analysis of the 2021 plan.**
9 Q Did you have any indication to believe
10 that the legislature failed to meet that
11 requirement in some respect?
12 **A Not necessarily, no.**
13 Q What I'm showing you here is -- as with
14 any area of the map where there's cities, it can
15 be kind of hard to see the particular districts
16 because they're smaller. There's more dense
17 population. So I've narrowed in to the Fargo,
18 North Dakota area.
19 Do you see that here?
20 **A Yes.**
21 Q Are there any districts here that you
22 see that appear to you to be not reasonably
23 compact?
24 MR. PHILLIPS: I'm going to object that
25 this is outside the scope of Dr. Hood's opinion

134

1 and work in this case.
2 Again, maybe so I don't have to object
3 every question about it, can we agree to a
4 standing objection on that?
5 MR. GABER: With respect to this
6 exhibit?
7 MR. PHILLIPS: Yes.
8 MR. GABER: Sure.
9 **A Not necessarily. Again, I mean, one of**
10 **the reasons we calculate compactness scores is so**
11 **we're not just using our eyes, though.**
12 Q But just part of it is looking at the
13 districts, right? That plays a role?
14 **A It can. I mean, again, visuals don't**
15 **play a role with compactness scores necessarily.**
16 **Compactness scores may be a reflection of what**
17 **someone's seen.**
18 Q But just looking at these Fargo area
19 districts, you're not identifying any that appear
20 to you to be unreasonably -- to not be reasonably
21 compact?
22 MR. PHILLIPS: Objection, asked and
23 answered.
24 **A Not necessarily, no.**
25 MR. GABER: Let's mark as Exhibit 10 the

135

1 file, Grand Forks Close Up Enacted Plan.
2 And let me send that to you, David.
3 (Exhibit Hood-10 marked for
4 identification and attached to the transcript.)
5 MR. PHILLIPS: I'll just object to any
6 questioning to this exhibit for the same reason,
7 it's outside the scope of Dr. Hood's opinion and
8 work in this case.
9 BY MR. GABER:
10 Q Okay. This is Exhibit 10. So this is a
11 close-up of the Grand Forks area districts and the
12 legislature's enacted plan.
13 And maybe -- is it possible to zoom in a
14 bit on this so Dr. Hood doesn't have to get so
15 close to his computer. Thank you.
16 Are there any districts here in the
17 Grand Forks area that appear to you to be not
18 reasonably compact?
19 **A Not necessarily, just looking at what --**
20 **looking at it with my eyes.**
21 Q You wouldn't expect to conclude that
22 something here was not compact?
23 **A Well, again, I would not just use my**
24 **eyes; I would calculate the compactness scores.**
25 **That's what they're for. So we sort of have an**

136

1 **apples-to-apples comparison that we can use.**
2 **Because sometimes things you're looking at with**
3 **your eyes can be slightly deceiving in terms of**
4 **how compact it is, you know, based on which score**
5 **you're using.**
6 Q And some of the things that can affect
7 the score as opposed to what you're looking at are
8 the use of, for example, rivers as boundaries.
9 Is that right?
10 **A It can. Rivers or coastlines. So**
11 **obviously there's no coastline in North Dakota,**
12 **but rivers could.**
13 Q And the way it would affect it is
14 generally to decrease the compactness score if
15 there's a natural boundary that's a squiggly line
16 as opposed to a straight line?
17 **A Some of them. Probably not Reock as**
18 **much as Polsby-Popper or Schwartzberg. They're**
19 **measuring different things. So...**
20 Q The Reock score, it would, to the extent
21 that the area of the district is smaller to where
22 there are the indents of the river, right, as
23 opposed to a straight line that went from the very
24 edge of all of the --
25 (Cross-talk.)

February 13, 2023

137

1 **A Right, right. But, you know, I guess it**
 2 **depends on how much the river is winding and how**
 3 **many indents there are. It might not make a huge**
 4 **difference. It might make a difference.**
 5 MR. GABER: And let's pull up as
 6 Exhibit 11 the Bismarck Close Up Enacted Plan.
 7 MR. PHILLIPS: I'll just object to any
 8 questioning on this exhibit for the same reason,
 9 it's outside the scope of Dr. Hood's opinion and
 10 work on this case.
 11 (Exhibit Hood-11 marked for
 12 identification and attached to the transcript.)
 13 BY MR. GABER:
 14 Q And this is a close-up of the enacted
 15 districts passed by the legislature in the
 16 Bismarck area.
 17 Are there any districts here that appear
 18 to you to be not reasonably compact?
 19 **A Well, I don't know about reasonably.**
 20 **Again, I would calculate the scores for these. 34**
 21 **is going to be less compact by some measures.**
 22 Q Any other ones?
 23 **A Well, I mean, we would derive scores for**
 24 **all of these, and we can make comparisons. But**
 25 **let's say 34 in this map is probably the least**

138

1 **compact. I mean, I can't see all of 31, 33,**
 2 **et cetera, 8, so I don't know about those.**
 3 Q So here you would say 34 is less compact
 4 than the others, but you wouldn't go so far as to
 5 say that it's not reasonably compact?
 6 **A Not necessarily. But again, I would**
 7 **probably need some more information on this.**
 8 Q So in your Virginia report, one of the
 9 things you did is compare to other districts in
 10 the state to see whether the challenged districts
 11 were at or perhaps better than some of the other
 12 districts in the state, right?
 13 **A That's correct, yes.**
 14 Q So that is actually the type of analysis
 15 that one would do -- it's one type of analysis you
 16 could do in determining whether a district is
 17 sufficiently or reasonably compact?
 18 **A Yes, and it's certainly a comparison**
 19 **I've made in the past. So...**
 20 Q And, in fact, in your report in this
 21 case, you compared the plaintiffs' proposed
 22 districts to the other districts enacted by the
 23 legislature?
 24 **A Yes. That was the primary comparison I**
 25 **was making, yes.**

139

1 Q Okay. So in your view, looking at the
 2 maps and comparing them is actually totally within
 3 the scope of the work that you did?
 4 **A I believe so, yes.**
 5 Q Okay. Now -- and I can pull up the
 6 compactness report if that would be helpful, or I
 7 could pull up the spreadsheet that you created.
 8 But is it your understanding that each
 9 of the enacted districts in the North Dakota state
 10 legislative plan exceed the compactness scores
 11 that you analyzed for the challenged districts in
 12 the Virginia case?
 13 Let me rephrase that because I'm not
 14 sure that's entirely correct.
 15 That the least compact district in the
 16 Virginia case that you found to be compact had a
 17 lower compactness score than all of the enacted
 18 North Dakota state legislative districts.
 19 Does that sound right to you?
 20 **A It sounds right, but I don't know. I**
 21 **mean --**
 22 MR. PHILLIPS: Just note my objection.
 23 Objection, outside the scope of the opinion and
 24 calls for speculation.
 25 Q So you recall the one district had a

140

1 Reock score of .15. Do you recall that, in the
 2 Virginia case?
 3 **A Yes.**
 4 Q I think that was District 28.
 5 **A We can certainly make that comparison,**
 6 **obviously.**
 7 Q And if we make that comparison, that
 8 district had a lower compactness score than any of
 9 the North Dakota enacted districts?
 10 **A Well, again, if I can see, then I could**
 11 **tell you.**
 12 Q Yeah. Let me do that for you.
 13 This is not an exhibit that I sent to
 14 the court reporter, but what I'm going to do, if
 15 I'm allowed to, is share my screen and show you
 16 the spreadsheet that you produced in discovery.
 17 Does that work?
 18 **A Sure.**
 19 MR. PHILLIPS: Is this the one that was
 20 produced in response to the subpoena to Dr. Hood?
 21 MR. GABER: It came with the -- I think
 22 that's the same as the one that came with the
 23 initial report. But that's what it is.
 24 THE WITNESS: I think I sent it again,
 25 possibly.

February 13, 2023

141

1 MR. PHILLIPS: I'm sorry, Mark. I think
 2 we named that file with, like, a Bates stamp
 3 number for just reference purposes, the one that
 4 Dr. Hood produced. That might be a good way to
 5 reference it.
 6 MR. GABER: All right. That works.
 7 (Reporter interruption.)
 8 MR. GABER: So this is Bates stamped
 9 HOOD-0001. I put it in the chat, and I am going
 10 to -- since I put it in the chat, can you all do
 11 the screen share? Let me do it because I'm going
 12 to do some sorting functions.
 13 A/V TECH: Not a problem. I can also
 14 allow you to control the PC.
 15 MR. GABER: That's a bad idea.
 16 (A discussion was held off the record.)
 17 (Exhibit Hood-12 marked for
 18 identification and attached to the transcript.)
 19 BY MR. GABER:
 20 Q So this is the Excel spreadsheet that
 21 you produced -- or you created with the
 22 compactness scores for the enacted districts in
 23 the North Dakota legislative plan.
 24 Is that right?
 25 A Yes.

142

1 Q So I'm going to use the sort function
 2 here and sort the Reock scores from -- well, let's
 3 see. I don't want to sort it alphabetically.
 4 Let's see if this works.
 5 All right. So in the enacted plan, do
 6 you see that the lowest Reock score is 0.17 for
 7 District 34?
 8 A Yes.
 9 Q And that's higher than the District 28
 10 from the Virginia case that was 0.15, correct?
 11 A Correct.
 12 Q And in the Virginia case, you found that
 13 District 28 was compact, correct?
 14 A I think I said reasonably compact was
 15 the term. So...
 16 Q Okay. So using that measure, then it
 17 would appear as though the North Dakota
 18 legislature -- every one of the districts would
 19 satisfy that metric of reasonable compactness
 20 because they're all higher than the score for the
 21 Virginia district you likewise found to be
 22 reasonably compact.
 23 Is that fair?
 24 A That's a true statement. They're all
 25 higher than 0.15.

143

1 Q And then I'm going to sort by the
 2 Polsby-Popper scores. And here, the lowest
 3 Polsby-Popper score is again District 34, and
 4 actually, it matches District 46. They're both
 5 0.19.
 6 Do you see that?
 7 A Right.
 8 Q Now, we can pull it up again, but in the
 9 Virginia case, the challenged districts, the
 10 Polsby-Popper scores ranged from 0.08 to 0.14.
 11 Does that sound right to you?
 12 A If that's -- if you're representing
 13 that's what it is, then --
 14 Q I have it in front of me.
 15 A Okay. Okay.
 16 (Cross-talk.)
 17 Q So assuming that's correct -- and I
 18 think we actually -- when it was up in front of
 19 you, I think you testified about it.
 20 The 0.19 that's the lowest in the
 21 enacted plan for North Dakota would be higher than
 22 any of the six that were challenged in Virginia
 23 that you found to be reasonably compact?
 24 A Yes.
 25 Q And so using that comparison, under that

144

1 framework you employed, all of the North Dakota
 2 enacted districts would likewise be reasonably
 3 compact?
 4 A Under that framework, yes.
 5 Q And you don't see anything wrong with
 6 that framework, right? It was the framework you
 7 adopted and applied in the Vesilind case?
 8 A Yes, that's correct.
 9 Q And so to the extent a district falls
 10 within the range of the enacted North Dakota
 11 legislative districts, it too would qualify as a
 12 reasonably compact district?
 13 A Well, at least compared to those
 14 Virginia districts.
 15 Q And compared to the North Dakota
 16 districts?
 17 A Well, I mean, we can make a comparison
 18 within the North Dakota districts if we're looking
 19 within a state plan.
 20 Q But to the extent that the lowest North
 21 Dakota district is reasonably compact by the
 22 method that you have applied in cases, then a
 23 district that's higher than that district, or at
 24 least equal to or higher, would itself be
 25 reasonably compact?

February 13, 2023

145

1 MR. PHILLIPS: Objection, calls for a
 2 legal conclusion, calls for speculation.
 3 **A Based on that Virginia comparison I did,**
 4 **yes. Again, that was in Virginia. So it was a**
 5 **state-specific comparison.**
 6 Q Although part of that was not
 7 state-specific; it was looking at -- one of the
 8 three methods you employed was to use the paper
 9 that Prof. Pildes and Niemi had written, correct?
 10 **A That's correct. I did look at that.**
 11 Q And all of the North Dakota enacted
 12 state legislative plans are reasonably compact
 13 under that metric, correct?
 14 **A Virginia?**
 15 Q All of the North Dakota --
 16 **A All the North Dakota -- well, they're**
 17 **all higher than that, yes.**
 18 Q And so employing that methodology, which
 19 you have in the past, would lead you to conclude
 20 that all of the enacted North Dakota state
 21 legislative districts are reasonably compact?
 22 MR. PHILLIPS: Objection, outside the
 23 scope of his opinion.
 24 **A Well, I think it was, quote,**
 25 **sufficiently compact, unquote, but...**

146

1 Q Okay. Do you see a different between
 2 sufficiently compact and reasonably compact?
 3 **A I don't know. I mean, for some reason,**
 4 **I chose to use that qualifier, so I'll stick with**
 5 **it.**
 6 Q So in your expert report, when you were
 7 assessing District 9 -- or rather plaintiffs'
 8 demonstrative versions of District 9, you compared
 9 it to the other enacted legislative districts, and
 10 then you also narrowed and compared it to the
 11 enacted version of District 9 in terms of
 12 compactness.
 13 Does that sound right to you?
 14 **A Yes, that's correct. That's fair.**
 15 Q And I take your point on the first score
 16 to be that when compared to other North Dakota
 17 districts, the demonstrative districts were on the
 18 lower end of the statewide districts.
 19 Is that fair?
 20 **A In terms of ranking, yes.**
 21 Q But they were not the lowest, right?
 22 **A I don't think -- I don't think any of**
 23 **them were ever the lowest, no.**
 24 Q And we've established that, by your own
 25 methodology that you've employed in the past, that

147

1 all of the North Dakota enacted districts are
 2 sufficiently or reasonably compact?
 3 MR. PHILLIPS: Object to the form.
 4 **A Well, again, comparing it to that**
 5 **Virginia case, they're above those threshold**
 6 **levels, yes.**
 7 Q And so the same would hold true for
 8 plaintiffs' demonstrative districts; they are both
 9 above the Virginia level that you found to be
 10 compact, but they're also above other districts
 11 within the North Dakota plan that you also find to
 12 be sufficiently compact.
 13 Is that right?
 14 **A That's correct. None of the**
 15 **demonstrative districts are at the -- are the**
 16 **lowest -- literally the lowest in the state plan.**
 17 Q And with respect to your -- and they're
 18 higher than the Virginia plan as well, correct?
 19 **A Yes, that's correct.**
 20 Q Now, you spend a bit of time comparing
 21 plaintiffs' demonstrative districts to the enacted
 22 version of District 9 in terms of compactness,
 23 correct?
 24 **A Yes.**
 25 Q And in terms of the other districting

148

1 principles that you looked at, that's your main
 2 comparison is between the proposed District 9 by
 3 the plaintiffs and the enacted version of
 4 District 9, right?
 5 **A Yes.**
 6 Q The enacted version of District 9 is a
 7 rectangle, more or less, right?
 8 **A Fair, yes.**
 9 Q And do you understand the question, in
 10 terms of compactness for Voting Rights Act
 11 purposes, to be a comparison to a perfect
 12 rectangle, or is it about whether or not the
 13 district is reasonably compact standing alone?
 14 MR. PHILLIPS: Object to form.
 15 **A My understanding is that it would be**
 16 **reasonably compact on its own.**
 17 Q And so the real comparison that we would
 18 want to do is determine whether or not the
 19 proposed district standing on its own is
 20 reasonably compact?
 21 **A Well, and we can do that from my report.**
 22 Q Correct.
 23 **A It places the demonstrative districts**
 24 **within the statewide plan as a whole. So...**
 25 Q Right. And I think we just established

February 13, 2023

149

1 that compared -- given that the -- your conclusion
 2 that all of the enacted districts are reasonably
 3 compact or sufficiently compact, whichever term we
 4 want to use, given that the demonstrative
 5 districts fall within that range, they too would
 6 be characterized as sufficiently or reasonably
 7 compact?
 8 **A Again, with the caveat based on what I**
 9 **said in the Virginia case, yes.**
 10 Q On page 6 of your report -- and this is
 11 with respect to demonstrative District 1. In the
 12 first paragraph under part A there, the last
 13 sentence, you note that the part of the boundary
 14 for the Spirit Lake reservation is contiguous with
 15 a portion of the demonstrative District 1
 16 boundary.
 17 Do you see that?
 18 **A Yes.**
 19 Q What is the salience of that
 20 observation?
 21 **A I don't know that it's -- I don't know**
 22 **how important that is. That's just an**
 23 **observation, which is the case, that part of the**
 24 **reservation boundary is part of the boundary for**
 25 **the district. I'm just -- it's just a statement.**

150

1 Q I just want to know what your -- I need
 2 to know what your opinions are about it. So I
 3 guess I didn't understand --
 4 **A Right. I don't know that it means any**
 5 **more than literally what it says.**
 6 Q Okay. That actually -- one of the
 7 state's -- or one of the legislature's criteria
 8 from its report is respecting the boundaries of
 9 the reservations in the state.
 10 Do you recall that?
 11 **A Yes, that's correct.**
 12 Q And we'll bring up the map in a bit, or
 13 we can do that now if you'd like. But the enacted
 14 plan, District 15 also follows the boundary of the
 15 Spirit Lake reservation in the same manner that
 16 plaintiffs' demonstrative plan does.
 17 Does that seem right to you?
 18 **A Yeah. I do recall that, yes.**
 19 Q In your analysis of the compactness of
 20 plaintiffs' proposed demonstrative districts, you
 21 did not seek to compare the scores to other
 22 districts that courts have upheld under the VRA as
 23 reasonably compact, correct?
 24 **A That's correct, yes.**
 25 Q That's the type of analysis that you did

151

1 in the Vesilind case -- or that's one of the types
 2 of analyses that you did in the Vesilind case,
 3 however, right?
 4 **A Well, in that -- again, in that**
 5 **particular case, there was a Virginia state court**
 6 **that had made certain specific observations about**
 7 **compactness in districts. So...**
 8 Q If the -- say the U.S. Supreme Court has
 9 determined a particular district to be reasonably
 10 compact for VRA purposes, one thing that could be
 11 done is to look at the compactness scores of that
 12 district and compare it to a proposed district to
 13 see whether it satisfies the test for reasonable
 14 compactness for VRA purposes, right?
 15 MR. PHILLIPS: Objection, speculation,
 16 calls for a legal conclusion.
 17 **A That comparison could be made, yes.**
 18 Q And that would be a similar type
 19 comparison to what you did in Virginia except in
 20 the context of the VRA rather than the state
 21 constitution, right?
 22 **A Yes.**
 23 Q That's not something that you did here,
 24 right?
 25 **A Correct.**

152

1 Q Now, Dr. Collingwood noted in his report
 2 that the overall compactness score for the plan as
 3 a whole in the enacted plan was the same as that
 4 in plaintiffs' demonstrative plans.
 5 You don't dispute his report in that
 6 regard, correct?
 7 **A Yeah, I think he was just looking at**
 8 **maybe the mean score for the state.**
 9 **Is that correct?**
 10 Q I think so.
 11 **A Something like that. No, not**
 12 **necessarily, no.**
 13 Q And one of the things you noted in your
 14 Vesilind report -- and we can pull that back up,
 15 for you to see, page 22.
 16 MR. PHILLIPS: Same objection on this
 17 exhibit, that it's outside the scope.
 18 Mark, maybe a short bio break whenever
 19 it makes the most sense.
 20 MR. GABER: Yep.
 21 Q So in this part of your report,
 22 Dr. Hood, for Vesilind, for the Virginia case, you
 23 were responding to Prof. McDonald's analysis where
 24 he had reported the degradation in compactness
 25 scores from alternative districts that the

February 13, 2023

153

1 plaintiffs were proposing to those same numbered
2 districts in the enacted plan.
3 Does that sound familiar?
4 **A A little bit, yes.**
5 Q And the point you make here is that, you
6 know, sometimes it doesn't make sense to compare a
7 numbered district in one plan to a numbered
8 district in another plan because those district
9 boundaries are different, and it might make sense
10 to look more at the statewide results for the map
11 as a whole.
12 Does that fairly describe the point
13 you're making here?
14 **A Let me look at this for a second.**
15 Q Sure.
16 **A Yeah, I do say that here.**
17 Q So it does make sense, in this context
18 as well where the similar situation is happening,
19 to -- where there's a numbered district compared
20 to another numbered district in a different plan
21 that covers different territory, that looking as
22 well at the plan as a whole is a useful piece of
23 information to help disentangle those differences.
24 Is that fair?
25 **A Well, I think that's fair.**

154

1 **Again, I'm responding to a particular**
2 **measure that Prof. McDonald has been utilizing in**
3 **this particular -- in that case that we've been**
4 **talking about in Virginia.**
5 Q And that's the degradation from --
6 **A Yes, yes.**
7 Q -- from the alternative map to --
8 **A Degradation measure.**
9 MR. GABER: Well, let's go ahead and
10 take a break now.
11 (Recess from 3:08 p.m. until 3:19 p.m.)
12 BY MR. GABER:
13 Q Dr. Hood, welcome back from the break.
14 Now, I am going to mark as an exhibit --
15 I think we are on 13 -- a document that's titled
16 Plaintiffs Demonstrative Plan 1 Map.
17 (A discussion was held off the record.)
18 (Exhibit Hood-13 marked for
19 identification and attached to the transcript.)
20 BY MR. GABER:
21 Q Dr. Hood, do you recognize this as the
22 enacted plan statewide view of -- I'm sorry. Let
23 me start that over.
24 Do you recognize this as Plaintiffs'
25 Demonstrative Plan 1 for the entire state view?

155

1 **A Yes, from what I recall, yes.**
2 Q And if you look at District 9 in this
3 plan, in Benson County, do you see that it is --
4 the northern border of Benson County is a very
5 squiggly line that is the Devils Lake boundary?
6 **A Okay. I mean, I see what you're talking**
7 **about, yes.**
8 Q And then just below that, do you see
9 another river boundary that's the Sheyenne River
10 in Eddy County?
11 **A Well, I'm just going to take your word**
12 **for it.**
13 Q You didn't look --
14 **A I couldn't tell you where the Sheyenne**
15 **River was necessarily. So...**
16 Q So in looking at the map, you didn't
17 look to any of the -- well, when you were doing
18 the compactness analysis, did you look at the
19 visual -- did you have a visual look at the map?
20 **A Sure, sure.**
21 Q And did you notice the river and lake
22 boundaries?
23 **A Yes, I did.**
24 Q Did you do anything to determine whether
25 those natural boundaries were affecting the

156

1 compactness scores?
2 **A Well, those boundaries, if they are**
3 **affecting the scores, are going to get picked up**
4 **in the scores that I ran. So...**
5 Q Right. But the effect wouldn't, right;
6 you would just get the score?
7 **A Well, to compare -- yeah, to compare an**
8 **effect, though, you'd have to have some**
9 **hypothetical to compare against it, I guess is**
10 **what I would say.**
11 Q So as we discussed earlier, I think you
12 said in particular the Polsby-Popper and maybe the
13 Schwartzberg, because those are based on
14 perimeter, those scores decreased as a result of
15 these types of squiggly river boundaries?
16 **A More so than Reock would, yes.**
17 Q So if this were a straight line, the
18 compactness score for proposed District 9 here
19 would be higher?
20 **A Well, most likely -- I mean, this map is**
21 **not super detailed, but most likely, if this were**
22 **a straight line instead of following a river**
23 **boundary, then yes, the perimeter scores would**
24 **probably be higher.**
25 Q And this river -- sorry -- the Devils

February 13, 2023

157

1 Lake boundary, that is actually the county
 2 boundary as well; the county itself has that --
 3 Benson County itself has that sort of squiggly
 4 Devils Lake boundary.
 5 Is that right?
 6 **A From what I recall, yes.**
 7 MR. GABER: Okay. We can take this down
 8 for now.
 9 Q Now, looking back at your report,
 10 page 4, this is the analysis of LD 15 section of
 11 your report?
 12 **A Okay.**
 13 Q It's correct, right, that in your
 14 report, you don't contest that with respect to
 15 just looking at District 15, that Gingles prongs 2
 16 and 3 are established there.
 17 Is that right?
 18 **A So say that one more time.**
 19 Q That Gingles prongs 2 and 3, you agree,
 20 are established with respect to District 15 in the
 21 enacted plan?
 22 **A Well, I state that, so yes.**
 23 Q Okay.
 24 **A Yeah, I mean, it's stated there in the**
 25 **report.**

158

1 Q What you do say, though, is that Gingles
 2 prong 1 is not established because District 15 is
 3 not a majority Native American district.
 4 Do I have that right?
 5 **A Yeah, that's correct.**
 6 Q Now, I think we talked a little bit
 7 earlier at the beginning of our conversation today
 8 about this, but you understand that Gingles
 9 prong 1 is focused on whether or not an
 10 alternative district to the enacted one that's
 11 challenged can be drawn in which there would be a
 12 majority Native population.
 13 Is that correct?
 14 **A Yes.**
 15 Q And so this conclusion about Gingles
 16 prong 1 here in your report isn't actually about
 17 Gingles prong 1; it's just an observation that
 18 enacted District 15 isn't itself a majority Native
 19 voting age population district, correct?
 20 **A Correct.**
 21 Q And you don't dispute that the
 22 plaintiffs' demonstrative plans are majority
 23 Native voting population districts, correct?
 24 **A Correct. They are.**
 25 Q And they include the Native population

159

1 that's currently included in enacted District 15,
 2 right?
 3 **A Correct. I guess I would say most of**
 4 **it. You know, I'd have to do, like, a detailed**
 5 **analysis to say everybody was included. But most**
 6 **people, yes, are included.**
 7 Q And so in that respect, the
 8 demonstrative districts are themselves Gingles
 9 prong 1 demonstrative districts that satisfy the
 10 requirement there, right?
 11 **A Well, they're majority Native American**
 12 **districts, yes.**
 13 MR. GABER: I'll mark as Exhibit 14 the
 14 document titled Government Admin Committee Report.
 15 (Exhibit Hood-14 marked for
 16 identification and attached to the transcript.)
 17 BY MR. GABER:
 18 Q Dr. Hood, do you recognize this as --
 19 it's a long report of the legislature, but it
 20 includes other things. But among what it includes
 21 is the joint redistricting committee's discussion
 22 of the history of redistricting in North Dakota,
 23 the legal framework, and then a discussion of the
 24 priorities that guided this legislative
 25 redistricting process.

160

1 **A Yes, from what I recall, that's correct.**
 2 Q And if we can turn to page 28 of the
 3 document, please. And maybe scroll down a bit,
 4 please. Down to the Population Deviation section.
 5 So you see the section here titled
 6 Population Deviation?
 7 **A Yes.**
 8 Q And do you see that the legislature sets
 9 as its goal that the overall range for the plan be
 10 within 10 percent population deviation?
 11 **A Correct.**
 12 Q And they note that in the plan being
 13 considered by the committee -- and I think you
 14 would agree that that's the plan that actually was
 15 adopted -- the overall deviation was 9.87 percent
 16 with the largest district being 4.88 percent over
 17 ideal and the smallest 4.99 below.
 18 Do you see that?
 19 **A Yes.**
 20 Q Now, nowhere here does the legislature
 21 indicate that it has some preference for being
 22 close to zero as opposed to being within the
 23 10 percent range, right?
 24 **A Correct.**
 25 Q If you could turn to your report on

February 13, 2023

161

1 page 6, please. And this is again with respect to
2 demonstrative District 1. The 3.14 percent that
3 demonstrative District 1 deviates, that's within
4 the goal of the legislature, right?
5 **A It would be in that plus or minus**
6 **5 percent, yes.**
7 Q Have you looked to rank demonstrative
8 District 1 with respect to the other districts as
9 you had done for the compactness scores?
10 **A I don't recall doing that comparison.**
11 Q Would you be surprised to find that it's
12 about in the middle of the districts in terms of
13 population deviation?
14 **A Not necessarily, no.**
15 Q It's actually about within the middle of
16 the 5 percent -- 0 to 5 percent, right?
17 **A Right.**
18 Q So the demonstrative district satisfies
19 the legislature's goal for population deviation?
20 **A Again, it certainly falls within those**
21 **bounds.**
22 Q And that's the case with respect to both
23 demonstrative districts?
24 **A I believe so, yeah. The other was plus**
25 **4.53 percent. So...**

162

1 MR. GABER: Now, if we could mark as
2 Exhibit 15 the file Enacted Map Statewide.
3 And let me get that over to you, David.
4 (Exhibit Hood-15 marked for
5 identification and attached to the transcript.)
6 BY MR. GABER:
7 Q Dr. Hood, do you recognize this as the
8 2021 Enacted State Legislative Plan for North
9 Dakota?
10 **A Yes.**
11 MR. GABER: And LaVar, would you mind
12 zooming in to the top right part of this with the
13 yellow and pink district. Thank you.
14 Q Now, for the district -- I'm sorry. For
15 the state house map, District 9A -- District 9
16 splits Rolette County, Towner County, and Cavalier
17 County.
18 Do you see that?
19 **A Yes.**
20 Q So that's three out of three of the
21 counties that are included, the enacted plan
22 splits for the state house map.
23 Is that right?
24 **A It's a little hard to see. Is Rolette**
25 **County split within District 9?**

163

1 Q Yeah. You see the area north of 9A
2 there, the gray kind of more faded lines represent
3 the county borders.
4 **A Right. But is Rolette County wholly**
5 **contained within LD 9, I guess is the question.**
6 Q So I'm talking about the state house
7 version of the map.
8 **A Okay. Fair enough. Yes.**
9 Q So for purposes of the state house,
10 within District 9, Rolette, Towner, and Cavalier
11 County are all split?
12 **A Yes, yes.**
13 Q Now, if you could look at -- we'll keep
14 this up on the screen, please. But if you can
15 look at page 7 of your report. In the Communities
16 of Interest section on the bottom of page 7.
17 **A Okay.**
18 Q You talk about county splits, and then
19 you say, In the enacted plan, LD 9 splits only
20 Towner County.
21 Do you see that?
22 **A Yes.**
23 Q Now, setting aside the state house
24 version where all three of the counties are split,
25 with respect to the state senate version of

164

1 District 9, the entire district, your statement in
2 your report, that's not correct, right? You see
3 that it splits both Cavalier and Towner counties?
4 **A It should say Cavalier as well.**
5 Q So that's two of the three counties are
6 split in the state senate version of District 9?
7 **A Right.**
8 Q And that's an error in your report, I
9 gather?
10 **A Yeah, it definitely should say Cavalier**
11 **County.**
12 Q And then let's pull up -- let's pull
13 back up, please, Exhibit 13. We're going to go
14 back and forth between these. 13 is the
15 Demonstrative Plan 1. If you could zoom in to the
16 District 9 and 15 area.
17 So you note that plaintiffs'
18 demonstrative plan 9 -- in your report, you note
19 that it splits Eddy County, Pierce County, and
20 Rolette County, right, so that's three of the four
21 counties it covers.
22 **A Yes.**
23 Q Now, the split that's contained in Eddy
24 County, that's the same exact split that the
25 enacted plan District 15 has for Eddy County,

February 13, 2023

165

1 right?

2 **A Right.**

3 Q And that's to adhere to the boundaries

4 of the Spirit Lake reservation, which is along the

5 Sheyenne River.

6 Is that right?

7 **A Right. That's where the reservation**

8 **boundary would be, yes.**

9 Q And that's one of the state's -- in its

10 committee report, that's one of the criteria,

11 adhering to the boundaries of reservations?

12 **A Yes, yes.**

13 Q So --

14 (Cross-talk.)

15 Q Sorry, go ahead.

16 **A I'm saying, that's correct, it was in**

17 **that report.**

18 Q So one of the four splits -- sorry. One

19 of the three counties that are split in

20 plaintiffs' demonstrative plan, plan 1, is to

21 adhere to the requirement of the legislature to

22 follow the reservation boundary, and that's why

23 Eddy County is split?

24 **A Well, it certainly keeps the reservation**

25 **within 9, yes.**

166

1 Q And by comparison to enacted plan's

2 state house map, the same number of counties are

3 split in plaintiffs' demonstrative plan for the

4 state house, which is the whole district, as in

5 the enacted plan, correct?

6 **A Three and three, yes.**

7 Q Let's switch back to the enacted map,

8 please, which was Exhibit 15. And take a look at

9 District 15 here.

10 District 15 includes all of Ramsey

11 County, but then part of Towner County, part of

12 Benson County, and part of Eddy County, right?

13 **A Right.**

14 Q So District 15 has three split counties

15 and one whole county?

16 **A Yes.**

17 Q And that's the exact same count as

18 Plaintiffs' Demonstrative Plan 1, correct, three

19 counties that are split and one whole county?

20 **A For demonstrative District 1, right?**

21 Q Right.

22 **A Yes.**

23 Q And as we mentioned earlier, one of

24 those boundaries is exactly the same. That's the

25 Eddy County split.

167

1 **A Right. That's correct.**

2 Q So on this score of county splits,

3 plaintiffs' Demonstrative District 1 is

4 essentially the same on that score as the enacted

5 Districts 9 and 15?

6 **A Well, in 9, I guess if you go to the**

7 **house districts, if that's what we're talking**

8 **about, yes.**

9 Q And for the state senate, two-thirds of

10 the counties in District 9 are split, two of the

11 three?

12 **A That's correct.**

13 Q And it's the same entirely as

14 District 15, three split counties and one whole

15 county, right?

16 **A Correct.**

17 Q And the plaintiffs' demonstrative

18 District 1 puts Benson County back together whole,

19 right?

20 **A I believe so, yes.**

21 Q And we can take a look at that if you'd

22 like to see it.

23 **A Okay. I mean, I think that's correct.**

24 MR. GABER: That's Exhibit 13. The

25 third to the last tab there, LaVar. Thank you.

168

1 Q So you see Benson county is whole there?

2 **A Yes, yes.**

3 Q Your Communities of Interest discussion

4 in your report focuses on county splits, right?

5 **A Yes.**

6 Q That term means more than split

7 counties, right?

8 **A Well, communities of interest can be**

9 **more than counties, certainly.**

10 Q Did you analyze any communities of

11 interest in your report other than counties?

12 **A No.**

13 Q Did you -- we've talked about how

14 respecting reservation boundaries is a priority of

15 the legislature, right?

16 **A Correct, yeah.**

17 Q And did you look to see whether the

18 enacted plan respected both the reservation

19 boundaries and the off-reservation trust land for

20 the Turtle Mountain tribe?

21 **A Well, I believe it did. I'm not sure**

22 **about the trust land. But the reservation was**

23 **contained within the district.**

24 Q And -- but you don't -- I guess earlier

25 we talked about how you don't have any particular

February 13, 2023

169

1 knowledge or experience about Native American
2 issues generally or voting patterns or
3 sociological history or whatnot, right?
4 **A That's correct.**
5 Q Would it surprise you to know that the
6 trust lands are important, you know, holdings for
7 the Turtle Mountain tribe?
8 **A No.**
9 Q But you didn't look to see whether the
10 enacted plan keeps those in one district?
11 **A Well, I used the reservation boundaries**
12 **as defined by the census bureau, and under that**
13 **definition, it is contained within the district.**
14 Q You would agree that --
15 **A I'm not sure -- you know, I'm honestly**
16 **not sure that -- whether that contained these**
17 **trust lands that we're talking about or not. I**
18 **just don't know the answer to that. So...**
19 Q Okay. Would you agree that that would
20 be a type of community of interest consideration
21 that could be taken into account, whether the
22 reservation and the trust lands are included in a
23 single district?
24 **A Well, certainly, it could.**
25 Q Now, looking --

170

1 MR. GABER: Maybe, LaVar, if you don't
2 mind zooming out a little bit here so we can see
3 the full map.
4 Q Now, is it your understanding that aside
5 from -- this is Plaintiffs' Demonstrative Plan 1.
6 Aside from the changes to District 9, 15, and then
7 some minor changes to 14 and 29, the rest of the
8 plan reflects the plan that was enacted by the
9 legislature?
10 **A From what I recall, outside of those**
11 **changes, that would be correct, yes.**
12 Q Now, with respect to some of the other
13 districts in the plan, you understand that rural
14 North Dakota is somewhat sparsely populated,
15 right?
16 **A Certainly, yes.**
17 Q So when that's the case, the
18 geographical size of districts has to increase
19 because there's -- you have to go further to find
20 population to get an equally populated district.
21 Does that seem fair?
22 **A Yes.**
23 Q And there are other districts in the
24 state's enacted plan that span a larger geographic
25 distance than does District 9 in plaintiffs'

171

1 demonstrative plan, correct?
2 **A Yes.**
3 Q One example is its neighboring district,
4 I believe that's 8.
5 MR. GABER: Can you Zoom into the gray
6 district for me, LaVar.
7 Q I think it's actually not 8, I think
8 it's 6.
9 Do you see that?
10 **A 6.**
11 Q So 6 is larger in geographic size than
12 demonstrative District 9, right?
13 **A Looks to be, yes.**
14 Q It stretches further north to south than
15 does District 9 in this map?
16 **A Yes.**
17 Q And let's zoom out again, please.
18 District 14 stretches from Pierce
19 County -- the northern boundary of Pierce County
20 all the way to the southern boundary of -- is that
21 Kidder County?
22 Do you see that?
23 **A Yes.**
24 Q And that's a larger geographic distance
25 than demonstrative District 9, correct?

172

1 **A Yes.**
2 Q If you look at District 28, the
3 teal-colored district in the southeastern part of
4 the state, that district looks to be similar or
5 possibly slightly larger in its east-west span as
6 is demonstrative District 9 in its north to south
7 span, right?
8 **A Well, they certainly look on par. I**
9 **mean, I don't know without measuring. So...**
10 Q District -- the green district in the
11 corner, I believe -- is that 39?
12 MR. GABER: Can you zoom to the
13 southwest corner for me, please, LaVar. Yeah,
14 District 39, north to south. Maybe scroll back
15 out so we can see the whole state again. Sorry.
16 Q That looks to be slightly larger north
17 to south than demonstrative District 9 in this
18 plan, right?
19 **A Potentially, yes.**
20 Q Do you see, in the western part of the
21 state, District 23, the kind of grayish-blue
22 colored district?
23 **A Yes.**
24 Q How would you describe the shape of that
25 district?

February 13, 2023

173

1 **A I don't know. I think it would be --**
2 **it's difficult to come up with an adjective.**
3 Q I think it looks like a dinosaur.
4 **A Okay. Well -- I don't know. That's not**
5 **what was coming to my mind.**
6 Q Or maybe a baby dinosaur.
7 What about the -- you see the sort of
8 neck that connects its body to its head?
9 **A Yes, I see that.**
10 Q How would you characterize that?
11 **A Well, a neck. I mean, I think that's**
12 **probably a pretty good way to describe it. A**
13 **bridge.**
14 Q Would you describe that as a narrow
15 bridge?
16 **A Well, it's fairly narrow. I mean, the**
17 **district itself is not huge geographically. But**
18 **that's certainly -- I mean, I guess I could fairly**
19 **say that's probably the narrowest part of the**
20 **district.**
21 Q And you describe in your report
22 plaintiffs' demonstrative District 9 as having a
23 land bridge.
24 Do you recall that?
25 **A Yes.**

174

1 Q Can you tell me on the map what the land
2 bridge is?
3 **A Well, on this map, for instance, here,**
4 **it would be that area to the right or to the east**
5 **of where it literally says Pierce, North Dakota,**
6 **where that lettering is there. So that's sort of**
7 **the bridge at that point. So...**
8 Q And do you understand that that's a
9 complete voting precinct from Pierce County?
10 **A Well, I didn't -- I don't know that I**
11 **would recall that, just sitting here.**
12 Q Did you look to see -- I notice that you
13 produced split reports for municipalities.
14 You didn't encounter any municipal
15 splits in Plaintiffs' Demonstrative Plan 1?
16 **A Not that I recall.**
17 Q It wasn't in your report, but it was in
18 the data, I noticed.
19 **A Right, right.**
20 Q And did you analyze to see whether there
21 were precinct splits? I noticed that there were
22 notes that you'd written about precinct splits.
23 **A I don't think I ever got that far.**
24 Q And so adhering to voting tabulation
25 precincts is also a traditional districting

175

1 principle.
2 Is that fair?
3 **A It's one of the things that can be**
4 **looked at, yes. I mean, precincts aren't**
5 **necessarily communities of interest. But**
6 **sometimes courts have looked at whether precincts**
7 **are split or not. That's true.**
8 **I say they're not communities of**
9 **interest because most people don't think about,**
10 **you know, a precinct as a community -- as a local**
11 **community necessarily. They could be, but not**
12 **necessarily. So...**
13 Q It eases the burden on election
14 administrators to not change the precincts.
15 Is that fair?
16 **A It probably makes that part of things**
17 **easier, yes.**
18 Q And so to the extent -- Dr. Collingwood
19 noted in his report that demonstrative plan 1
20 adheres to all of the precinct lines -- the new
21 precinct lines that it touches.
22 Do you recall that?
23 **A Not precisely, but...**
24 Q You don't have any reason to dispute
25 that?

176

1 **A Not necessarily, no.**
2 Q And to the extent it does that, that's
3 one of the criteria that is often followed as a
4 traditional districting criteria?
5 **A It is one of the things that is looked**
6 **at sometimes, yes.**
7 Q The land bridge that you identify, that
8 voting precinct in Pierce County, that is not
9 narrower than -- in fact, it's wider than other
10 land bridges you see in this map.
11 Is that fair?
12 **A Well, it's wider than the one we were**
13 **talking about in 23, certainly.**
14 Q Do you see District 8 down there in the
15 south central part of the state, the purplish-gray
16 district?
17 **A Yes.**
18 Q And do you see how that moves up in sort
19 of a step pattern to the northwest?
20 **A Yes.**
21 Q The bridge that you identify -- the land
22 bridge you identify in Pierce County in
23 demonstrative District 9 is larger in size than
24 District 8's bridge.
25 Is that fair?

February 13, 2023

177

1 A Looks to be, yes, just looking at the
2 map here.
3 Q Now, you see on the map here, Rolette
4 County and Benson County, they're pretty close to
5 one another.
6 Would you agree?
7 A Yes. Yeah.
8 Q They're just separated by that one
9 voting precinct in Pierce County; the distance of
10 that precinct is the whole distance between
11 Rolette and Benson County?
12 A If that's one precinct, then yes.
13 Q Do you agree that Benson County is
14 physically more proximate to Rolette County than
15 is Cavalier County?
16 A Yes.
17 Q And the enacted version of District 9
18 stretches from Rolette County to Cavalier County,
19 correct?
20 A Correct.
21 Q Do you see that in the enacted plan, the
22 proposed District 15, which is altered to
23 accommodate proposed District 9, is changed to
24 include all of Towner County?
25 A So you said in the enacted plan. You

178

1 mean this --
2 Q I'm sorry. I'm reaching the point of
3 the muddled brain.
4 So in the demonstrative plan,
5 plaintiffs' proposed demonstrative plan 1,
6 District 15 includes all of Towner County.
7 Do you see that?
8 A Yes, it appears that that's the case.
9 MR. GABER: And then, LaVar, if you
10 don't mind switching to the enacted map, which is
11 the last tab.
12 Q Do you see that the enacted map,
13 District 15 splits Towner County with District 9?
14 A Yes.
15 MR. GABER: I'm going to mark as
16 Exhibit 16 the file 2012 through 2020 North Dakota
17 Legislative Map.
18 (Exhibit Hood-16 marked for
19 identification and attached to the transcript.)
20 BY MR. GABER:
21 Q So this is -- do you recognize this,
22 Dr. Hood, as the prior decade's legislative plan
23 for North Dakota that was in effect from 2012 to
24 2020?
25 A Yes, yes.

179

1 Q Now, do you see that in the prior
2 decade's plan, District 15 included all of Towner
3 County?
4 A Yes.
5 Q And so in plaintiffs' -- in the enacted
6 plan in 2021 splits Towner County between 15 and
7 9.
8 Is that right?
9 A That is correct.
10 Q And so one of the benefits of
11 Plaintiffs' Demonstrative Plan 1 is it returns
12 Towner County in whole to the district in which it
13 previously was retained?
14 A It does do that, yes.
15 Q Now, Benson County, in the prior
16 decade's plan, was split between District 14 and
17 District 23.
18 Do you see that?
19 A Yes. Yes.
20 Q And you'll recall, District 23 in the
21 enacted plan -- and we can look at it if you'd
22 like -- that's that dinosaur district that's now
23 been moved all the way to the other side of the
24 state?
25 A Right, right.

180

1 Q And the part of Benson County that
2 includes the Spirit Lake reservation is no longer
3 in District 23, which is now on the other side of
4 the state; instead, it's in District 15.
5 Does that seem right?
6 A So say that one more time. Sorry.
7 Q Yeah. So do you know on this map where
8 the Spirit Lake reservation is?
9 A Yes, yes.
10 Q You see in Benson County there, it's
11 previously in District 23?
12 A Right.
13 Q And so it's now in District 15, right?
14 A Correct, correct.
15 MR. GABER: Let's mark as Exhibit 17 the
16 document Enacted versus Benchmark Core
17 Constituencies Report.
18 (Exhibit Hood-17 marked for
19 identification and attached to the transcript.)
20 BY MR. GABER:
21 Q Dr. Hood, do you recognize this as a
22 report that you produced to us that compares the
23 enacted district boundaries to the -- I'm going to
24 call it the benchmark, the prior decade's map, and
25 reports the percentage of the population of the

February 13, 2023

181

1 district with the highest remaining population in
 2 that district or core constituency?
 3 Is that fair?
 4 **A Yes.**
 5 Q And if we could scroll down, I don't
 6 know what page it is, but it's District 9. So
 7 it's probably page 2 or 3. Looks like right there
 8 at the top of page 3.
 9 So in your report, you talk about core
 10 retention, right, as one of the traditional
 11 districting principles and one of the
 12 legislature's goals?
 13 **A Right.**
 14 Q And so you report that there is a
 15 75 percent core retention for the enacted plan
 16 District 9.
 17 Is that correct?
 18 **A Yes.**
 19 Q And so -- and just so we understand,
 20 from the report, what that means is that the -- in
 21 the new version of enacted District 9, the largest
 22 component of it is old District 9, and that
 23 accounts for 75 percent of new District 9's
 24 population.
 25 Do I have that right?

182

1 **A Yes, yeah. Not geography, but**
 2 **population, yes.**
 3 Q Right. Now, in the prior decade, all of
 4 the voters in District 9, which was -- you
 5 understand that was -- mapped the boundaries of
 6 Rolette County, right?
 7 **A Right.**
 8 Q With respect to the state house core
 9 retention, this is only a report for the state
 10 senate core retention, right?
 11 **A Right, correct.**
 12 Q With respect to --
 13 **A I wasn't looking at the subdistricts.**
 14 Q Okay. And with respect to the
 15 subdistricts, some of the -- you know, half or
 16 maybe a little bit more than half of Rolette
 17 County's voters remained in, let's call it the
 18 same -- I guess they're both in new districts for
 19 the house, right?
 20 **A Right.**
 21 Q So essentially, there's zero percent
 22 retention with respect to people staying in the
 23 same district for the state house?
 24 **A For that county?**
 25 Q For District 9's -- for prior

183

1 District 9's state house voters. They're entirely
 2 in new state house districts?
 3 **A Well, I mean, so District 9, which**
 4 **includes the house districts, obviously, was**
 5 **comprised in part from its former self. Now, I**
 6 **didn't divide this up into the house districts.**
 7 **So I don't know exactly how that would parse out**
 8 **is what I'm saying.**
 9 Q Yeah. Now, but with respect to
 10 Plaintiffs' -- Plaintiffs' Demonstrative Plan 1,
 11 with the exception of one voting precinct, all of
 12 the Rolette County voters who were previously the
 13 entirety of District 9 are retained within the
 14 same district in plaintiffs' demonstrative plan,
 15 both for the state house and the state senate?
 16 **A Yes, that's correct.**
 17 Q Now, in your report, you talk about how
 18 core retention is a good indicator of incumbency
 19 protection.
 20 Is that right?
 21 **A It's one of them, yes.**
 22 Q The incumbent District 9 state senator,
 23 Richard Marcellais, who was a Native American,
 24 lost re-election in the most recent election,
 25 correct?

184

1 **A Yes.**
 2 Q And so at least with respect to him, the
 3 legislature's enacted plan does not satisfy the
 4 incumbency protection goal, correct?
 5 **A Well, he -- I just want to make sure I**
 6 **get all this straight. He previously represented**
 7 **District 9; is that correct?**
 8 Q Since 2006.
 9 **A And so again, 75 percent of his**
 10 **constituents should have followed him across the**
 11 **redistricting cycle into the new District 9.**
 12 Q And so in that respect, the 25 percent
 13 are pretty important that you add, right? Who you
 14 add to the district that needs to expand can play
 15 a big role, depending on voting patterns, in how
 16 the election will have an outcome?
 17 **A Well, it could. I mean, a 75 percent**
 18 **retention is not horrible, I will say. It's not.**
 19 Q What would you --
 20 (Cross-talk.)
 21 **A Three out of four of his former**
 22 **constituents are still with him in the new**
 23 **district. So...**
 24 Q Well, it's a little different than that,
 25 right? 100 percent of his former constituents are

February 13, 2023

185

1 with him in the new district, but three out of
 2 four voters in the new district are new to him.
 3 **A No, three out of four --**
 4 Q Sorry, one out of four.
 5 **A Yes, I would -- okay. You really had me**
 6 **thrown there. I thought maybe I was --**
 7 Q All right. No, no, that was my fault.
 8 But in any event, it wasn't sufficient
 9 for him to be retained as an incumbent?
 10 **A Well, again, core constituencies are one**
 11 **part of incumbent protection or incumbent**
 12 **reelection, but they're not everything related to**
 13 **incumbent reelection. So...**
 14 Q Did you look to -- beyond District 9 in
 15 assessing the enacted plan's performance in terms
 16 of core retention?
 17 **A It doesn't look like it. I mean, it**
 18 **looks like I'm making comparisons here between the**
 19 **enacted plan in specific districts and the enacted**
 20 **plan, specifically LD 9, in the demonstrative**
 21 **districts.**
 22 Q Do you think that the legislature
 23 followed -- or satisfied its goal with respect to
 24 core retention for the plan as a whole?
 25 **A Well, probably so, I would say. You**

186

1 **know, in the case of some districts being moved**
 2 **across the state -- and you have to do that. I**
 3 **mean, this doesn't trump other redistricting**
 4 **factors, especially population equality. You're**
 5 **not going to necessarily be able to maximize this**
 6 **in every case.**
 7 Q And do you have, like, a threshold for
 8 what you consider to be a strong core retention?
 9 Is it 50 percent?
 10 **A I don't know -- honestly, I don't know**
 11 **that I've ever come up with a threshold. You**
 12 **know, it ranges -- it's pretty easy to grasp**
 13 **because it ranges from zero to 100, zero percent**
 14 **to 100 percent. I mean, if you're at 50 percent,**
 15 **it would mean that 50 percent of your new**
 16 **constituents are new to you; they didn't follow**
 17 **you across with the old district boundaries.**
 18 **So, you know, so every one of two new --**
 19 **one of two voters in the new cycle are not your**
 20 **prior constituents.**
 21 Q You did not, as part of your report,
 22 examine any of the prior -- other than maybe the
 23 benchmark 2012 to 2020 plan -- did you look at the
 24 2012 to 2020 plan as part of your analysis?
 25 **A Just to the extent to which I needed it**

187

1 **to make comparisons.**
 2 Q Did you look at any prior decade's
 3 districting plans for North Dakota legislative
 4 seats to make any comparisons to district
 5 configurations?
 6 **A I did not.**
 7 Q To the extent that there -- is that
 8 something that is relevant, to see how the
 9 legislature has in the past configured districts
 10 to see whether -- to compare districts and see if
 11 they're similar configurations?
 12 **A It could be, but, you know, every**
 13 **redistricting cycle is new, and in this particular**
 14 **case, the job was given over to an ad hoc**
 15 **commission. And of course, the legislature had to**
 16 **approve what the commission did, obviously.**
 17 **But my point being, there are different**
 18 **people in charge of redistricting every time, and**
 19 **so things are not necessarily going to look the**
 20 **same.**
 21 **And they're not going to be the same,**
 22 **period, when you take into account that population**
 23 **has shifted across the state, which it had, and**
 24 **certain -- certain things have to be rectified in**
 25 **terms of making sure that the districts are within**

188

1 **constitutional bounds in terms of population**
 2 **deviations.**
 3 Q When you say "ad hoc commission," what
 4 do you mean by that?
 5 **A Well, I don't mean that in any kind of**
 6 **negative sense. I just mean there was a**
 7 **commission put together charged by the legislature**
 8 **with developing a redistricting plan.**
 9 Q Who served on the commission?
 10 **A Well, I believe they were all**
 11 **legislators.**
 12 Q On page 9 and 10 of your report, in your
 13 Summary and Conclusions, towards the end, you note
 14 that there's been a degradation -- or that that --
 15 the demonstrative District 9 performs worse on
 16 some traditional redistricting criteria compared
 17 to enacted version of District 9.
 18 Do you see that?
 19 **A Yes.**
 20 Q And you would agree, we've gone through
 21 all of those different criteria?
 22 **A Correct.**
 23 Q And plaintiffs' proposed District 9
 24 satisfies the population deviation legislative
 25 goal, correct?

February 13, 2023

189

1 **A Correct.**
 2 Q We talked about how, under your own
 3 metric from Virginia and applied here, that the
 4 district is sufficiently or reasonably compact,
 5 correct?
 6 **A Correct.**
 7 Q And with respect to county splits, we
 8 noted that there was an error in your report with
 9 respect to the number of counties, right, that the
 10 enacted plan splits?
 11 **A Correct. That's correct.**
 12 Q And demonstrative District 9 has the
 13 same number of county splits as does District 15,
 14 which is also under challenge in this case, right?
 15 **A Correct.**
 16 Q And it has the same number of county
 17 splits as the state house map for District 9,
 18 correct?
 19 **A Correct.**
 20 Q It splits Eddy County only to adhere to
 21 the boundaries of the Spirit Lake Nation, correct?
 22 **A Correct.**
 23 Q And that's the same split of Eddy County
 24 that the enacted District 15 makes, correct?
 25 **A Correct.**

190

1 **So I mean, it's two -- should be two**
 2 **county splits in the enacted plan versus three,**
 3 **right. So...**
 4 Q For District 9 at the state senate
 5 level, right?
 6 **A Yeah.**
 7 Q And at the state house level, it splits
 8 all three counties in the district?
 9 **A If you go down to the subdistricts, yes.**
 10 Q And we discussed how plaintiffs'
 11 demonstrative plan restores Towner County to its
 12 prior configuration in terms of core retention,
 13 moving it to District 15 entirely.
 14 **A That is true.**
 15 Q We've discussed how the enacted map has
 16 features in terms of land bridges or necks or
 17 connecting points in districts that are a fair bit
 18 smaller than what you termed the land bridge in
 19 plaintiffs' demonstrative District 9, right?
 20 **A Correct.**
 21 Q And a number of the enacted districts in
 22 the map span much larger -- either similar or
 23 larger geographic distances than does enacted --
 24 than demonstrative District 9, correct?
 25 **A That's correct, yes.**

191

1 Q And demonstrative -- sorry -- enacted
 2 District 9, in fact, from east to west is just
 3 about as long as plaintiffs' demonstrative
 4 District 1 is from north to south, correct?
 5 **A From what I remember, yes.**
 6 Q And the two most populous counties
 7 included in plaintiffs' demonstrative District 9
 8 are Benson County and Rolette County, correct?
 9 **A I don't think we talked about that. I**
 10 **mean, I don't have -- I'm just being up front. I**
 11 **don't have the population figures in front of me.**
 12 **So...**
 13 Q Well, it includes all of Benson County,
 14 a precinct from Pierce County, and then Rolette
 15 County, and then that small piece of Eddy County
 16 that's to adhere to the reservation boundary.
 17 So does it sound right to say that
 18 Benson and Rolette are the most populous
 19 components of the district?
 20 **A Well, I would assume, but, you know, one**
 21 **doesn't need to make assumptions. I mean,**
 22 **geography doesn't necessarily equate to**
 23 **population, obviously. So...**
 24 Q Okay. We discussed how Benson County
 25 and Rolette County are closer geographically than

192

1 Rolette County is to Cavalier County, right?
 2 **A That's true, yes.**
 3 Q And so on all of these measures,
 4 demonstrative -- plaintiffs' demonstrative
 5 district is similar to or in some instances better
 6 in terms of traditional districting criteria than
 7 either District 9 in the enacted plan, District 15
 8 in the enacted plan, or other districts in the
 9 state.
 10 Is that fair?
 11 MR. PHILLIPS: Objection, that's
 12 ambiguous and compound.
 13 **A Well, on some traditional redistricting**
 14 **criteria, it might be; on some, it's certainly**
 15 **not.**
 16 Q Now, Dr. Hood, at the end of your
 17 report, you say that the use of a land bridge and
 18 some of the districting criteria we just discussed
 19 coupled with the fact that the demonstrative
 20 District 9 joins two Native American reservations
 21 raises the question of whether the creation of
 22 LD 9 under plaintiffs' demonstrative plan results
 23 in a racial gerrymander.
 24 Can you explain to me what you mean by
 25 "results in a racial gerrymander."

February 13, 2023

193

1 **A I guess the question is, why was LD 9**
2 **drawn -- or why was demonstrative District 1 or 2**
3 **drawn the way they were drawn.**
4 Q What do you understand to be the test
5 for whether a district is a racial gerrymander?
6 **A Typically, it's if race is the**
7 **predominant factor in drawing the district lines.**
8 Q And how do courts assess whether or not
9 that's occurred?
10 **A Well, one of the things --**
11 MR. PHILLIPS: I'll just state my
12 objection.
13 Calls for a legal conclusion.
14 Q What do you understand to be the
15 analysis there?
16 **A Well, one of the things that's typically**
17 **done is an analysis of traditional redistricting**
18 **criteria.**
19 Q And those are all the ones that we've
20 talked about here today?
21 **A Yes, certainly. I mean, there could be**
22 **some others. But yeah, those are -- the ones we**
23 **talked about certainly are.**
24 Q One of the hallmarks throughout the case
25 law -- and you've read racial gerrymandering case

194

1 decisions, I gather, right?
2 **A Yes.**
3 Q You're familiar with the Shaw case from
4 the Supreme Court?
5 **A Right.**
6 Q The Miller case from the Supreme Court?
7 **A Right.**
8 Q You're familiar with the Cooper versus
9 Harris and Bethune-Hill?
10 **A Yes.**
11 Q Have you seen the districts from those
12 cases?
13 **A Some of them, yes. I probably have seen**
14 **all of them. I can remember some of them on the**
15 **top of my head, yes.**
16 Q I assume you're familiar -- I think
17 it's -- is it the Shaw case or the Miller case,
18 the Georgia district?
19 **A The Miller case.**
20 Q Are you familiar with the way that
21 district looked?
22 **A Yes, I am.**
23 Q It's not your testimony that the
24 district from Miller looks anything like
25 plaintiffs' demonstrative districts in this case,

195

1 is it?
2 **A I don't think I said that, no.**
3 Q Okay. In the Supreme Court's racial
4 gerrymandering cases, one of the typical features
5 is split precincts where the census bloc level is
6 split along racial lines. So on one side of the
7 line is a bloc that, say, has white folks, and on
8 the other side of the line is a census bloc that
9 has black or other minority folks. That's
10 typically one of the fact patterns that we see in
11 those cases?
12 **A That's one of the factors that's looked**
13 **at, yes.**
14 Q That's not the case in plaintiffs'
15 demonstrative districts, right? In fact,
16 demonstrative District 1 keeps all the precincts
17 entirely whole, correct?
18 **A I believe so, yes.**
19 Q And so what is the basis for your
20 conclusion that plaintiffs' demonstrative plans
21 raise questions about whether they result in a
22 racial gerrymander?
23 **A Well, again, my argument would be**
24 **looking at some traditional redistricting**
25 **criteria, there was a diminishment on at least**

196

1 **some of those factors with the demonstrative**
2 **districts compared to the original LD 9 or the**
3 **enacted LD 9.**
4 Q Anything else?
5 **A Well, that's primarily it.**
6 Q But is there anything else?
7 **A No. That's my primary argument or**
8 **thoughts on that.**
9 MR. GABER: Okay. Let's go ahead and
10 take about a ten-minute break, and that will bring
11 us back at 4:32.
12 (Recess from 4:22 p.m. until 4:33 p.m.)
13 MR. GABER: Dr. Hood, unless I have to
14 ask you any follow-up questions if Mr. Phillips
15 has any, I don't have any further questions for
16 you. Thank you so much for your time and for
17 appearing right after your class today. I
18 appreciate it.
19 THE WITNESS: Thank you.
20 I guess I would like to add maybe one or
21 clarification from that last discussion that we
22 were having about, you know, what could or could
23 not be a racial gerrymander in terms of
24 districting.
25 And obviously, in the report, I included

February 13, 2023

197

1 these maps. And so I think it's also important to
 2 look at how the district's configured and how it
 3 connects to concentrations of racial minorities
 4 across a distance.
 5 So I guess that's -- you were asking
 6 me -- I was thinking about this. You're asking me
 7 why I came to that conclusion or the possibility
 8 of that conclusion. So obviously, I included the
 9 maps for a reason. So...
 10 BY MR. GABER:
 11 Q Did you talk to Mr. Phillips during the
 12 break?
 13 A Yes.
 14 Q Now, you said "across a distance." We
 15 talked about how the distance -- the length of
 16 District 9 in plaintiffs' demonstrative plan is
 17 the same, or in many instances, it's shorter than
 18 the distances of other districts in the state's
 19 plan, right?
 20 A Correct. That's true.
 21 Q And it's about the same distance as the
 22 enacted version of District 9 is across from
 23 Rolette County to Cavalier County, right?
 24 A Correct.
 25 Q And it can be a racial gerrymander to

198

1 include white voters in a district instead of
 2 other races of voters, right?
 3 A That is correct, certainly.
 4 Q And so to the extent that enacted
 5 District 9 stretches across to include rural white
 6 voters instead of Native American voters, under
 7 your view, that too could be an indication of a
 8 racial gerrymander?
 9 A Potentially.
 10 Q Now, just the fact that there are two
 11 Native American tribes in a district does not on
 12 its own mean that the district is a racial
 13 gerrymander, right?
 14 A No. I'm not arguing that.
 15 Q And in order for that to be the case,
 16 race would have had to have been the predominant
 17 consideration across the entire district, right?
 18 That's the test the Supreme Court applies?
 19 A Yes. It has to -- that's my
 20 understanding, it has to be the predominant
 21 factor.
 22 Q And the traditional districting
 23 principles would each need to be subordinated to
 24 race such that race was the inflexible goal, and
 25 traditional districting criteria fell by the

199

1 wayside in service of that racial goal. That's
 2 basically what a racial gerrymandering is.
 3 Is that your understanding?
 4 MR. PHILLIPS: I'll object that it calls
 5 for a legal conclusion.
 6 A Yes, that's my understanding.
 7 Q Okay. And so what you're saying here in
 8 your addendum is that the fact that there are two
 9 Native American reservations within plaintiffs'
 10 demonstrative District 9 is the additional reason,
 11 in addition to the comparison of some traditional
 12 criteria to the enacted version of 9, that is
 13 leading you to make this statement about racial
 14 gerrymandering?
 15 MR. PHILLIPS: Objection, misstates the
 16 prior testimony.
 17 A Yes, I think that's correct. I mean,
 18 I --
 19 Q But -- go ahead.
 20 A Well, say -- sorry. Say that one more
 21 time.
 22 Q You've offered two reasons that are --
 23 would you say -- are you saying it's a racial
 24 gerrymander? Your report says it raises questions
 25 about whether or not it results.

200

1 A No, I can't make that determination.
 2 Q And when you say --
 3 A So no, I'm not saying that.
 4 Q Okay. So it's not your testimony that
 5 it is a racial gerrymander, plaintiffs'
 6 demonstrative District 9?
 7 A No, I can't make that -- I don't believe
 8 I can make that determination.
 9 Q You don't have the evidentiary basis to
 10 say that.
 11 Is that fair?
 12 A I think that's fair, yes.
 13 Q And we've gone through the traditional
 14 districting criteria. It's not seriously your
 15 testimony that the plaintiffs' demonstrative
 16 District 9 subverts traditional districting
 17 principles, right?
 18 A Well, no. It was that they were
 19 degraded to some degree.
 20 Q From one comparison district, enacted
 21 District 9, right?
 22 A Correct. That's correct.
 23 Q Not standing alone?
 24 A I'm sorry. What standing alone?
 25 Q Only in comparison -- we've gone through

February 13, 2023

201

1 these at length, and it turns out some of them
 2 you've testified that plaintiffs' demonstrative
 3 district does better or as good as the other
 4 districts in the area, including 9 and 15?
 5 **A Sometimes.**
 6 Q And we talked about, with respect to
 7 compactness, that the proper framework is to look
 8 standing alone whether the district is reasonably
 9 compact?
 10 **A Well, we talked about a lot in terms of**
 11 **compactness and fairness. And that was one**
 12 **comparison. But that's not the only comparison to**
 13 **be made.**
 14 Q And your conclusion, based on the types
 15 of analysis you've done in this case and in other
 16 cases, is that plaintiffs' demonstrative
 17 District 9 is, in fact, reasonably compact?
 18 **A Well, again, based on what I said in**
 19 **that Virginia case, it has a higher level of -- or**
 20 **the compactness scores are higher than in that**
 21 **Virginia case.**
 22 Q Did you have pause as to whether any of
 23 the districts in the Virginia case were racial
 24 gerrymanders? I didn't see that in your report
 25 there.

202

1 **A No. No. That was -- let me be clear.**
 2 **That was not an issue in that case. It was**
 3 **literally just compactness.**
 4 Q Do you understand that Native American
 5 reservations are more than just racial groups;
 6 that they are sovereign nations?
 7 **A Yes, yes.**
 8 Q And do you understand that they have
 9 interests that are different than purely racial
 10 interests?
 11 **A Yes.**
 12 Q And do you understand that Native
 13 American tribes might have shared interests that
 14 relate to issues with respect to representation in
 15 the state legislature?
 16 MR. PHILLIPS: Objection.
 17 **A Certainly.**
 18 Q You said "certainly," right?
 19 **A Yes.**
 20 Q And so to the extent that a district
 21 respects the boundaries of Native American
 22 reservations, it's not merely making racial
 23 classifications, but rather, it's accounting for a
 24 sovereign political boundary, correct?
 25 **A Well, to the extent to which that's the**

203

1 **case -- it does that, yes.**
 2 Q And your testimony with respect to
 3 traditional districting criteria is not that
 4 plaintiffs' demonstrative district subordinates
 5 those criteria in favor of a racial
 6 classification, right? You don't have that
 7 evidence?
 8 **A No, I didn't say that.**
 9 Q It does not subordinate traditional
 10 redistricting criteria?
 11 MR. PHILLIPS: I'll object that it
 12 misstates his testimony. And his report says that
 13 it raises a question. He's testified that he's
 14 not opining on that specifically, and I believe
 15 that it would be for the Court to decide.
 16 Q So the question was, the demonstrative
 17 District 9 does not subordinate traditional
 18 districting criteria; you don't believe it does,
 19 correct?
 20 MR. PHILLIPS: Objection, outside the
 21 scope of his opinion, calls for a legal
 22 conclusion.
 23 **A Again, I guess I think my testimony was**
 24 **that certain traditional redistricting criteria**
 25 **have been degraded compared to the enacted LD 9.**

204

1 **I mean, I think that's what I've said.**
 2 Q And certain redistricting criteria are
 3 better in the demonstrative plan.
 4 That's fair?
 5 **A Or the same, essentially.**
 6 MR. GABER: Okay. I have no further
 7 questions.
 8 MR. PHILLIPS: Thank you.
 9 I don't have any follow-ups myself.
 10 COURT REPORTER: Anything else for the
 11 record?
 12 MR. GABER: I do not believe so.
 13 (Transcript orders discussed.)
 14 COURT REPORTER: I think that's all we
 15 need. Thank you.
 16 (Off the record at 4:44 p.m.)
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February 13, 2023

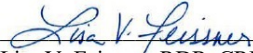
205

CERTIFICATE

1
2
3 I, Lisa V. Feissner, RDR, CRR, CLR, do
4 hereby certify that the witness was first duly
5 sworn by me and that I was authorized to and did
6 report said proceedings.

7 I further certify that the foregoing
8 transcript is a true and correct record of the
9 proceedings; that said proceedings were taken by
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12 signing was not requested; and that I am neither
13 attorney nor counsel for, nor related to or
14 employed by, any of the parties to the action in
15 which this deposition was taken; and that I have
16 no interest, financial or otherwise, in this case.

17
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 15th day of FEBRUARY, 2023.

20
21 
22 Lisa V. Feissner, RDR, CRR, CLR

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A			
ability	176:13, 181:9,	97:11, 112:1,	adding
9:16	183:17, 189:2,	184:10, 186:2,	91:18, 92:16
able	191:3, 191:9,	186:17, 187:23,	addition
7:17, 61:8,	193:20, 193:23,	197:4, 197:14,	9:6, 10:6,
63:3, 64:12,	195:21, 196:10,	197:22, 198:5,	42:20, 77:24,
74:19, 87:10,	196:22, 197:6,	198:17	78:2, 104:11,
114:23, 186:5	197:15, 197:21,	act	199:11
about	199:13, 199:25,	11:3, 11:25,	additional
13:8, 15:17,	201:6, 201:10	23:22, 113:22,	19:5, 19:9,
15:18, 16:9,	above	114:12, 115:6,	108:13, 199:10
16:18, 18:16,	94:3, 125:10,	115:14, 116:9,	addressed
19:25, 21:15,	125:11, 125:12,	116:11, 116:17,	25:15
24:20, 27:11,	126:13, 147:5,	116:19, 123:19,	adds
30:5, 33:20,	147:9, 147:10	148:10	44:10
41:4, 41:19,	absence	action	adhere
44:3, 44:14,	60:13, 78:21,	205:14	165:3, 165:21,
48:11, 53:20,	114:14	actual	189:20, 191:16
55:22, 61:10,	absolute	26:10, 34:19,	adheres
64:8, 64:17,	118:4	123:25	175:20
66:12, 67:12,	academic	actually	adhering
68:9, 70:2,	42:16, 66:13,	9:15, 25:1,	165:11, 174:24
70:16, 70:21,	78:4	32:10, 32:14,	adjective
71:12, 71:18,	academically	37:9, 77:13,	173:2
76:1, 76:5,	39:15, 68:10,	80:8, 87:6,	adjudicate
78:10, 78:25,	71:13	124:5, 138:14,	87:21
79:11, 80:6,	academics	139:2, 143:4,	admin
81:18, 93:11,	69:2	143:18, 150:6,	159:14
99:20, 106:12,	accepted	157:1, 158:16,	administration
107:1, 107:2,	71:5	160:14, 161:15,	14:4, 15:22,
107:20, 110:2,	accommodate	171:7	16:4
110:18, 110:25,	177:23	ad	administrations
114:20, 118:8,	accord	187:14, 188:3	13:21
125:5, 126:17,	66:6	add	administrators
128:21, 134:3,	accorded	29:23, 64:14,	175:14
137:19, 138:2,	42:6	64:16, 64:18,	admit
143:19, 148:12,	according	89:22, 90:10,	65:24
150:2, 151:6,	38:21, 58:19,	93:23, 99:24,	adopted
154:4, 155:7,	59:16, 108:21	100:10, 100:22,	113:20, 116:24,
158:8, 158:15,	account	108:13, 109:13,	144:7, 160:15
158:16, 161:12,	169:21, 187:22	109:15, 110:4,	advantage
161:15, 163:6,	accounting	110:19, 111:16,	44:20, 45:10
163:18, 167:8,	202:23	184:13, 184:14,	advising
168:13, 168:22,	accounts	196:20	13:7
168:25, 169:1,	181:23	added	affect
169:17, 173:7,	accurately	33:7, 99:6,	136:6, 136:13
174:22, 175:9,	109:25	102:19, 108:9,	affected
	across	110:22	80:13
	38:23, 92:8,	addendum	affecting
		199:8	155:25, 156:3

<p>afforded 72:14</p> <p>after 13:3, 19:10, 42:1, 85:17, 119:14, 129:11, 196:17</p> <p>afternoon 113:17</p> <p>again 7:21, 15:6, 28:4, 33:5, 35:22, 36:20, 45:8, 49:23, 53:1, 53:5, 55:6, 56:16, 57:6, 57:21, 60:23, 60:25, 64:1, 65:9, 65:24, 66:19, 67:16, 76:5, 76:22, 76:23, 78:10, 79:8, 82:14, 84:13, 85:14, 87:3, 89:10, 91:14, 95:13, 96:13, 103:20, 105:12, 106:4, 108:25, 109:19, 109:21, 111:4, 114:8, 117:6, 120:8, 124:3, 126:6, 128:2, 134:2, 134:9, 134:14, 135:23, 137:20, 138:6, 140:10, 140:24, 143:3, 143:8, 145:4, 147:4, 149:8, 151:4, 154:1, 161:1, 161:20, 171:17, 172:15, 184:9, 185:10, 195:23, 201:18, 203:23</p> <p>against 11:2, 79:2,</p>	<p>156:9</p> <p>age 23:1, 32:8, 58:18, 92:21, 158:19</p> <p>ago 40:12, 124:4</p> <p>agree 25:6, 28:5, 41:14, 41:17, 45:12, 45:16, 47:20, 49:16, 50:5, 51:15, 53:16, 56:19, 58:4, 65:3, 65:21, 66:9, 68:3, 68:15, 78:9, 79:10, 81:21, 86:24, 87:3, 87:19, 88:4, 88:6, 91:2, 92:22, 94:1, 96:10, 102:9, 106:20, 107:18, 110:19, 110:22, 119:7, 119:10, 119:11, 134:3, 157:19, 160:14, 169:14, 169:19, 177:6, 177:13, 188:20</p> <p>agreed 43:2, 65:12, 109:14</p> <p>agricultural 104:10</p> <p>ahead 41:12, 41:21, 154:9, 165:15, 196:9, 199:19</p> <p>al 1:5, 1:10</p> <p>alabama 10:12, 10:18</p> <p>all 13:7, 18:24, 38:5, 44:4, 47:12, 47:16,</p>	<p>51:2, 53:19, 55:1, 64:10, 70:10, 71:15, 73:5, 76:17, 77:10, 79:3, 83:23, 89:20, 92:6, 102:10, 105:17, 108:19, 112:1, 112:15, 114:3, 116:23, 130:12, 132:12, 136:24, 137:24, 138:1, 139:17, 141:6, 141:10, 142:5, 142:20, 142:24, 144:1, 145:11, 145:15, 145:16, 145:17, 145:20, 147:1, 149:2, 163:11, 163:24, 166:10, 171:20, 175:20, 177:24, 178:6, 179:2, 179:23, 182:3, 183:11, 184:6, 185:7, 188:10, 188:21, 190:8, 191:13, 192:3, 193:19, 194:14, 195:16, 204:14</p> <p>allegation 94:18, 94:22, 94:24, 96:18</p> <p>alleged 22:3, 98:16, 111:18</p> <p>allegedly 95:8, 96:1, 96:24, 97:9</p> <p>alleging 11:19, 14:13, 15:4, 94:13</p> <p>allison 4:5</p> <p>allow 7:16, 141:14</p> <p>allowed 127:1, 140:15</p>	<p>almost 22:16, 42:2</p> <p>alone 91:7, 125:25, 127:1, 148:13, 200:23, 200:24, 201:8</p> <p>along 20:9, 123:16, 165:4, 195:6</p> <p>alphabetically 142:3</p> <p>already 31:10, 35:1, 69:22, 110:6, 110:20</p> <p>also 7:18, 8:22, 12:6, 17:24, 28:18, 43:13, 45:2, 46:2, 51:9, 57:11, 75:10, 78:6, 86:5, 92:2, 99:16, 99:24, 104:4, 107:5, 107:8, 130:24, 131:6, 141:13, 146:10, 147:10, 147:11, 150:14, 174:25, 189:14, 197:1</p> <p>altered 177:22</p> <p>alternative 20:24, 21:6, 24:12, 127:19, 127:22, 152:25, 154:7, 158:10</p> <p>although 13:19, 21:1, 44:18, 58:6, 145:6</p> <p>always 15:12, 22:16</p> <p>ambiguous 192:12</p> <p>americans 17:2, 22:8,</p>
---	---	--	--

<p>30:24, 33:23, 50:25, 51:2, 58:10, 80:25, 84:1, 84:23 among 30:23, 31:2, 31:6, 54:14, 84:9, 85:4, 86:6, 87:13, 97:14, 104:14, 128:12, 130:3, 130:11, 130:12, 159:20 analyses 68:9, 105:14, 106:17, 151:2 analysis 19:10, 20:23, 22:2, 22:23, 27:11, 27:18, 27:19, 30:15, 33:11, 33:24, 35:13, 35:20, 36:7, 36:10, 37:11, 37:15, 38:9, 38:25, 46:21, 46:22, 49:4, 49:7, 49:13, 51:20, 52:1, 52:18, 55:4, 55:12, 56:2, 56:5, 56:20, 57:4, 57:23, 58:1, 58:3, 59:24, 60:16, 64:12, 65:22, 69:21, 70:12, 75:24, 80:4, 82:18, 88:7, 93:14, 93:15, 94:5, 96:8, 99:14, 99:15, 101:25, 102:4, 105:11, 106:8, 110:20, 111:14, 129:11, 133:8, 138:14, 138:15, 150:19,</p>	<p>150:25, 152:23, 155:18, 157:10, 159:5, 186:24, 193:15, 193:17, 201:15 analyze 21:2, 69:12, 70:7, 75:21, 79:24, 79:25, 80:11, 106:12, 168:10, 174:20 analyzed 26:1, 28:1, 45:16, 69:22, 70:10, 72:4, 72:6, 72:24, 73:1, 74:4, 77:14, 77:22, 89:16, 91:3, 95:14, 96:15, 97:11, 108:14, 109:4, 139:11 analyzing 44:23, 52:7, 78:4 another 43:4, 44:10, 44:14, 66:19, 70:1, 81:15, 87:11, 153:8, 153:20, 155:9, 177:5 answer 7:23, 36:25, 41:22, 56:9, 114:22, 169:18 answered 134:23 answers 7:17 antecedent 117:25 anthropology 17:1 anticipate 19:2, 19:4 any 7:20, 7:22,</p>	<p>9:4, 9:7, 10:7, 10:16, 12:21, 14:6, 15:3, 16:8, 17:4, 17:21, 17:24, 19:2, 19:9, 29:21, 35:18, 36:5, 37:2, 40:23, 42:3, 46:23, 48:23, 50:24, 51:22, 54:3, 55:16, 56:1, 56:5, 58:9, 63:24, 70:5, 72:1, 73:18, 80:16, 80:19, 81:8, 83:13, 91:19, 102:3, 104:14, 104:15, 108:4, 108:22, 108:24, 115:13, 129:1, 133:9, 133:14, 133:21, 134:19, 135:5, 135:16, 137:7, 137:17, 137:22, 140:8, 143:22, 146:22, 150:4, 155:17, 168:10, 168:25, 174:14, 175:24, 185:8, 186:22, 187:2, 187:4, 188:5, 196:14, 196:15, 201:22, 204:9, 205:14, 205:24, 205:25 anyone 20:8 anything 8:18, 16:17, 17:15, 17:18, 55:17, 80:6, 144:5, 155:24, 194:24, 196:4, 196:6, 204:10 anyway 36:21</p>	<p>anywhere 83:14 app 58:19 apparently 36:14 appear 16:7, 60:25, 133:22, 134:19, 135:17, 137:17, 142:17 appearing 196:17 appears 29:6, 178:8 appendix 127:16 apples-to-apples 136:1 applied 117:10, 125:4, 144:7, 144:22, 189:3 applies 101:23, 129:1, 198:18 apply 61:18, 64:12, 111:13, 124:14, 205:24 applying 62:5, 117:23 appreciate 196:18 approach 68:4, 100:25 appropriate 123:1 appropriately 96:7 approve 187:16 approved 123:11 area 5:22, 51:3, 51:22, 93:17, 100:2, 121:10,</p>
--	--	---	---

<p>121:17, 121:25, 130:10, 133:14, 133:18, 134:18, 135:11, 135:17, 136:21, 137:16, 163:1, 164:16, 174:4, 201:4</p> <p>areas 15:23, 50:22, 96:6, 96:9</p> <p>aren't 21:11, 93:17, 106:18, 175:4</p> <p>argue 57:15</p> <p>argued 120:5</p> <p>arguing 27:20, 198:14</p> <p>argument 69:20, 100:14, 195:23, 196:7</p> <p>arithmetic 100:19</p> <p>around 12:3, 50:23, 59:3, 114:7, 131:5</p> <p>article 126:19</p> <p>articles 16:8</p> <p>aside 9:2, 27:8, 34:23, 90:18, 163:23, 170:4, 170:6</p> <p>asked 12:16, 19:5, 35:1, 134:22</p> <p>asking 114:19, 197:5, 197:6</p> <p>assess 193:8</p> <p>assessing 146:7, 185:15</p> <p>assessment 15:20, 47:16</p>	<p>assigning 78:16</p> <p>assume 81:20, 97:5, 104:3, 109:24, 128:4, 191:20, 194:16</p> <p>assuming 107:12, 110:2, 143:17</p> <p>assumptions 191:21</p> <p>asterisk 48:5</p> <p>attached 5:6, 6:2, 18:10, 26:21, 29:15, 33:3, 40:1, 88:22, 118:15, 127:14, 132:23, 135:4, 137:12, 141:18, 154:19, 159:16, 162:5, 178:19, 180:19</p> <p>attention 40:25, 124:22</p> <p>attorney 7:8, 103:25, 104:4, 107:4, 108:9, 205:13</p> <p>audience 20:8</p> <p>authorized 205:5</p> <p>available 68:3, 89:12, 89:16, 102:6</p> <p>avenue 3:18</p> <p>aware 53:21, 53:24</p> <p>awareness 81:4</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>baby 173:6</p>	<p>back 19:22, 34:24, 44:22, 53:2, 62:25, 68:10, 68:13, 80:7, 82:9, 105:3, 113:11, 113:13, 128:22, 129:4, 129:25, 130:1, 152:14, 154:13, 157:9, 164:13, 164:14, 166:7, 167:18, 172:14, 196:11</p> <p>backing 38:15, 106:1</p> <p>backup 33:11</p> <p>bad 141:15</p> <p>bakke 3:17</p> <p>ballot 75:14, 108:6</p> <p>band 1:4, 17:5</p> <p>bartlett 24:6, 24:10</p> <p>based 23:7, 25:4, 25:10, 25:22, 25:24, 61:6, 64:2, 90:9, 98:23, 99:7, 109:19, 112:11, 130:7, 136:4, 145:3, 149:8, 156:13, 201:14, 201:18</p> <p>baseline 120:22</p> <p>bases 126:21</p> <p>basic 122:16</p> <p>basically 37:2, 121:10, 199:2</p>	<p>basis 17:22, 24:2, 28:8, 54:21, 77:16, 195:19, 200:9</p> <p>bat 36:18</p> <p>bates 89:3, 101:11, 141:2, 141:8</p> <p>because 29:20, 33:5, 38:19, 41:9, 44:4, 45:21, 47:5, 68:5, 85:17, 85:23, 93:14, 93:20, 94:23, 99:23, 113:21, 115:8, 117:10, 126:1, 126:15, 127:3, 133:16, 136:2, 139:13, 141:11, 142:20, 153:8, 156:13, 158:2, 170:19, 175:9, 186:13</p> <p>been 7:3, 8:3, 9:3, 9:22, 13:17, 15:11, 15:12, 15:17, 15:18, 17:10, 24:15, 27:23, 48:11, 52:16, 55:23, 55:24, 59:12, 75:3, 96:18, 102:9, 102:17, 102:18, 106:16, 113:23, 127:5, 128:8, 130:6, 154:2, 154:3, 179:23, 188:14, 198:16, 203:25</p> <p>before 2:6, 7:13, 7:22, 8:3, 9:4, 10:14, 25:16,</p>
--	--	---	---

<p>28:9, 28:20, 58:22, 63:18, 76:4, 102:6, 109:22, 111:22 begin 22:20 beginning 2:5, 158:7 behalf 3:2, 3:15, 13:17, 14:12, 15:11 behavior 16:20 being 21:5, 23:9, 23:15, 31:23, 32:3, 40:3, 42:21, 47:2, 49:8, 51:19, 52:23, 54:8, 58:7, 60:9, 89:11, 96:15, 96:17, 98:8, 99:1, 106:6, 111:10, 117:9, 119:19, 120:15, 124:1, 126:9, 130:4, 160:12, 160:16, 160:21, 160:22, 186:1, 187:17, 191:10 belcourt 58:16 belief 23:14, 113:21, 116:10, 117:25 believe 9:21, 11:12, 12:8, 56:4, 57:20, 58:9, 59:11, 75:23, 76:21, 91:1, 98:14, 101:12, 104:15, 112:12, 114:10, 116:16, 117:17, 133:9, 139:4, 161:24,</p>	<p>167:20, 168:21, 171:4, 172:11, 188:10, 195:18, 200:7, 203:14, 203:18, 204:12 believed 114:23, 115:5 below 125:17, 125:18, 125:24, 155:8, 160:17 benchmark 180:16, 180:24, 186:23 benefit 44:10 benefits 44:18, 179:10 benson 155:3, 155:4, 157:3, 166:12, 167:18, 168:1, 177:4, 177:11, 177:13, 179:15, 180:1, 180:10, 191:8, 191:13, 191:18, 191:24 bethune-hill 194:9 better 67:9, 68:4, 78:1, 91:11, 127:23, 138:11, 192:5, 201:3, 204:3 between 19:23, 24:21, 43:2, 43:11, 46:10, 60:24, 67:13, 84:19, 146:1, 148:2, 164:14, 177:10, 179:6, 179:16, 185:18 beyond 81:7, 185:14 big 15:21, 184:15</p>	<p>bio 152:18 bismarck 3:19, 5:22, 137:6, 137:16 bit 26:24, 27:10, 34:24, 36:21, 41:4, 48:17, 50:16, 64:8, 82:9, 92:19, 93:10, 128:4, 135:14, 147:20, 150:12, 153:4, 158:6, 160:3, 170:2, 182:16, 190:17 black 195:9 black-and-white 88:12 blencke 4:4 bloc 21:18, 21:21, 45:5, 73:8, 96:21, 111:10, 112:8, 113:2, 195:5, 195:7, 195:8 blocking 93:16 blue 77:7 board 118:13, 118:19 boards 42:3 body 173:8 books 16:9 border 51:4, 155:4 borders 163:3 both 11:1, 13:20,</p>	<p>43:18, 52:6, 92:2, 100:11, 106:23, 143:4, 147:8, 161:22, 164:3, 168:18, 182:18, 183:15 bottom 41:1, 48:18, 124:25, 129:7, 163:16 bounce 19:22 boundaries 30:16, 59:8, 59:12, 59:13, 59:15, 136:8, 150:8, 153:9, 155:22, 155:25, 156:2, 156:15, 165:3, 165:11, 166:24, 168:14, 168:19, 169:11, 180:23, 182:5, 186:17, 189:21, 202:21 boundary 136:15, 149:13, 149:16, 149:24, 150:14, 155:5, 155:9, 156:23, 157:1, 157:2, 157:4, 165:8, 165:22, 171:19, 171:20, 191:16, 202:24 bounds 77:11, 161:21, 188:1 brain 178:3 break 7:20, 7:25, 48:12, 58:13, 62:22, 100:5, 113:9, 152:18, 154:10, 154:13, 196:10, 197:12 bridge 173:13, 173:15,</p>
--	--	---	---

<p>173:23, 174:2, 174:7, 176:7, 176:21, 176:22, 176:24, 190:18, 192:17 bridges 176:10, 190:16 bring 150:12, 196:10 brought 11:18 bryan 4:6 bulk 15:16 burden 175:13 bureau 59:5, 59:13, 169:12 burgum 8:23, 26:18</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculate 31:14, 84:16, 85:12, 86:12, 134:10, 135:24, 137:20 calculated 31:19 calculating 85:9 calculation 109:1 calculations 34:7, 82:10, 98:23, 108:25, 109:21, 110:14, 111:6, 112:19, 112:20, 112:24 calculator 19:15 call 27:21, 44:19, 180:24, 182:17 called 27:19</p>	<p>calling 25:20 calls 65:7, 66:16, 67:14, 69:7, 73:14, 77:20, 88:2, 88:16, 95:11, 96:11, 99:4, 101:1, 113:25, 115:17, 117:13, 139:24, 145:1, 145:2, 151:16, 193:13, 199:4, 203:21 came 111:6, 112:19, 140:21, 140:22, 197:7 campaign 3:6, 7:9 campaigns 80:7, 80:12 can't 28:24, 40:16, 66:18, 69:16, 72:15, 83:19, 87:16, 87:18, 99:11, 138:1, 200:1, 200:7 candidate 21:18, 22:16, 25:3, 32:17, 36:24, 37:20, 37:22, 43:8, 43:16, 43:25, 44:11, 44:25, 45:2, 45:3, 45:22, 46:12, 46:16, 46:20, 48:1, 48:21, 49:6, 51:13, 52:13, 52:17, 52:23, 53:9, 53:15, 53:22, 54:1, 54:8, 54:20, 56:18, 56:21, 57:10, 57:19, 60:3,</p>	<p>60:9, 60:20, 60:21, 61:20, 61:23, 62:8, 62:10, 62:11, 62:15, 62:17, 62:19, 63:5, 65:18, 73:22, 75:13, 76:18, 77:7, 77:8, 77:10, 89:20, 90:7, 90:13, 90:20, 91:24, 92:13, 94:10, 95:6, 95:16, 95:22, 96:20, 97:15, 97:16, 98:4, 98:11, 98:13, 98:19, 98:21, 99:2, 99:3, 103:8, 104:13, 105:23, 105:25, 106:6, 106:9, 106:15, 106:21, 107:7, 107:14, 107:16, 108:12, 109:5, 109:9, 109:18, 110:1, 110:5, 110:7, 110:11, 110:12, 112:14, 114:18, 116:6 candidates 21:16, 28:15, 38:5, 43:12, 43:18, 46:25, 47:21, 48:25, 49:21, 54:14, 55:18, 56:15, 61:8, 65:21, 66:8, 68:22, 70:17, 92:8, 93:17, 96:6, 96:22, 98:1, 102:14, 106:22, 108:19, 109:16, 111:2, 111:9, 111:21, 112:7, 112:10, 113:6</p>	<p>capacity 1:9 carter 4:3 cases 9:3, 9:6, 9:10, 10:11, 11:1, 13:11, 13:15, 15:7, 25:16, 61:2, 66:20, 71:1, 78:5, 87:20, 87:21, 116:1, 118:9, 124:11, 125:7, 144:22, 194:12, 195:4, 195:11, 201:16 category 127:5 caution 79:2 cavalier 50:8, 50:18, 162:16, 163:10, 164:3, 164:4, 164:10, 177:15, 177:18, 192:1, 197:23 caveat 56:16, 110:15, 110:17, 111:5, 123:23, 149:8 census 23:9, 59:5, 59:13, 169:12, 195:5, 195:8 center 3:6, 7:9 central 176:15 century 3:18 certain 69:21, 70:25, 78:6, 87:23, 151:6, 187:24, 203:24, 204:2 certainly 29:3, 41:23,</p>
--	--	---	--

<p>43:1, 60:14, 65:25, 74:15, 76:7, 100:18, 102:15, 103:11, 103:21, 105:10, 107:22, 108:3, 110:23, 116:5, 120:6, 121:13, 125:18, 138:18, 140:5, 161:20, 165:24, 168:9, 169:24, 170:16, 172:8, 173:18, 176:13, 192:14, 193:21, 193:23, 198:3, 202:17, 202:18 certification 205:23 certify 205:4, 205:7 certifying 205:26 cetera 138:2 challenge 11:17, 39:10, 97:3, 99:23, 119:18, 189:14 challenged 96:17, 100:2, 100:11, 119:25, 120:15, 122:2, 124:9, 128:13, 130:4, 130:13, 138:10, 139:11, 143:9, 143:22, 158:11 challenges 11:2, 24:11 challenging 11:24, 21:4, 37:3, 43:10, 45:1, 91:24, 100:8 chance 113:14 change 10:25, 175:14</p>	<p>changed 64:3, 132:15, 177:23 changes 45:9, 170:6, 170:7, 170:11 characteristic 86:25 characterize 131:14, 173:10 characterized 78:7, 149:6 charge 187:18 charged 188:7 chat 141:9, 141:10 check 31:11, 58:14 checked 23:14 chippewa 1:5, 17:5 choice 21:17, 21:18, 22:16, 25:3, 32:17, 37:20, 37:22, 47:22, 48:1, 48:25, 49:6, 49:21, 51:13, 52:13, 52:17, 52:24, 53:9, 53:15, 54:1, 54:8, 54:15, 54:20, 55:18, 56:15, 56:18, 56:21, 57:10, 60:3, 60:9, 60:21, 61:9, 61:20, 61:23, 62:10, 62:11, 62:15, 62:20, 63:5, 68:23, 92:13, 94:11, 95:6, 95:16, 96:22, 106:9, 106:21,</p>	<p>106:22, 114:18, 116:6 choices 106:3 choose 69:17, 75:8 chose 70:6, 75:12, 146:4 chosen 69:16 circle 121:11, 121:17, 121:25 circumstances 17:25, 78:7, 78:22, 79:1, 81:10, 81:15, 87:22, 112:17 citation 24:9 cited 133:2 cities 133:14 city 10:3, 10:4, 10:5, 58:16 civil 1:6 claim 14:12, 15:11, 20:12, 99:17, 99:19 claimed 16:25 claims 22:6, 24:21, 24:22, 24:23, 42:8 clarification 196:21 clarify 11:13, 63:1 class 196:17 classification 203:6</p>	<p>classifications 202:23 clear 33:14, 54:7, 54:20, 63:9, 92:13, 106:21, 128:24, 202:1 clearly 79:20 cliff 121:13 close 50:19, 51:3, 115:24, 130:9, 132:19, 135:1, 135:15, 137:6, 160:22, 177:4 close-up 5:18, 5:20, 5:22, 135:11, 137:14 closer 68:17, 191:25 clr 1:25, 2:7, 205:3, 205:22 coalition 24:23 coastline 136:11 coastlines 136:10 cohesive 21:10 coin 27:20 coined 27:20 collection 36:6 collingwood 26:1, 32:21, 35:4, 35:15, 37:18, 43:22, 45:16, 47:8, 47:9, 47:15, 48:19, 53:25, 57:21, 64:20,</p>
---	---	--	---

<p>66:1, 70:6, 71:14, 75:10, 76:24, 77:4, 78:24, 81:7, 93:21, 93:23, 102:22, 109:24, 110:18, 110:24, 112:16, 152:1, 175:18 collingwood's 12:18, 12:21, 35:17, 36:10, 37:11, 38:21, 46:24, 48:24, 55:17, 56:2, 56:12, 56:20, 57:4, 62:6, 73:19, 75:24, 81:3, 99:15, 105:17, 108:18, 109:20 colored 172:22 column 30:4, 30:5, 30:6, 30:9, 33:22, 77:6 com 3:21 combination 44:3, 97:10 combine 38:2, 59:7 combined 53:8, 92:4 combining 26:8 come 14:6, 34:24, 83:14, 109:23, 128:22, 129:3, 173:2, 186:11 comes 131:19 comfortable 74:22, 114:25 coming 173:5</p>	<p>commission 107:8, 187:15, 187:16, 188:3, 188:7, 188:9 commissioner 103:7, 104:10, 104:11, 108:11 commissioners 14:1 committee 114:7, 114:11, 116:4, 133:1, 159:14, 160:13, 165:10 committee's 159:21 common 17:17, 60:17, 60:24 commonwealth 118:23 communities 163:15, 168:3, 168:8, 168:10, 175:5, 175:8 community 169:20, 175:10, 175:11 compact 20:18, 119:1, 119:25, 120:7, 122:18, 122:21, 123:19, 123:22, 124:1, 124:2, 125:13, 126:1, 126:13, 126:14, 127:3, 128:18, 129:13, 130:5, 130:20, 130:25, 131:7, 131:24, 132:6, 132:13, 133:3, 133:23, 134:21, 135:18, 135:22, 136:4, 137:18, 137:21, 138:1, 138:3, 138:5, 138:17, 139:15, 139:16,</p>	<p>142:13, 142:14, 142:22, 143:23, 144:3, 144:12, 144:21, 144:25, 145:12, 145:21, 145:25, 146:2, 147:2, 147:10, 147:12, 148:13, 148:16, 148:20, 149:3, 149:7, 150:23, 151:10, 189:4, 201:9, 201:17 compactness 14:23, 118:8, 121:1, 122:22, 123:3, 123:9, 124:1, 124:11, 125:24, 126:6, 134:10, 134:15, 134:16, 135:24, 136:14, 139:6, 139:10, 139:17, 140:8, 141:22, 142:19, 146:12, 147:22, 148:10, 150:19, 151:7, 151:11, 151:14, 152:2, 152:24, 155:18, 156:1, 156:18, 161:9, 201:7, 201:11, 201:20, 202:3 compare 66:22, 124:8, 138:9, 150:21, 151:12, 153:6, 156:7, 156:9, 187:10 compared 82:23, 83:10, 122:19, 122:21, 138:21, 144:13, 144:15, 146:8, 146:10, 146:16, 149:1, 153:19, 188:16, 196:2, 203:25</p>	<p>compares 121:9, 121:16, 121:23, 180:22 comparing 86:25, 139:2, 147:4, 147:20 comparison 123:20, 136:1, 138:18, 138:24, 140:5, 140:7, 143:25, 144:17, 145:3, 145:5, 148:2, 148:11, 148:17, 151:17, 151:19, 161:10, 166:1, 199:11, 200:20, 200:25, 201:12 comparisons 137:24, 185:18, 187:1, 187:4 complaint 99:8, 99:9 complete 49:12, 102:18, 133:7, 174:9 completed 74:16 compliance 116:18 compliant 118:24 complied 14:23 comply 115:6, 115:14, 116:9, 116:17, 117:23 complying 114:11 component 64:13, 70:12, 181:22 components 191:19 composite 126:1, 126:10, 127:1, 127:17</p>
--	---	---	---

<p>compound 100:4, 100:5, 115:16, 192:12</p> <p>comprised 22:25, 183:5</p> <p>computer 135:15</p> <p>concentrated 51:3, 64:11</p> <p>concentration 51:8</p> <p>concentrations 197:3</p> <p>concern 114:13, 115:9, 116:25, 117:11</p> <p>concerning 42:7</p> <p>conclude 54:21, 131:23, 135:21, 145:19</p> <p>concluded 125:25</p> <p>conclusion 24:2, 42:7, 48:24, 56:12, 61:6, 62:7, 66:12, 66:17, 67:15, 69:4, 69:7, 72:10, 73:15, 73:20, 74:5, 74:12, 74:19, 74:23, 77:17, 88:3, 88:17, 95:12, 96:12, 99:5, 109:23, 111:7, 122:17, 125:21, 126:21, 131:25, 132:5, 145:2, 149:1, 151:16, 158:15, 193:13, 195:20, 197:7, 197:8, 199:5, 201:14, 203:22</p> <p>conclusions 35:17, 42:13, 56:6, 188:13</p>	<p>conduct 27:10, 35:12</p> <p>conducted 35:19, 49:4, 49:7, 110:21, 114:15</p> <p>conducting 36:2, 94:5, 129:11</p> <p>configuration 190:12</p> <p>configurations 187:5, 187:11</p> <p>configured 187:9, 197:2</p> <p>confine 96:8</p> <p>confirm 35:2</p> <p>confirms 94:8</p> <p>congruent 59:14</p> <p>connected 131:11</p> <p>connecting 131:15, 190:17</p> <p>connection 131:22</p> <p>connects 173:8, 197:3</p> <p>consider 16:23, 32:13, 69:1, 69:2, 88:8, 108:2, 186:8</p> <p>consideration 169:20, 198:17</p> <p>considerations 42:22</p> <p>considered 43:5, 44:5, 103:11, 125:12, 126:18, 160:13</p> <p>consistent 52:22, 106:17</p> <p>constituencies 180:17, 185:10</p>	<p>constituency 181:2</p> <p>constituents 184:10, 184:22, 184:25, 186:16, 186:20</p> <p>constitute 111:9</p> <p>constituted 34:9</p> <p>constitution 14:24, 119:21, 120:8, 129:15, 151:21</p> <p>constitution's 118:25</p> <p>constitutional 188:1</p> <p>consulting 12:23, 12:25</p> <p>cont'd 6:1</p> <p>contain 50:24, 102:12</p> <p>contained 18:25, 58:16, 163:5, 164:23, 168:23, 169:13, 169:16</p> <p>contains 94:9</p> <p>contest 42:3, 45:17, 46:7, 157:14</p> <p>contested 71:9, 73:7, 105:13, 105:19, 105:22, 106:7, 106:19, 107:13, 107:23</p> <p>contests 43:23, 71:17, 73:23, 75:1, 76:17, 78:3, 89:23, 90:3, 90:7, 90:12, 90:16, 90:25, 91:6, 98:10,</p>	<p>102:19</p> <p>context 15:10, 15:19, 23:16, 45:15, 46:2, 71:24, 151:20, 153:17</p> <p>contexts 39:4, 41:7</p> <p>contiguous 129:14, 149:14</p> <p>continuity 131:12</p> <p>contrary 119:19, 119:20</p> <p>control 141:14, 205:26</p> <p>conventional 60:5</p> <p>conversation 158:7</p> <p>converted 29:24, 33:8</p> <p>cooper 194:8</p> <p>copy 18:12, 18:14, 27:4, 47:13</p> <p>core 180:16, 181:2, 181:9, 181:15, 182:8, 182:10, 183:18, 185:10, 185:16, 185:24, 186:8, 190:12</p> <p>corner 172:11, 172:13</p> <p>correlate 49:19</p> <p>correlation 52:14</p> <p>corresponded 12:12</p> <p>could 24:12, 40:19, 42:2, 48:12, 76:22, 77:16, 78:7, 86:18, 88:18, 99:23,</p>
--	--	--	--

<p>100:13, 106:11, 109:22, 110:22, 118:3, 127:23, 130:8, 136:12, 138:16, 139:7, 140:10, 151:10, 151:17, 160:25, 162:1, 163:13, 164:15, 169:21, 169:24, 173:18, 175:11, 181:5, 184:17, 187:12, 193:21, 196:22, 198:7 couldn't 155:14 counsel 7:9, 205:13 count 59:19, 166:17 counted 97:22, 98:9 counter 64:25 counties 50:18, 51:12, 162:21, 163:24, 164:3, 164:5, 164:21, 165:19, 166:2, 166:14, 166:19, 167:10, 167:14, 168:7, 168:9, 168:11, 189:9, 190:8, 191:6 country 83:14, 87:11 county 13:25, 14:1, 14:2, 14:10, 39:24, 40:5, 50:7, 50:8, 55:2, 55:3, 55:9, 55:10, 155:3, 155:4, 155:10, 157:1, 157:2, 157:3, 162:16, 162:17,</p>	<p>162:25, 163:3, 163:4, 163:11, 163:18, 163:20, 164:11, 164:19, 164:20, 164:24, 164:25, 165:23, 166:11, 166:12, 166:15, 166:19, 166:25, 167:2, 167:15, 167:18, 168:1, 168:4, 171:19, 171:21, 174:9, 176:8, 176:22, 177:4, 177:9, 177:11, 177:13, 177:14, 177:15, 177:18, 177:24, 178:6, 178:13, 179:3, 179:6, 179:12, 179:15, 180:1, 180:10, 182:6, 182:24, 183:12, 189:7, 189:13, 189:16, 189:20, 189:23, 190:2, 190:11, 191:8, 191:13, 191:14, 191:15, 191:24, 191:25, 192:1, 197:23 county's 182:17 couple 113:17 coupled 192:19 course 187:15 court 1:1, 7:16, 10:14, 13:13, 13:25, 21:5, 24:6, 24:16, 25:15, 58:25, 66:13, 66:18, 67:8, 67:11, 68:25, 69:24,</p>	<p>70:25, 71:2, 71:4, 72:8, 72:16, 72:23, 72:25, 73:11, 73:16, 88:8, 118:18, 123:6, 123:17, 123:24, 124:6, 132:16, 140:14, 151:5, 151:8, 194:4, 194:6, 198:18, 203:15, 204:10, 204:14 court's 88:4, 195:3 courts 39:16, 78:19, 87:20, 122:21, 123:10, 123:17, 150:22, 175:6, 193:8 covers 50:7, 153:21, 164:21 cracked 94:15, 94:19, 94:25, 96:1 create 89:6 created 139:7, 141:21 creates 129:12 creating 114:12 creation 192:21 criteria 112:12, 113:7, 150:7, 165:10, 176:3, 176:4, 188:16, 188:21, 192:6, 192:14, 192:18, 193:18, 195:25, 198:25, 199:12, 200:14, 203:3, 203:5, 203:10, 203:18,</p>	<p>203:24, 204:2 criticism 35:18, 56:1 criticize 46:24 cross-talk 29:2, 30:22, 38:17, 52:4, 59:2, 98:7, 136:25, 143:16, 165:14, 184:20 crossover 24:21 crr 1:25, 2:7, 205:3, 205:22 crux 119:16 currently 8:7, 9:7, 10:7, 10:12, 10:14, 159:1 cutoff 58:12, 125:24, 127:4, 127:7 cutting 75:6 cv 15:16 cycle 33:16, 81:1, 104:7, 105:12, 184:11, 186:19, 187:13 cycles 76:4, 90:3, 90:12, 90:19, 90:21, 92:9</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dakota 1:2, 1:10, 9:4, 11:7, 13:8, 16:18, 17:10, 23:18, 35:5, 35:10, 79:16, 80:21, 81:11, 81:16, 103:22,</p>
--	---	---	---

<p>104:6, 132:25, 133:18, 136:11, 139:9, 139:18, 140:9, 141:23, 142:17, 143:21, 144:1, 144:10, 144:15, 144:18, 144:21, 145:11, 145:15, 145:16, 145:20, 146:16, 147:1, 147:11, 159:22, 162:9, 170:14, 174:5, 178:16, 178:23, 187:3 dallas 13:24, 14:1, 14:9, 14:10 danahy 3:4 data 23:7, 26:9, 26:14, 30:1, 36:6, 36:7, 36:10, 36:13, 36:14, 36:15, 36:19, 49:19, 53:8, 55:6, 59:5, 61:3, 64:23, 79:22, 82:16, 174:18 database 40:8 dave's 58:19, 59:16 david 3:16, 127:12, 132:21, 135:2, 162:3 day 83:23, 205:19 days 83:24 dc 3:9 debate 44:21 decade 182:3</p>	<p>decade's 178:22, 179:2, 179:16, 180:24, 187:2 deceiving 136:3 decide 203:15 decided 70:25 decision 88:5 decisions 106:12, 194:1 declaration 5:12 decomposing 36:22 decrease 78:17, 85:10, 85:13, 120:25, 136:14 decreased 85:24, 156:14 deemed 123:18 defeat 48:20, 56:14, 56:25, 57:12, 92:7, 96:5, 111:1, 111:8 defeated 21:17, 37:22, 38:5, 73:23, 110:12, 111:10 defeating 70:17, 95:5, 96:22, 99:2, 112:9 defend 118:23 defendants 1:11, 3:15, 13:18, 15:13 defending 11:2, 13:18 defined 24:5, 58:6,</p>	<p>169:12 definitely 105:1, 164:10 definition 111:12, 111:13, 169:13 definitions 24:17, 24:20 degradation 152:24, 154:5, 154:8, 188:14 degraded 200:19, 203:25 degree 44:20, 200:19 democrat 105:22 democratic 13:21, 14:3, 53:22, 54:8, 61:20, 62:8, 62:16, 106:1, 106:15, 107:15 demographic 23:7, 26:9, 49:19, 50:14, 59:5, 60:19 demographics 25:4, 53:12 demonstrative 5:24, 146:8, 146:17, 147:8, 147:15, 147:21, 148:23, 149:4, 149:11, 149:15, 150:16, 150:20, 152:4, 154:16, 154:25, 158:22, 159:8, 159:9, 161:2, 161:3, 161:7, 161:18, 161:23, 164:15, 164:18, 165:20, 166:3, 166:18, 166:20, 167:3, 167:17, 170:5, 171:1, 171:12, 171:25, 172:6,</p>	<p>172:17, 173:22, 174:15, 175:19, 176:23, 178:4, 178:5, 179:11, 183:10, 183:14, 185:20, 188:15, 189:12, 190:11, 190:19, 190:24, 191:1, 191:3, 191:7, 192:4, 192:19, 192:22, 193:2, 194:25, 195:15, 195:16, 195:20, 196:1, 197:16, 199:10, 200:6, 200:15, 201:2, 201:16, 203:4, 203:16, 204:3 dense 133:16 depend 104:19, 104:20 depending 54:22, 184:15 depends 137:2 deposed 8:3 deposition 1:14, 2:3, 5:7, 6:3, 7:11, 8:16, 19:13, 205:15 derive 137:23 describe 22:13, 131:9, 153:12, 172:24, 173:12, 173:14, 173:21 described 23:23 describing 51:23 despite 32:7 detailed 67:25, 109:1,</p>
--	---	--	---

<p>109:21, 156:21, 159:4 detect 51:21 determination 55:4, 55:7, 60:12, 61:15, 69:11, 70:2, 70:20, 70:22, 71:2, 72:16, 73:4, 73:11, 73:17, 78:8, 88:1, 88:15, 200:1, 200:8 determinations 46:24, 67:12 determine 26:9, 28:14, 43:17, 49:25, 52:16, 56:17, 57:18, 60:1, 60:9, 63:4, 73:1, 93:16, 96:4, 148:18, 155:24 determined 109:25, 151:9 determining 87:22, 123:2, 123:21, 138:16 developing 188:8 deviates 161:3 deviation 160:4, 160:6, 160:10, 160:15, 161:13, 161:19, 188:24 deviations 188:2 devils 155:5, 156:25, 157:4 diagram 72:25 difference 46:10, 54:14,</p>	<p>84:19, 86:15, 87:12, 137:4 differences 71:20, 153:23 different 32:19, 32:20, 35:24, 36:15, 36:19, 39:4, 51:17, 53:19, 65:5, 67:6, 71:21, 72:15, 72:23, 76:6, 78:3, 85:9, 116:1, 136:19, 146:1, 153:9, 153:20, 153:21, 184:24, 187:17, 188:21, 202:9 differential 88:11 differentiate 60:24 differing 39:5, 72:14 difficult 10:23, 65:10, 173:2 diluting 14:14, 22:3 dilution 15:19, 39:4, 42:7, 42:14, 44:23, 66:20, 69:10, 72:22, 74:13, 78:5, 87:20, 87:21, 99:21 dilutive 21:5, 94:23 diminished 44:20 diminishment 195:25 dinosaur 173:3, 173:6, 179:22 direct 27:6, 40:25,</p>	<p>205:25 direction 67:6, 68:25, 73:10 directly 42:5, 72:2, 79:8, 79:14 disagree 35:3, 35:8, 35:16, 46:23, 48:23, 51:17, 54:3, 69:13, 70:9, 71:11, 96:13, 97:6, 112:20 discern 115:1 disclose 18:13 disclosed 79:18 discovery 140:16 discuss 42:25 discussed 45:14, 66:10, 68:18, 70:8, 71:6, 71:12, 72:8, 84:8, 91:21, 92:19, 102:15, 107:6, 108:8, 109:14, 111:16, 118:7, 156:11, 190:10, 190:15, 191:24, 192:18, 204:13 discusses 78:25 discussing 79:19 discussion 71:18, 79:4, 99:8, 141:16, 154:17, 159:21, 159:23, 168:3, 196:21 disentangle 153:23</p>	<p>dispute 52:14, 56:11, 56:23, 57:3, 72:1, 73:19, 74:1, 75:23, 79:6, 79:9, 101:6, 108:22, 108:24, 152:5, 158:21, 175:24 disputed 72:2, 72:3 disputing 21:12 distance 170:25, 171:24, 177:9, 177:10, 197:4, 197:14, 197:15, 197:21 distances 190:23, 197:18 distant 65:20, 68:6 distinction 43:2 distinguishing 24:21 district's 197:2 districting 147:25, 174:25, 176:4, 181:11, 187:3, 192:6, 192:18, 196:24, 198:22, 198:25, 200:14, 200:16, 203:3, 203:18 dive 67:25 diverge 36:20 divide 31:20, 85:2, 183:6 divided 85:11, 86:15 dividing 31:14 document 18:8, 41:2,</p>
---	---	---	---

<p>118:12, 132:19, 154:15, 159:14, 160:3, 180:16 documents 8:17 doing 12:25, 27:25, 71:4, 104:21, 107:1, 155:17, 161:10 done 7:12, 12:21, 12:23, 19:6, 31:10, 35:15, 40:14, 55:12, 56:5, 60:6, 74:14, 74:16, 74:25, 79:18, 81:8, 84:6, 92:4, 102:22, 108:8, 151:11, 161:9, 193:17, 201:15 doubt 40:23 down 7:17, 22:19, 26:24, 30:10, 42:18, 48:17, 64:9, 75:6, 77:25, 100:6, 101:14, 102:1, 108:6, 128:10, 129:7, 130:8, 157:7, 160:3, 160:4, 176:14, 181:5, 190:9 dphillips@bgwatt- orneys 3:21 dr 7:7, 26:23, 27:16, 29:17, 36:10, 37:11, 37:18, 40:3, 41:16, 43:22, 45:16, 46:24, 47:15, 48:19,</p>	<p>48:24, 53:25, 55:17, 56:2, 56:12, 56:20, 57:4, 61:13, 62:6, 63:13, 64:20, 71:14, 73:19, 75:10, 75:24, 78:24, 81:3, 81:7, 93:23, 99:15, 101:24, 105:17, 108:18, 109:24, 110:18, 110:24, 112:16, 113:13, 114:1, 117:18, 118:17, 119:6, 119:16, 127:16, 129:10, 132:25, 133:25, 135:7, 135:14, 137:9, 140:20, 141:4, 152:1, 152:22, 154:13, 154:21, 159:18, 162:7, 175:18, 178:22, 180:21, 192:16, 196:13 draw 24:12, 63:8, 74:19, 115:5, 115:25, 116:3, 117:24, 124:22 drawing 100:8, 193:7 drawn 51:13, 53:12, 95:10, 96:23, 128:8, 158:11, 193:2, 193:3 drew 98:9 dropped 83:4 duck 131:12 duly 7:3, 205:4 during 19:13, 80:20,</p>	<p>197:11 <hr/>E<hr/>each 7:16, 31:15, 38:10, 38:25, 67:4, 70:3, 70:15, 77:25, 111:24, 112:1, 115:24, 122:20, 139:8, 198:23 earlier 93:10, 99:8, 118:7, 156:11, 158:7, 166:23, 168:24 ease 7:19 eases 175:13 easier 11:15, 18:18, 175:17 east 50:8, 50:11, 174:4, 191:2 east-west 172:5 eastern 1:19, 2:5 easy 36:16, 186:12 eat 113:14 ecological 36:2, 37:6, 58:1 eddy 155:10, 164:19, 164:23, 164:25, 165:23, 166:12, 166:25, 189:20, 189:23, 191:15 edge 136:24 effect 22:12, 45:4, 156:5, 156:8,</p>	<p>178:23 effective 94:23 effort 80:24, 81:1 efforts 80:17, 80:20 ei 60:15 eight 76:9, 76:17, 77:10, 89:16, 89:20, 102:19, 102:22, 105:18 either 11:25, 57:7, 57:19, 57:23, 64:23, 66:13, 86:21, 190:22, 192:7 elect 25:3, 26:11, 32:14, 32:16, 61:8, 98:18, 114:17 elected 52:16, 60:10, 116:7 election 15:22, 16:3, 26:9, 26:14, 26:16, 30:2, 30:16, 32:6, 33:16, 34:8, 36:13, 36:14, 36:15, 36:19, 37:17, 37:18, 38:14, 39:8, 42:23, 44:24, 44:25, 45:18, 45:19, 45:22, 45:23, 46:1, 46:10, 49:18, 53:12, 53:13, 53:23, 56:22, 57:13, 62:19, 66:5, 67:4, 67:5, 67:7,</p>
--	--	--	--

<p>67:25, 68:20, 70:3, 70:15, 71:15, 76:4, 78:3, 78:11, 78:14, 78:21, 79:22, 81:1, 81:10, 81:16, 82:1, 82:2, 82:7, 82:16, 82:21, 83:2, 83:8, 83:10, 83:11, 83:17, 83:18, 85:6, 86:8, 87:1, 87:4, 87:15, 87:23, 88:9, 89:13, 90:3, 90:12, 90:19, 90:21, 91:19, 92:9, 100:11, 101:10, 101:14, 101:15, 101:20, 102:2, 103:4, 103:9, 105:11, 106:22, 107:5, 108:11, 108:12, 111:25, 112:1, 175:13, 183:24, 184:16</p> <p>electorate 30:18, 31:15, 31:22, 32:2, 32:9, 34:9, 34:15, 34:19, 36:22</p> <p>elects 104:6</p> <p>eligible 33:23</p> <p>else 11:15, 83:14, 196:4, 196:6, 204:10</p> <p>elsewhere 87:11</p> <p>employed 8:6, 124:8, 144:1, 145:8,</p>	<p>146:25, 205:14</p> <p>employing 145:18</p> <p>enacted 5:17, 5:19, 5:21, 6:4, 22:24, 28:16, 31:22, 123:2, 127:19, 127:21, 132:20, 135:1, 135:12, 137:6, 137:14, 138:22, 139:9, 139:17, 140:9, 141:22, 142:5, 143:21, 144:2, 144:10, 145:11, 145:20, 146:9, 146:11, 147:1, 147:21, 148:3, 148:6, 149:2, 150:13, 152:3, 153:2, 154:22, 157:21, 158:10, 158:18, 159:1, 162:2, 162:8, 162:21, 163:19, 164:25, 166:1, 166:5, 166:7, 167:4, 168:18, 169:10, 170:8, 170:24, 177:17, 177:21, 177:25, 178:10, 178:12, 179:5, 179:21, 180:16, 180:23, 181:15, 181:21, 184:3, 185:15, 185:19, 188:17, 189:10, 189:24, 190:2, 190:15, 190:21, 190:23, 191:1, 192:7, 192:8, 196:3, 197:22, 198:4, 199:12, 200:20, 203:25</p> <p>encompass 121:11</p>	<p>encompasses 121:18</p> <p>encounter 82:6, 174:14</p> <p>encourage 31:12</p> <p>end 37:24, 77:1, 146:18, 188:13, 192:16</p> <p>endogenous 39:7, 39:10, 39:11, 39:16, 41:4, 41:7, 42:20, 43:3, 43:23, 44:24, 45:21, 46:2, 47:17, 56:13, 56:25, 57:4, 57:13, 65:16, 65:24, 66:6, 66:21, 67:5, 67:18, 68:2, 68:20, 71:8, 73:6, 76:14, 89:12, 90:2, 91:23, 101:20, 102:12, 102:13, 103:4, 107:5, 108:10, 112:7</p> <p>enough 31:17, 50:3, 50:4, 51:23, 55:9, 57:22, 60:13, 93:18, 114:24, 119:15, 163:8</p> <p>entire 54:6, 154:25, 164:1, 198:17</p> <p>entirely 139:14, 167:13, 183:1, 190:13, 195:17</p> <p>entirety 183:13</p> <p>entities 13:17</p>	<p>entity 9:4, 9:25, 10:21</p> <p>equal 39:1, 98:18, 121:25, 144:24</p> <p>equality 186:4</p> <p>equally 38:10, 65:22, 66:14, 72:5, 79:2, 111:24, 112:1, 170:20</p> <p>equate 191:22</p> <p>error 164:8, 189:8</p> <p>especially 80:25, 186:4</p> <p>esq 4:3, 4:4, 4:5, 4:6</p> <p>esquire 3:3, 3:4, 3:5, 3:16</p> <p>essentially 37:16, 55:2, 60:18, 167:4, 182:21, 204:5</p> <p>established 29:7, 146:24, 148:25, 157:16, 157:20, 158:2</p> <p>estimate 86:20</p> <p>estimated 84:23</p> <p>estimates 83:6</p> <p>estimating 36:21</p> <p>et 1:5, 1:10, 138:2</p> <p>even 45:4, 55:8, 58:2, 75:5, 94:5, 100:23,</p>
--	--	--	--

<p>112:10, 113:2 event 185:8 ever 9:3, 17:10, 17:12, 146:23, 174:23, 186:11 every 37:18, 119:14, 134:3, 142:18, 186:6, 186:18, 187:12, 187:18 everybody 159:5 everything 185:12 evidence 26:2, 53:14, 54:13, 63:24, 88:7, 112:8, 113:1, 203:7 evidentiary 200:9 exact 93:4, 93:5, 164:24, 166:17 exactly 35:23, 36:16, 115:2, 128:20, 166:24, 183:7 examination 5:2, 7:5, 81:8 examine 41:7, 96:21, 186:22 examined 7:3 example 36:3, 39:7, 43:4, 55:21, 72:19, 83:13, 83:19, 87:11, 87:16, 125:21, 136:8, 171:3 examples 13:23 exceed 139:10</p>	<p>exceeds 119:6 excel 29:18, 33:6, 141:20 except 55:21, 121:16, 151:19 exception 183:11 exclude 97:8 excluding 106:14, 112:17, 112:18 exclusively 23:9 executed 129:24 exercise 111:5, 111:22, 112:21 exhibit 5:7, 6:3, 18:8, 18:9, 26:18, 26:20, 29:12, 29:14, 32:25, 33:2, 39:23, 39:25, 42:19, 47:10, 76:25, 82:13, 82:15, 83:1, 84:18, 88:20, 88:21, 95:21, 118:12, 118:14, 127:10, 127:13, 129:1, 129:6, 132:19, 132:22, 134:6, 134:25, 135:3, 135:6, 135:10, 137:6, 137:8, 137:11, 140:13, 141:17, 152:17, 154:14, 154:18, 159:13, 159:15, 162:2, 162:4, 164:13, 166:8, 167:24, 178:16,</p>	<p>178:18, 180:15, 180:18 exhibits 19:23, 29:11, 34:23, 82:10 exist 123:5 existing 10:8, 11:2, 21:2, 21:4, 45:2 exists 35:9, 43:17, 50:1, 87:17, 101:6, 123:4 exogenous 39:18, 41:4, 42:1, 42:12, 42:21, 43:2, 65:19, 67:7, 67:18, 67:19, 68:3, 68:6, 68:21 expand 184:14 expect 22:15, 52:24, 135:21 experience 169:1 expert 5:8, 5:9, 5:14, 8:19, 8:22, 9:2, 9:7, 10:19, 12:7, 13:16, 15:13, 16:24, 18:8, 18:14, 18:20, 18:21, 18:25, 26:18, 27:1, 35:11, 37:4, 39:24, 40:4, 47:9, 76:24, 118:8, 118:13, 118:18, 146:6 expertise 17:4 experts 72:21</p>	<p>explain 192:24 explanation 116:12 express 79:12 extent 15:25, 21:3, 22:6, 25:20, 27:16, 51:7, 52:8, 52:14, 61:12, 63:11, 66:16, 67:6, 67:16, 79:21, 96:14, 99:19, 100:7, 100:10, 101:22, 110:24, 116:14, 116:23, 119:5, 120:7, 136:20, 144:9, 144:20, 175:18, 176:2, 186:25, 187:7, 198:4, 202:20, 202:25 eyes 134:11, 135:20, 135:24, 136:3</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 54:5, 60:25, 77:23 fact 24:4, 25:9, 25:25, 32:7, 53:15, 54:22, 71:13, 73:25, 82:5, 87:19, 91:6, 91:16, 91:21, 95:19, 101:5, 115:22, 119:25, 126:1, 126:24, 138:20, 176:9, 191:2, 192:19, 195:10, 195:15, 198:10, 199:8, 201:17 factor 21:9, 32:20,</p>
---	---	---	---

<p>103:12, 193:7, 198:21 factors 18:1, 20:2, 25:10, 25:11, 44:5, 67:20, 78:16, 93:12, 100:2, 186:4, 195:12, 196:1 facts 80:11 factual 70:2, 73:11 faded 163:2 failed 133:10 fair 15:20, 16:11, 20:20, 25:12, 25:14, 29:9, 31:17, 31:18, 33:18, 37:14, 37:23, 39:20, 44:12, 45:6, 47:23, 49:22, 51:12, 52:19, 60:22, 68:19, 69:5, 80:15, 91:13, 119:15, 121:12, 128:4, 142:23, 146:14, 146:19, 148:8, 153:24, 153:25, 163:8, 170:21, 175:2, 175:15, 176:11, 176:25, 181:3, 190:17, 192:10, 200:11, 200:12, 204:4 fairly 153:12, 173:16, 173:18 fairness 201:11 fall 149:5 falls 144:9, 161:20</p>	<p>familiar 14:11, 25:18, 50:14, 58:20, 80:19, 153:3, 194:3, 194:8, 194:16, 194:20 far 42:6, 42:13, 64:5, 71:7, 77:3, 77:6, 117:16, 138:4, 174:23 fargo 5:18, 132:19, 133:17, 134:18 fault 185:7 favor 68:23, 69:3, 73:8, 113:1, 203:5 feature 98:5, 112:16 featured 79:1, 104:12, 105:25 features 44:25, 45:21, 190:16, 195:4 featuring 65:17, 65:20, 66:7, 91:23, 107:6, 108:12 february 1:18, 2:4, 205:19 federal 123:17 feissner 1:25, 2:6, 205:3, 205:22 fell 198:25 felt 74:22 ferret 72:9 few 95:8</p>	<p>fewer 91:12, 113:6 fiddled 59:3 figure 23:2 figures 33:22, 191:11 file 8:18, 9:24, 26:18, 29:12, 29:21, 39:23, 47:7, 88:20, 127:10, 135:1, 141:2, 162:2, 178:16 filed 11:10, 99:9 files 33:11 financial 205:16 find 40:19, 47:12, 64:20, 147:11, 161:11, 170:19 finding 68:24 fine 12:2, 121:14 finger 131:18 finish 41:12 first 7:3, 11:6, 20:15, 20:22, 22:21, 30:4, 41:3, 68:5, 114:24, 122:19, 146:15, 149:12, 205:4 five 92:8, 97:11, 112:1 flawed 36:3 flippant 53:18</p>	<p>focus 15:25, 20:23, 22:2 focused 22:8, 158:9 focuses 168:4 focusing 22:20 folder 29:22, 33:7 folks 9:24, 195:7, 195:9 follow 20:9, 54:17, 165:22, 186:16 follow-up 196:14 follow-ups 204:9 followed 122:17, 176:3, 184:10, 185:23 following 54:17, 71:5, 156:22 follows 7:4, 116:25, 150:14 ford 118:19 foregoing 205:7, 205:23 forks 5:20, 135:1, 135:11, 135:17 form 20:18, 69:7, 77:20, 100:3, 101:1, 147:3, 148:14 former 53:21, 129:2, 183:5, 184:21, 184:25 forth 19:3, 19:23,</p>
--	---	---	---

<p>20:2, 20:10, 164:14 found 28:21, 63:8, 65:13, 109:3, 111:20, 139:16, 142:12, 142:21, 143:23, 147:9 four 108:13, 108:19, 109:5, 109:10, 109:17, 110:6, 130:12, 132:10, 164:20, 165:18, 184:21, 185:2, 185:3, 185:4 framework 144:1, 144:4, 144:6, 159:23, 201:7 freely 65:24 frequently 83:21 front 69:12, 106:12, 143:14, 143:18, 191:10, 191:11 full 30:9, 47:25, 77:5, 99:25, 101:25, 113:24, 114:15, 114:16, 115:7, 115:9, 116:11, 117:1, 117:11, 117:25, 170:3 fulsome 102:18 function 25:9, 142:1 functional 27:18, 27:19 functions 25:2, 141:12 further 43:6, 68:13, 126:15, 170:19,</p>	<p>171:14, 196:15, 204:6, 205:7 future 48:13 fuzzy 59:11</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gaber 3:3, 5:3, 7:6, 7:8, 18:7, 18:11, 26:17, 26:22, 28:5, 28:7, 28:10, 29:10, 29:16, 32:24, 33:4, 39:22, 40:2, 41:20, 42:18, 47:4, 48:14, 62:22, 62:25, 63:6, 88:19, 88:23, 113:8, 113:11, 113:12, 118:11, 118:16, 119:10, 119:15, 127:9, 127:15, 132:18, 132:24, 134:5, 134:8, 134:25, 135:9, 137:5, 137:13, 140:21, 141:6, 141:8, 141:15, 141:19, 152:20, 154:9, 154:12, 154:20, 157:7, 159:13, 159:17, 162:1, 162:6, 162:11, 167:24, 170:1, 171:5, 172:12, 178:9, 178:15, 178:20, 180:15, 180:20, 196:9, 196:13, 197:10, 204:6, 204:12 gather 15:16, 16:23, 44:9, 79:22,</p>	<p>164:9, 194:1 gathered 122:16 gears 113:16, 118:6 general 68:11, 84:4, 84:8, 91:10, 91:18, 101:14, 103:25, 104:4, 107:4, 108:10 generally 13:17, 43:5, 44:13, 71:5, 91:13, 136:14, 169:2 generic 22:18, 81:17 generically 82:4 geographic 170:24, 171:11, 171:24, 190:23 geographical 170:18 geographically 20:17, 50:15, 115:23, 173:17, 191:25 geography 182:1, 191:22 georgia 8:8, 194:18 gerrymander 11:19, 192:23, 192:25, 193:5, 195:22, 196:23, 197:25, 198:8, 198:13, 199:24, 200:5 gerrymandering 125:7, 193:25, 195:4, 199:2, 199:14 gerrymanders 201:24 get-out-the-vote 80:17, 80:20</p>	<p>getting 31:25, 85:20, 130:9 gingles 20:2, 20:11, 20:23, 21:7, 21:12, 21:15, 22:1, 22:8, 27:11, 29:5, 35:6, 37:11, 39:17, 43:17, 45:21, 66:12, 68:23, 69:3, 70:12, 70:21, 71:19, 72:10, 72:16, 73:12, 77:18, 78:5, 78:20, 88:15, 93:12, 93:14, 93:15, 94:5, 95:4, 96:8, 96:24, 99:1, 100:1, 100:24, 101:6, 111:14, 157:15, 157:19, 158:1, 158:8, 158:15, 158:17, 159:8 give 67:2, 67:4, 70:3, 70:15, 70:23, 70:25, 72:9, 112:4, 128:22 given 41:9, 60:5, 63:9, 64:19, 65:16, 71:20, 72:13, 73:9, 87:19, 87:24, 89:13, 95:9, 100:7, 100:20, 100:21, 102:11, 115:22, 130:2, 149:1, 149:4, 187:14 gives 39:1</p>
---	--	---	--

<p>giving 19:2 glean 114:24, 115:4 global 66:2 go 40:24, 41:12, 41:21, 47:14, 48:16, 61:1, 62:25, 68:5, 68:10, 68:13, 77:3, 82:9, 107:1, 109:21, 126:15, 129:4, 129:6, 129:25, 130:1, 138:4, 154:9, 164:13, 165:15, 167:6, 170:19, 190:9, 196:9, 199:19 goal 133:6, 160:9, 161:4, 161:19, 184:4, 185:23, 188:25, 198:24, 199:1 goals 133:1, 181:12 going 18:7, 19:19, 19:21, 19:22, 26:17, 27:7, 29:10, 31:9, 32:24, 34:22, 39:22, 40:22, 47:5, 53:1, 60:23, 69:11, 69:17, 69:20, 78:14, 84:12, 84:17, 88:19, 89:3, 95:15, 105:3, 106:4, 113:16, 116:5, 118:11, 121:20, 127:9, 129:3, 132:18, 133:24, 137:21, 140:14,</p>	<p>141:9, 141:11, 142:1, 143:1, 154:14, 155:11, 156:3, 164:13, 178:15, 180:23, 186:5, 187:19, 187:21 gone 64:5, 188:20, 200:13, 200:25 good 7:7, 8:1, 18:16, 19:17, 68:4, 113:8, 141:4, 173:12, 183:18, 201:3 gotten 74:25 government 159:14 governmental 9:25, 13:17 governor 1:9, 53:22, 104:7 grand 5:20, 135:1, 135:11, 135:17 graphic 77:4 grasp 186:12 gray 163:2, 171:5 grayish-blue 172:21 great 16:18, 87:24 greater 66:6, 67:2, 67:5, 71:7, 112:10 green 77:8, 172:10 grinolds 3:17 group 10:1, 15:4,</p>	<p>20:17, 21:10, 21:22, 24:13, 31:16, 32:16, 36:22, 43:9, 43:10, 45:1, 58:8, 60:19, 83:15, 87:13, 91:24, 94:10, 115:1, 117:6 group's 21:16, 60:21 groups 15:12, 23:8, 52:6, 52:7, 63:5, 84:9, 87:5, 114:7, 202:5 gubernatorial 104:5 guess 12:24, 30:10, 32:19, 34:13, 35:25, 38:22, 42:25, 46:18, 51:16, 55:11, 57:15, 60:6, 64:7, 65:9, 67:22, 69:8, 70:13, 79:8, 80:5, 85:8, 86:12, 92:4, 95:13, 97:13, 104:18, 105:3, 105:21, 108:25, 111:11, 116:1, 117:5, 118:3, 119:20, 120:8, 125:19, 137:1, 150:3, 156:9, 159:3, 163:5, 167:6, 168:24, 173:18, 182:18, 193:1, 196:20, 197:5, 203:23 guided 159:24</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 13:12, 182:15,</p>	<p>182:16 hallmarks 193:24 hand 42:2, 42:5, 98:9, 205:19 hansen 3:5 happened 85:17 happening 96:1, 153:18 happy 18:16 hard 19:19, 66:25, 126:6, 133:15, 162:24 harding 14:9 harris 194:9 head 173:8, 194:15 heavily 96:18 held 2:4, 8:9, 102:16, 114:6, 141:16, 154:17 help 97:21, 153:23 helpful 139:6 here 8:11, 8:15, 20:8, 34:7, 37:16, 40:24, 42:9, 44:15, 46:14, 47:15, 51:22, 58:11, 67:21, 72:21, 74:1, 81:2, 83:20, 84:17, 87:10, 88:13, 89:9, 92:4, 95:20, 97:21, 101:13, 104:25,</p>
--	---	---	--

<p>109:7, 120:14, 124:4, 125:4, 125:9, 125:22, 126:9, 126:17, 132:2, 133:13, 133:19, 133:21, 135:16, 135:22, 137:17, 138:3, 142:2, 143:2, 151:23, 153:5, 153:13, 153:16, 156:18, 158:16, 160:5, 160:20, 166:9, 170:2, 174:3, 174:11, 177:2, 177:3, 185:18, 189:3, 193:20, 199:7 hereby 205:4 hereunto 205:18 high 51:8, 51:23, 60:15, 64:19, 87:12, 92:20, 93:3, 93:6, 93:13 high-profile 75:5 higher 39:17, 39:21, 81:22, 82:6, 83:16, 83:25, 84:10, 84:15, 85:4, 86:7, 87:5, 87:14, 104:23, 113:2, 142:9, 142:20, 142:25, 143:21, 144:23, 144:24, 145:17, 147:18, 156:19, 156:24, 201:19, 201:20 highest 181:1 himself 48:6</p>	<p>history 17:2, 44:19, 45:11, 159:22, 169:3 hoc 187:14, 188:3 hold 10:12, 147:7 holdings 169:6 homogeneous 51:19, 51:25, 52:3, 52:6, 58:2, 58:5, 58:7, 59:19 honest 40:13, 74:25 honestly 103:1, 114:25, 120:2, 169:15, 186:10 hood 1:15, 2:3, 5:2, 5:7, 5:8, 5:9, 5:13, 5:14, 5:23, 5:25, 6:3, 6:6, 7:2, 7:7, 18:8, 26:18, 26:23, 29:17, 39:23, 40:3, 88:20, 89:4, 113:13, 117:18, 118:12, 118:17, 119:16, 127:16, 129:10, 132:25, 135:3, 135:14, 137:11, 140:20, 141:4, 141:9, 141:17, 152:22, 154:13, 154:18, 154:21, 159:15, 159:18, 162:4, 162:7, 178:18, 178:22, 180:18, 180:21, 192:16, 196:13 hood's 27:16, 41:16,</p>	<p>61:13, 63:13, 101:24, 114:1, 119:6, 133:25, 135:7, 137:9 hood-1 18:9 hood-2 26:20 hood-3 29:14 hood-4 33:2 hood-5 39:25 hood-6 88:21 hood-7 118:14 hood-8 127:13 hood-9 132:22 horrible 184:18 hour 48:12 house 46:2, 46:8, 52:9, 62:9, 103:14, 103:19, 103:23, 105:24, 114:15, 115:11, 115:21, 162:15, 162:22, 163:6, 163:9, 163:23, 166:2, 166:4, 167:7, 182:8, 182:19, 182:23, 183:1, 183:2, 183:4, 183:6, 183:15, 189:17, 190:7 howe 1:8 however 52:6, 71:5, 151:3 hub 36:15</p>	<p>huge 137:3, 173:17 hundred 28:25 hypothetical 5:10, 5:11, 29:12, 32:25, 95:17, 156:9 hypothetically 25:13, 66:25, 72:20, 72:21</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 141:15 ideal 160:17 identification 18:10, 26:21, 29:15, 33:3, 40:1, 88:22, 118:15, 127:14, 132:23, 135:4, 137:12, 141:18, 154:19, 159:16, 162:5, 178:19, 180:19 identified 23:9, 59:12 identify 47:21, 83:13, 176:7, 176:21, 176:22 identifying 57:9, 134:19 iii 5:8, 5:9, 5:14 illustrative 21:8 import 59:4 important 7:15, 7:18, 32:13, 60:8, 63:3, 73:5, 149:22, 169:6, 184:13, 197:1 include 13:14, 13:15,</p>
--	--	--	--

<p>15:7, 23:12, 42:2, 45:7, 69:20, 78:14, 90:1, 93:13, 101:20, 102:10, 103:2, 103:10, 103:16, 104:4, 105:1, 105:8, 105:12, 106:18, 107:9, 107:17, 107:18, 108:1, 108:5, 158:25, 177:24, 198:1, 198:5 included 69:18, 70:11, 75:12, 93:20, 93:22, 96:15, 102:25, 103:5, 103:21, 103:24, 104:16, 104:18, 105:5, 105:10, 105:19, 106:5, 127:17, 133:2, 159:1, 159:5, 159:6, 162:21, 169:22, 179:2, 191:7, 196:25, 197:8 includes 76:13, 159:20, 166:10, 178:6, 180:2, 183:4, 191:13 including 79:9, 81:18, 81:19, 102:13, 106:24, 108:3, 112:15, 113:3, 201:4 incorrect 46:15, 56:6 increase 78:17, 84:16, 85:10, 85:13, 85:22, 86:17, 86:22, 116:5, 170:18</p>	<p>increases 68:16 incumbency 44:10, 44:17, 44:19, 45:8, 183:18, 184:4 incumbent 44:18, 45:3, 46:12, 52:9, 183:22, 185:9, 185:11, 185:13 incursion 131:22 indents 136:22, 137:3 independent 81:4, 105:25, 106:6 index 126:2 indians 1:5, 17:5 indicate 160:21 indicates 48:6 indication 100:23, 133:9, 198:7 indicative 45:4, 98:25 indicator 183:18 indirectly 72:3, 79:8 individual 70:24 individually 67:3 infer 46:19, 62:7, 117:5 inference 36:3, 37:6, 49:20, 51:12, 51:25, 55:11, 55:22, 58:1, 61:17, 61:19,</p>	<p>61:25, 62:2, 62:5, 64:6, 65:13, 65:15, 67:1 inferences 53:6, 53:11, 60:14, 61:4, 63:9, 63:18, 63:21, 63:25, 65:10 inferred 49:8 inflexible 198:24 influenced 24:22 information 32:12, 32:18, 32:23, 60:8, 87:25, 138:7, 153:23 initial 140:23 injunction 11:10, 12:4 inputted 36:6 insert 41:13 insofar 94:7, 96:17 instance 81:19, 104:24, 117:7, 174:3 instances 192:5, 197:17 instead 156:22, 180:4, 198:1, 198:6 insufficient 94:23, 111:18 intend 9:24 interest 163:16, 168:3, 168:8, 168:11, 169:20, 175:5, 175:9, 205:16</p>	<p>interests 17:17, 202:9, 202:10, 202:13 internal 82:18 interpret 71:19 interpreting 66:4 interruption 11:22, 92:25, 141:7 interview 117:6 introduce 127:9 involved 13:7, 13:13 involves 71:6 involving 10:15, 13:25 issue 25:16, 39:9, 66:20, 117:15, 202:2 issues 36:5, 169:2, 202:14 itself 76:15, 144:24, 157:2, 157:3, 158:18, 173:17</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>january 129:24 job 1:23, 8:11, 187:14 joins 192:20 joint 159:21 judge 126:7 jumping 14:7</p>
---	---	--	--

<p>jurisdiction 10:2 jurisdictions 59:9</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 10:23, 19:17, 163:13 keeps 165:24, 169:10, 195:16 kelty 4:4 key 26:8 kidder 171:21 kind 15:1, 19:21, 51:25, 78:16, 81:1, 102:3, 120:3, 124:21, 133:15, 163:2, 172:21, 188:5 kinds 68:8 know 7:21, 8:3, 9:11, 12:8, 13:12, 16:5, 19:4, 26:14, 35:16, 35:21, 35:23, 40:7, 40:16, 45:7, 45:10, 48:5, 49:23, 50:21, 51:17, 52:20, 53:18, 54:24, 54:25, 55:7, 57:15, 58:8, 64:2, 64:5, 64:17, 65:10, 66:21, 67:19, 67:24, 69:9, 69:13, 69:19, 72:19, 74:14, 75:4, 75:7,</p>	<p>76:3, 77:23, 78:14, 81:18, 82:15, 84:9, 91:14, 91:19, 99:22, 100:14, 100:15, 102:21, 104:17, 105:22, 107:22, 115:1, 115:18, 115:21, 115:25, 117:5, 124:1, 126:7, 128:20, 129:22, 131:13, 136:4, 137:1, 137:19, 138:2, 139:20, 146:3, 149:21, 150:1, 150:2, 150:4, 153:6, 159:4, 169:5, 169:6, 169:15, 169:18, 172:9, 173:1, 173:4, 174:10, 175:10, 180:7, 181:6, 182:15, 183:7, 186:1, 186:10, 186:12, 186:18, 187:12, 191:20, 196:22 knowing 107:12 knowledge 17:21, 169:1 known 12:13</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>laid 124:6 lake 17:8, 17:13, 149:14, 150:15, 155:5, 155:21, 157:1, 157:4, 165:4, 180:2, 180:8, 189:21 land 168:19, 168:22,</p>	<p>173:23, 174:1, 176:7, 176:10, 176:21, 190:16, 190:18, 192:17 lands 169:6, 169:17, 169:22 large 20:17, 22:17, 51:11, 60:20, 61:17, 94:2 larger 15:7, 80:24, 91:2, 91:7, 170:24, 171:11, 171:24, 172:5, 172:16, 176:23, 190:22, 190:23 largest 160:16, 181:21 last 11:8, 13:5, 33:15, 63:2, 89:2, 117:20, 117:21, 129:8, 132:9, 149:12, 167:25, 178:11, 196:21 lately 128:3 later 25:25, 34:25 laurie 4:7 lavar 4:2, 20:6, 162:11, 167:25, 170:1, 171:6, 172:13, 178:9 law 22:10, 119:19, 123:8, 193:25 lawsuit 9:25 ld 22:23, 22:24, 29:12, 32:25, 89:10, 89:15,</p>	<p>97:23, 101:4, 101:6, 103:3, 103:4, 157:10, 163:5, 163:19, 185:20, 192:22, 193:1, 196:2, 196:3, 203:25 ld9 5:10, 5:11 lead 145:19 leading 199:13 learn 105:13 least 29:6, 45:18, 49:12, 51:21, 53:14, 86:20, 90:1, 115:11, 116:13, 126:10, 137:25, 139:15, 144:13, 144:24, 184:2, 195:25 left 77:6 legal 3:6, 7:9, 41:8, 66:17, 67:15, 69:7, 73:15, 88:3, 88:17, 95:12, 96:12, 99:5, 145:2, 151:16, 159:23, 193:13, 199:5, 203:21 legally 69:13 legislative 5:17, 5:19, 5:21, 6:4, 6:5, 22:25, 39:12, 50:22, 84:7, 100:16, 114:5, 115:19, 139:10, 139:18, 141:23, 144:11, 145:12, 145:21, 146:9,</p>
--	--	--	---

<p>159:24, 162:8, 178:17, 178:22, 187:3, 188:24 legislators 188:11 legislature 10:23, 13:8, 23:18, 113:20, 114:20, 116:4, 116:18, 116:24, 133:5, 133:10, 137:15, 138:23, 142:18, 159:19, 160:8, 160:20, 161:4, 165:21, 168:15, 170:9, 185:22, 187:9, 187:15, 188:7, 202:15 legislature's 23:3, 133:1, 135:12, 150:7, 161:19, 181:12, 184:3 length 121:16, 197:15, 201:1 less 42:6, 42:13, 42:23, 68:24, 69:23, 71:1, 73:9, 78:8, 78:11, 137:21, 138:3, 148:7 let's 19:21, 19:24, 42:25, 47:4, 47:6, 62:22, 62:25, 82:12, 83:1, 84:17, 97:4, 101:11, 118:6, 120:10, 128:10, 129:25, 130:1, 134:25, 137:5, 137:25, 142:2, 142:4, 154:9, 164:12, 166:7, 171:17,</p>	<p>180:15, 182:17, 196:9 lettering 174:6 level 58:10, 60:15, 64:19, 65:1, 125:18, 147:9, 190:5, 190:7, 195:5, 201:19 levels 147:6 liked 74:24 likelihood 44:11 likely 156:20, 156:21 likewise 142:21, 144:2 limit 68:1 line 27:15, 28:6, 41:18, 63:2, 63:14, 74:8, 79:11, 119:5, 119:8, 125:7, 136:15, 136:16, 136:23, 155:5, 156:17, 156:22, 195:7, 195:8 lines 33:17, 95:9, 99:22, 99:23, 163:2, 175:20, 175:21, 193:7, 195:6 lisa 1:25, 2:6, 205:3, 205:22 lisa's 7:19 list 45:8, 120:14 literally 147:16, 150:5, 174:5, 202:3</p>	<p>litigation 9:8, 9:18, 9:21, 10:8 little 7:18, 19:14, 26:24, 27:23, 31:10, 34:24, 36:21, 40:21, 48:17, 50:16, 59:11, 64:8, 82:9, 84:12, 98:17, 109:1, 118:7, 153:4, 158:6, 162:24, 170:2, 182:16, 184:24 local 42:3, 59:8, 175:10 located 115:25 logical 53:4, 115:4 logically 117:9, 117:23 long 8:9, 8:13, 36:25, 40:12, 40:17, 83:23, 91:14, 105:12, 159:19, 191:3 longer 180:2 look 9:23, 18:15, 21:5, 25:25, 26:14, 29:25, 33:22, 34:10, 39:16, 40:24, 49:17, 52:15, 55:2, 76:22, 80:8, 95:7, 95:19, 96:24, 97:3, 97:9, 98:16, 103:1, 123:9, 125:1, 127:20, 145:10, 151:11, 153:10,</p>	<p>153:14, 155:2, 155:13, 155:17, 155:18, 155:19, 163:13, 163:15, 166:8, 167:21, 168:17, 169:9, 172:2, 172:8, 174:12, 179:21, 185:14, 185:17, 186:23, 187:2, 187:19, 197:2, 201:7 looked 27:25, 28:11, 28:18, 29:5, 40:11, 40:17, 91:8, 120:2, 120:9, 127:4, 128:3, 148:1, 161:7, 175:4, 175:6, 176:5, 194:21, 195:12 looking 28:25, 44:22, 54:23, 55:8, 67:3, 67:24, 69:9, 89:15, 90:5, 91:11, 91:12, 91:16, 97:18, 114:9, 120:21, 128:21, 134:12, 134:18, 135:19, 135:20, 136:2, 136:7, 139:1, 144:18, 145:7, 152:7, 153:21, 155:16, 157:9, 157:15, 169:25, 177:1, 182:13, 195:24 looks 40:13, 97:24, 122:6, 129:19, 171:13, 172:4, 172:16, 173:3, 177:1, 181:7, 185:18, 194:24 loses 45:3, 76:19</p>
--	---	---	---

<p>losing 95:16 losses 109:19 lost 51:10, 89:20, 108:19, 109:10, 109:11, 109:16, 110:5, 183:24 lot 67:20, 105:13, 116:1, 126:7, 201:10 louisiana 10:15, 10:18 lower 124:11, 139:17, 140:8, 146:18 lowest 142:6, 143:2, 143:20, 144:20, 146:21, 146:23, 147:16 lulac 25:16 lunch 113:13</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 63:18, 63:20, 65:15, 81:15, 103:9, 103:15, 104:3, 108:25, 111:6, 112:21, 138:19, 151:6, 151:17, 201:13 main 12:18, 14:21, 148:1 majority 20:18, 21:18, 21:21, 24:5, 25:9, 32:9, 34:19, 60:20, 90:20, 94:3, 158:3, 158:12, 158:18, 158:22,</p>	<p>159:11 make 40:22, 42:22, 49:20, 51:24, 53:4, 53:6, 55:4, 55:7, 55:10, 56:1, 60:12, 60:14, 61:3, 61:15, 65:10, 65:13, 67:1, 67:12, 69:10, 69:20, 70:20, 72:10, 72:15, 73:11, 73:17, 78:8, 78:11, 87:23, 94:6, 95:2, 100:9, 100:13, 106:4, 109:2, 109:14, 110:19, 123:20, 126:23, 137:3, 137:4, 137:24, 140:5, 140:7, 144:17, 153:5, 153:6, 153:9, 153:17, 184:5, 187:1, 187:4, 191:21, 199:13, 200:1, 200:7, 200:8 makes 48:13, 69:24, 94:7, 152:19, 175:16, 189:24 makeup 50:14 making 55:22, 59:15, 61:17, 61:25, 64:6, 71:2, 106:11, 138:25, 153:13, 185:18, 187:25, 202:22 mandates 64:4 manner 150:15 many 8:4, 13:10,</p>	<p>22:7, 50:24, 52:7, 66:21, 67:17, 74:14, 74:16, 74:20, 94:9, 116:1, 128:8, 137:3, 197:17 map 11:2, 91:25, 127:22, 133:14, 137:25, 150:12, 153:10, 154:7, 154:16, 155:16, 155:19, 156:20, 162:2, 162:15, 162:22, 163:7, 166:2, 166:7, 170:3, 171:15, 174:1, 174:3, 176:10, 177:2, 177:3, 178:10, 178:12, 178:17, 180:7, 180:24, 189:17, 190:15, 190:22 mapped 127:22, 182:5 maps 13:18, 127:11, 127:18, 128:8, 128:12, 130:1, 139:2, 197:1, 197:9 marcellais 47:25, 48:25, 49:3, 56:21, 183:23 margin 22:17 margins 51:11 mark 3:3, 7:8, 18:7, 26:17, 29:10, 29:11, 32:24, 39:22, 47:4, 47:5, 47:9, 47:10, 48:11,</p>	<p>88:19, 118:11, 132:18, 134:25, 141:1, 152:18, 154:14, 159:13, 162:1, 178:15, 180:15 marked 18:9, 26:20, 29:14, 33:2, 39:25, 76:25, 88:21, 118:14, 127:13, 132:22, 135:3, 137:11, 141:17, 154:18, 159:15, 162:4, 178:18, 180:18 marvin 46:16, 48:20, 48:24, 51:10, 52:9, 62:13 match 106:2 matches 143:4 math 19:14, 31:10, 84:13, 97:21 matter 9:13, 9:14, 9:20, 10:6, 10:13, 11:7, 11:21, 11:23, 11:25, 12:1, 12:2, 12:5, 12:7, 12:17, 12:22, 12:24, 14:5, 18:25, 27:2, 35:12, 37:4, 38:13, 39:13, 39:14, 63:16, 64:7, 69:10, 69:24, 74:18, 78:15, 91:10, 99:21, 100:18, 102:6 matters 9:12, 10:7 maximize 186:5</p>
--	---	---	--

<p>maybe 13:12, 26:24, 64:5, 72:24, 97:20, 98:2, 134:2, 135:13, 152:8, 152:18, 156:12, 160:3, 170:1, 172:14, 173:6, 182:16, 185:6, 186:22, 196:20</p> <p>mcdonald 154:2</p> <p>mcdonald's 152:23</p> <p>mdanahy@campaign-legal 3:12</p> <p>means 150:4, 168:6, 181:20, 205:25</p> <p>measure 32:20, 125:25, 142:16, 154:2, 154:8</p> <p>measured 23:16, 23:19</p> <p>measures 126:8, 137:21, 192:3</p> <p>measuring 136:19, 172:9</p> <p>meet 111:11, 126:16, 133:10</p> <p>meetings 114:6</p> <p>member 17:12, 43:9</p> <p>memory 50:20, 51:21</p> <p>mentioned 166:23</p> <p>merely 202:22</p> <p>met 21:6</p> <p>method 51:20, 52:15,</p>	<p>76:2, 124:23, 144:22</p> <p>methodological 39:14, 74:18</p> <p>methodologically 42:12, 65:23</p> <p>methodologies 122:16</p> <p>methodology 35:18, 36:2, 37:3, 66:5, 71:6, 123:1, 124:8, 124:14, 125:4, 125:9, 126:20, 127:2, 127:8, 145:18, 146:25</p> <p>methods 51:18, 60:5, 145:8</p> <p>metric 124:15, 142:19, 145:13, 189:3</p> <p>mgaber@campaignlegal 3:11</p> <p>mha 11:17</p> <p>michael 1:8, 4:3</p> <p>middle 161:12, 161:15</p> <p>midterm 81:23, 82:1, 82:6, 82:21, 83:17, 84:11, 85:5, 87:1, 87:5, 87:13</p> <p>might 7:13, 7:19, 19:13, 27:23, 40:8, 42:22, 80:12, 109:23, 113:22, 117:11, 137:3, 137:4, 141:4, 153:9, 192:14, 202:13</p> <p>miller 194:6, 194:17,</p>	<p>194:19, 194:24</p> <p>mind 14:6, 19:25, 83:14, 162:11, 170:2, 173:5, 178:10</p> <p>minor 170:7</p> <p>minorities 197:3</p> <p>minority 14:14, 15:4, 15:12, 20:16, 21:10, 21:16, 21:22, 22:16, 23:8, 23:23, 24:7, 24:13, 25:2, 25:21, 32:16, 43:9, 45:1, 91:23, 91:24, 93:13, 94:2, 195:9</p> <p>minus 85:11, 85:15, 86:14, 161:5</p> <p>missed 56:8</p> <p>misstated 116:20</p> <p>misstates 115:16, 116:15, 199:15, 203:12</p> <p>mix 90:1</p> <p>mixed 73:5</p> <p>molly 3:4</p> <p>moment 27:8, 34:23, 58:13, 77:25, 129:3</p> <p>monday 1:18, 2:4</p> <p>moniz 103:8, 107:16</p> <p>more 7:13, 8:5,</p>	<p>19:18, 23:14, 25:4, 25:22, 28:24, 29:3, 29:10, 35:9, 41:9, 42:15, 42:21, 42:23, 43:4, 43:5, 43:10, 43:16, 44:5, 44:19, 45:4, 45:11, 52:17, 59:23, 63:17, 64:4, 65:17, 65:18, 65:19, 65:25, 66:8, 68:2, 68:6, 68:10, 68:21, 69:1, 69:2, 69:14, 70:8, 71:1, 71:8, 71:9, 73:2, 73:5, 73:6, 74:16, 74:25, 77:13, 78:11, 78:14, 81:25, 83:17, 84:22, 91:10, 91:11, 91:22, 96:23, 102:17, 102:18, 109:1, 111:12, 112:4, 112:5, 112:7, 113:17, 133:16, 138:7, 148:7, 150:5, 153:10, 156:16, 157:18, 163:2, 168:6, 168:9, 177:14, 180:6, 182:16, 199:20, 202:5</p> <p>morning 7:7</p> <p>most 43:22, 43:23, 44:25, 45:17, 45:20, 45:23, 46:7, 51:1, 81:24, 82:3, 84:9, 87:5,</p>
---	--	---	---

<p>90:2, 90:19, 96:7, 101:20, 102:11, 102:16, 152:19, 156:20, 156:21, 159:3, 159:5, 175:9, 183:24, 191:6, 191:18 mostly 16:1 motion 11:10 mountain 1:4, 11:14, 11:18, 12:1, 17:5, 17:13, 50:9, 58:17, 168:20, 169:7 move 22:19 moved 179:23, 186:1 moves 176:18 moving 44:22, 108:6, 190:13 much 39:17, 45:10, 53:19, 70:2, 70:14, 70:23, 87:14, 99:12, 131:21, 136:18, 137:2, 190:22, 196:16 muddled 178:3 municipal 174:14 municipalities 174:13 must 64:14 myself 97:21, 204:9</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 7:8, 29:21,</p>	<p>48:6 named 141:2 narf 4:3, 4:4, 4:5, 4:7 narrow 131:14, 173:14, 173:16 narrowed 133:17, 146:10 narrower 176:9 narrowest 173:19 nation 11:17, 17:8, 189:21 nations 202:6 natural 136:15, 155:25 nd 3:19, 5:17, 5:19, 5:21 near 48:13 nearby 19:17 nearly 92:24, 93:1 necessarily 16:4, 22:13, 45:8, 60:21, 64:1, 67:10, 70:5, 96:13, 97:6, 133:12, 134:9, 134:15, 134:24, 135:19, 138:6, 152:12, 155:15, 161:14, 175:5, 175:11, 175:12, 176:1, 186:5, 187:19, 191:22 necessary 12:8, 70:22, 117:24, 127:21</p>	<p>neck 173:8, 173:11 necks 190:16 need 7:20, 7:21, 20:5, 27:6, 67:11, 68:25, 69:2, 127:25, 138:7, 150:1, 191:21, 198:23, 204:15 needed 115:5, 115:11, 186:25 needs 184:14 negative 85:21, 85:22, 86:2, 86:3, 188:6 neighboring 94:20, 99:16, 171:3 neither 34:17, 205:12 nelson 46:16, 48:20, 48:24, 49:7, 51:10, 52:9, 53:22, 62:13 neswood 4:5 never 16:25 nevertheless 63:7, 63:20, 67:2, 70:10, 131:21 new 9:13, 10:2, 10:4, 10:5, 20:18, 30:17, 33:17, 71:17, 82:17, 175:20, 181:21, 181:23, 182:18, 183:2, 184:11, 184:22,</p>	<p>185:1, 185:2, 186:15, 186:16, 186:18, 186:19, 187:13 newly 28:16 next 37:8, 41:25, 48:6, 129:23, 130:8 nhansen@campaign- legal 3:13 nicole 3:5 niemi 124:16, 124:17, 124:18, 124:23, 125:5, 126:12, 145:9 nine 90:12 nomenclature 26:6 non-compact 119:19, 125:19, 127:5, 130:14 noncitizen 9:15, 9:16 noncitizens 9:16 none 75:11, 147:14 normally 70:19 north 1:2, 1:10, 9:4, 11:7, 13:8, 16:18, 17:10, 23:18, 35:5, 35:10, 79:16, 80:21, 81:10, 81:16, 103:22, 104:6, 132:25, 133:18, 136:11, 139:9, 139:18, 140:9, 141:23, 142:17, 143:21,</p>
---	---	--	--

<p>144:1, 144:10, 144:15, 144:18, 144:20, 145:11, 145:15, 145:16, 145:20, 146:16, 147:1, 147:11, 159:22, 162:8, 163:1, 170:14, 171:14, 172:6, 172:14, 172:16, 174:5, 178:16, 178:23, 187:3, 191:4 northeastern 35:4 northern 155:4, 171:19 northernmost 131:11 northwest 176:19 notary 2:7 note 120:13, 120:25, 121:13, 139:22, 149:13, 160:12, 164:17, 164:18, 188:13 noted 125:23, 152:1, 152:13, 175:19, 189:8 notes 88:20, 88:25, 90:9, 92:2, 95:19, 95:21, 101:9, 102:1, 174:22 nothing 19:18, 25:22, 106:24 notice 2:6, 155:21, 174:12 noticed 174:18, 174:21 nowhere 160:20</p>	<p>number 7:12, 10:11, 30:11, 31:13, 36:12, 49:11, 68:1, 74:11, 84:22, 85:21, 86:13, 86:14, 86:16, 89:11, 93:5, 141:3, 166:2, 189:9, 189:13, 189:16, 190:21 numbered 20:6, 153:1, 153:7, 153:19, 153:20 numbers 47:6, 80:1, 88:12, 88:14, 123:25, 124:5 numerical 112:23 nutshell 14:17 nw 3:7</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 27:14, 28:4, 41:15, 61:12, 63:11, 69:7, 74:8, 77:20, 100:3, 101:1, 115:15, 116:14, 119:4, 119:14, 133:24, 134:2, 135:5, 137:7, 147:3, 148:14, 199:4, 203:11 objection 28:6, 41:13, 41:18, 63:14, 65:7, 66:15, 67:14, 69:6, 73:14, 74:9, 88:2, 88:16, 95:11, 96:11,</p>	<p>97:1, 99:4, 101:22, 113:25, 114:19, 116:21, 117:13, 117:19, 118:2, 119:8, 119:11, 119:12, 128:25, 134:4, 134:22, 139:22, 139:23, 145:1, 145:22, 151:15, 152:16, 192:11, 193:12, 199:15, 202:16, 203:20 observation 149:20, 149:23, 158:17 observations 151:6 obviously 7:15, 16:5, 40:24, 75:10, 114:9, 136:11, 140:6, 183:4, 187:16, 191:23, 196:25, 197:8 occurred 75:4, 80:20, 113:23, 193:9 odds 116:6 off-reservation 168:19 offer 18:5 offered 199:22 offering 81:13 office 19:15, 41:8 officeholder 44:18 official 1:8 often 28:24, 29:3, 35:9, 176:3 okay 9:12, 12:2,</p>	<p>15:10, 19:17, 19:20, 26:4, 34:22, 40:15, 40:20, 42:18, 44:17, 45:12, 47:4, 47:11, 48:14, 55:1, 55:25, 59:1, 59:25, 65:3, 74:3, 84:14, 86:5, 86:11, 93:7, 93:10, 94:1, 97:4, 98:10, 99:7, 104:8, 105:24, 107:25, 117:20, 119:23, 122:1, 124:7, 125:2, 125:3, 128:4, 128:7, 129:17, 129:25, 135:10, 139:1, 139:5, 142:16, 143:15, 146:1, 150:6, 155:6, 157:7, 157:12, 157:23, 163:8, 163:17, 167:23, 169:19, 173:4, 182:14, 185:5, 191:24, 195:3, 196:9, 199:7, 200:4, 204:6 old 51:20, 181:22, 186:17 once 42:15 one 14:21, 26:2, 27:4, 27:7, 28:20, 29:18, 36:13, 50:11, 51:19, 52:12, 55:2, 57:2, 59:22, 59:23, 60:18, 64:11, 67:12, 76:7,</p>
--	---	--	---

<p>76:13, 81:13, 87:17, 87:18, 90:2, 93:12, 99:23, 100:13, 103:5, 104:12, 107:8, 107:17, 107:18, 108:1, 108:2, 111:22, 115:11, 115:13, 120:13, 120:22, 121:20, 122:15, 126:20, 128:23, 131:4, 132:25, 134:9, 138:8, 138:15, 139:25, 140:19, 140:22, 141:3, 142:18, 145:7, 150:6, 150:7, 151:1, 151:10, 152:13, 153:7, 157:18, 158:10, 165:9, 165:10, 165:18, 166:15, 166:19, 166:23, 167:14, 169:10, 171:3, 175:3, 176:3, 176:5, 176:12, 177:5, 177:8, 177:12, 179:10, 180:6, 181:10, 181:11, 183:11, 183:21, 185:4, 185:10, 186:18, 186:19, 191:20, 193:10, 193:16, 193:24, 195:4, 195:6, 195:10, 195:12, 196:20, 199:20, 200:20, 201:11 ones 10:10, 69:17, 87:23, 103:15, 127:20, 130:12, 132:12, 137:22, 193:19, 193:22 ongoing 10:13, 44:21</p>	<p>only 51:1, 60:18, 65:20, 84:6, 96:19, 115:8, 126:25, 163:19, 182:9, 189:20, 200:25, 201:12 opine 55:17, 127:2 opined 112:16, 117:15, 117:18, 130:19, 130:24, 131:6, 132:13 opining 17:15, 203:14 opinion 17:24, 18:4, 18:5, 27:17, 29:6, 36:1, 37:5, 41:16, 42:9, 42:11, 59:25, 61:13, 63:13, 63:21, 71:18, 79:12, 81:13, 101:24, 114:2, 114:9, 119:6, 119:23, 128:17, 129:8, 129:10, 129:12, 129:16, 130:2, 130:4, 132:15, 133:25, 135:7, 137:9, 139:23, 145:23, 203:21 opinions 8:19, 18:24, 19:2, 150:2 opponent 62:18 opportunity 25:3, 25:10, 26:10, 32:15, 98:18, 114:17, 115:10, 115:12 opportunity-to-e-lect 23:24, 24:7,</p>	<p>25:21 opposed 78:15, 136:7, 136:16, 136:23, 160:22 opposite 64:23, 68:25, 77:17 option 104:9 oral 1:14, 2:3 orange 39:23, 40:4 order 46:19, 47:6, 70:20, 198:15 orders 204:13 org 3:11, 3:12, 3:13 original 196:2 other 7:16, 9:7, 10:7, 14:1, 16:9, 19:23, 25:11, 26:3, 30:12, 31:6, 34:4, 42:2, 42:3, 42:22, 44:6, 45:12, 65:19, 70:5, 73:8, 73:10, 78:1, 79:13, 79:19, 81:8, 81:14, 82:24, 83:9, 84:18, 86:9, 87:7, 90:18, 104:9, 104:18, 115:13, 115:24, 116:12, 117:17, 124:10, 137:22, 138:9, 138:11, 138:22, 146:9, 146:16, 147:10, 147:25,</p>	<p>150:21, 159:20, 161:8, 161:24, 168:11, 170:12, 170:23, 176:9, 179:23, 180:3, 186:3, 186:22, 192:8, 195:8, 195:9, 197:18, 198:2, 201:3, 201:15 others 10:16, 14:6, 69:15, 70:8, 73:3, 129:1, 130:11, 138:4, 193:22 otherwise 7:19, 29:25, 33:10, 55:24, 205:16 out 12:9, 14:7, 24:17, 33:24, 38:18, 47:6, 66:22, 72:9, 82:1, 82:23, 84:23, 84:24, 90:7, 90:16, 98:9, 104:22, 111:20, 112:13, 112:25, 113:2, 113:5, 124:6, 162:20, 170:2, 171:17, 172:15, 183:7, 184:21, 185:1, 185:3, 185:4, 201:1 outcome 101:4, 184:16 outside 15:9, 27:16, 41:16, 50:21, 61:13, 63:12, 70:18, 74:9, 79:18, 81:17, 96:2, 96:6, 96:9, 101:23, 114:1, 114:9,</p>
---	---	---	---

<p>133:25, 135:7, 137:9, 139:23, 145:22, 152:17, 170:10, 203:20 over 7:16, 52:14, 64:3, 83:4, 83:15, 90:10, 94:3, 127:19, 154:23, 160:16, 162:3, 187:14 overall 129:8, 152:2, 160:9, 160:15 overlap 72:24 overwritten 127:19 own 35:12, 64:2, 88:6, 129:11, 146:24, 148:16, 148:19, 189:2, 198:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>packed 22:7, 22:15, 94:13, 94:19, 94:21, 94:25, 95:6, 95:17, 96:7, 96:9, 96:18, 96:24, 97:9 page 5:2, 5:7, 6:3, 19:24, 20:6, 20:7, 22:20, 22:22, 29:24, 41:1, 47:14, 48:5, 48:15, 77:2, 77:4, 89:2, 89:7, 92:3, 95:21, 101:11, 101:13, 101:18, 101:19, 120:10, 120:11, 124:23, 128:11,</p>	<p>129:6, 129:8, 129:23, 130:9, 132:10, 132:11, 149:10, 152:15, 157:10, 160:2, 161:1, 163:15, 163:16, 181:6, 181:7, 181:8, 188:12 pages 1:24, 37:9, 37:10, 101:12 paper 145:8 par 172:8 paragraph 41:3, 48:16, 48:17, 48:18, 124:25, 149:12 paralegal 4:7 parallel 8:23 parse 183:7 part 22:19, 28:3, 28:18, 35:9, 37:8, 41:2, 47:2, 49:10, 50:7, 51:1, 64:11, 70:22, 78:20, 80:4, 96:14, 99:17, 129:7, 130:2, 131:10, 131:11, 134:12, 145:6, 149:12, 149:13, 149:23, 149:24, 152:21, 162:12, 166:11, 166:12, 172:3, 172:20, 173:19, 175:16, 176:15, 180:1, 183:5, 185:11, 186:21, 186:24 particular 12:17, 16:18,</p>	<p>28:11, 39:13, 50:22, 63:16, 64:6, 64:7, 70:3, 70:15, 72:22, 74:1, 75:20, 83:15, 84:6, 99:22, 114:4, 119:18, 121:1, 123:6, 123:12, 123:18, 123:24, 124:5, 126:10, 127:8, 133:15, 151:5, 151:9, 154:1, 154:3, 156:12, 168:25, 187:13 parties 106:23, 205:14 partisan 36:24 parts 50:7, 64:14 party 106:1 passed 137:15 past 52:15, 52:21, 138:19, 145:19, 146:25, 187:9 pattern 52:22, 54:7, 63:9, 65:1, 65:5, 67:24, 82:6, 88:8, 176:19 patterns 16:10, 16:19, 169:2, 184:15, 195:10 pause 201:22 pc 141:14 pdf 20:8, 22:23, 29:24, 33:8, 33:9, 37:10,</p>	<p>47:14, 48:16, 77:2, 89:3, 101:12, 120:12 pending 7:23 people 32:19, 115:2, 117:7, 117:17, 159:6, 175:9, 182:22, 187:18 percent 22:25, 24:13, 25:22, 29:1, 30:17, 30:24, 31:3, 31:7, 31:21, 32:2, 32:8, 33:23, 34:2, 34:4, 34:9, 34:14, 50:19, 56:14, 56:24, 57:12, 58:7, 59:17, 73:23, 82:23, 83:4, 83:5, 83:16, 85:4, 86:7, 86:10, 86:22, 93:1, 93:8, 95:22, 98:15, 98:18, 98:20, 110:10, 111:1, 111:8, 160:10, 160:15, 160:16, 160:23, 161:2, 161:6, 161:16, 161:25, 181:15, 181:23, 182:21, 184:9, 184:12, 184:17, 184:25, 186:9, 186:13, 186:14, 186:15 percentage 30:11, 31:15, 37:21, 51:24, 83:16, 83:25, 84:15, 84:16, 86:17, 86:19, 180:25</p>
--	---	---	--

<p>perfect 148:11</p> <p>perform 12:16, 19:5, 55:3, 102:3</p> <p>performance 185:15</p> <p>performed 27:18, 46:21, 55:24</p> <p>performs 32:14, 188:15</p> <p>perhaps 7:18, 19:5, 35:22, 53:4, 58:3, 63:17, 98:6, 101:10, 104:5, 138:11</p> <p>perimeter 121:16, 121:23, 121:24, 156:14, 156:23</p> <p>period 67:20, 90:5, 187:22</p> <p>permutations 116:2</p> <p>perry 25:16</p> <p>person 61:22</p> <p>personally 70:19</p> <p>ph 1:15, 2:3, 5:2, 7:2</p> <p>phillips 3:16, 12:11, 12:13, 27:14, 28:4, 28:8, 41:11, 41:15, 41:21, 48:11, 61:12, 63:11, 65:7, 66:15, 67:14, 69:6, 73:14, 74:8, 77:20, 88:2, 88:16, 95:11,</p>	<p>96:11, 97:1, 99:4, 100:3, 101:1, 101:22, 113:25, 114:19, 115:15, 116:14, 117:13, 118:2, 119:4, 119:13, 128:24, 133:24, 134:7, 134:22, 135:5, 137:7, 139:22, 140:19, 141:1, 145:1, 145:22, 147:3, 148:14, 151:15, 152:16, 192:11, 193:11, 196:14, 197:11, 199:4, 199:15, 202:16, 203:11, 203:20, 204:8</p> <p>phrase 125:19</p> <p>physically 177:14</p> <p>pick 69:16</p> <p>picked 156:3</p> <p>picture 15:21, 99:25</p> <p>piece 153:22, 191:15</p> <p>pierce 164:19, 171:18, 171:19, 174:5, 174:9, 176:8, 176:22, 177:9, 191:14</p> <p>pildes 124:16, 124:22, 125:6, 126:12, 145:9</p> <p>pink 162:13</p> <p>places 14:1, 148:23</p> <p>placing 71:7</p>	<p>plains 16:18</p> <p>plaintiff 10:1, 13:22, 15:4, 21:4, 128:13</p> <p>plaintiff's 119:17</p> <p>plaintiffs 1:6, 3:2, 5:24, 7:10, 11:11, 11:19, 13:20, 24:11, 94:12, 99:10, 99:19, 100:8, 119:25, 127:18, 130:13, 138:21, 146:7, 147:8, 147:21, 148:3, 150:16, 150:20, 152:4, 153:1, 154:16, 154:24, 158:22, 164:17, 165:20, 166:3, 166:18, 167:3, 167:17, 170:5, 170:25, 173:22, 174:15, 178:5, 179:5, 179:11, 183:10, 183:14, 188:23, 190:10, 190:19, 191:3, 191:7, 192:4, 192:22, 194:25, 195:14, 195:20, 197:16, 199:9, 200:5, 200:15, 201:2, 201:16, 203:4</p> <p>plan 5:17, 5:19, 5:21, 5:24, 6:4, 6:5, 22:25, 118:24, 120:18, 120:22, 120:23, 121:2, 124:10, 127:21, 128:1, 129:12, 132:20, 133:8, 135:1,</p>	<p>135:12, 137:6, 139:10, 141:23, 142:5, 143:21, 144:19, 147:11, 147:16, 147:18, 148:24, 150:14, 150:16, 152:2, 152:3, 153:2, 153:7, 153:8, 153:20, 153:22, 154:16, 154:22, 154:25, 155:3, 157:21, 160:9, 160:12, 160:14, 162:8, 162:21, 163:19, 164:15, 164:18, 164:25, 165:20, 166:3, 166:5, 166:18, 168:18, 169:10, 170:5, 170:8, 170:13, 170:24, 171:1, 172:18, 174:15, 175:19, 177:21, 177:25, 178:4, 178:5, 178:22, 179:2, 179:6, 179:11, 179:16, 179:21, 181:15, 183:10, 183:14, 184:3, 185:19, 185:20, 185:24, 186:23, 186:24, 188:8, 189:10, 190:2, 190:11, 192:7, 192:8, 192:22, 197:16, 197:19, 204:3</p> <p>plan's 166:1, 185:15</p> <p>plans 5:16, 127:19, 145:12, 152:4, 158:22, 187:3, 195:20</p> <p>play 134:15, 184:14</p>
---	---	--	--

<p>plays 134:13</p> <p>please 7:21, 11:21, 124:25, 128:11, 130:9, 160:3, 160:4, 161:1, 163:14, 164:13, 166:8, 171:17, 172:13</p> <p>plus 24:13, 161:5, 161:24</p> <p>point 7:20, 26:13, 37:24, 60:16, 66:11, 68:23, 68:24, 69:17, 71:2, 73:8, 73:10, 78:15, 108:7, 114:25, 117:22, 126:11, 127:4, 131:15, 146:15, 153:5, 153:12, 174:7, 178:2, 187:17</p> <p>pointing 69:3</p> <p>points 67:6, 71:12, 83:17, 83:25, 84:15, 113:17, 127:7, 190:17</p> <p>polarization 64:19</p> <p>polarized 28:19, 28:22, 35:8, 35:13, 35:19, 38:14, 38:19, 38:24, 47:16, 50:1, 51:18, 57:7, 57:25, 80:3, 94:8, 98:6, 100:1, 106:21, 113:18</p> <p>political 8:7, 16:20,</p>	<p>17:3, 44:13, 44:21, 67:23, 81:20, 106:23, 125:16, 202:24</p> <p>politically 21:10</p> <p>politics 15:18, 15:22, 15:24, 16:5, 16:24</p> <p>polsby-popper 121:5, 121:15, 122:7, 125:10, 136:18, 143:2, 143:3, 143:10, 156:12</p> <p>populated 170:14, 170:20</p> <p>population 23:1, 32:8, 51:24, 58:18, 92:21, 93:14, 94:3, 94:4, 94:15, 94:19, 94:24, 98:17, 111:19, 115:23, 133:17, 158:12, 158:19, 158:23, 158:25, 160:4, 160:6, 160:10, 161:13, 161:19, 170:20, 180:25, 181:1, 181:24, 182:2, 186:4, 187:22, 188:1, 188:24, 191:11, 191:23</p> <p>populations 50:18, 96:2</p> <p>populous 191:6, 191:18</p> <p>portion 115:7, 149:15</p> <p>position 8:10, 63:2, 64:2, 107:21</p> <p>positioned 67:9</p>	<p>possibilities 116:2</p> <p>possibility 107:23, 197:7</p> <p>possible 43:1, 52:20, 52:21, 55:3, 57:18, 78:6, 98:4, 135:13</p> <p>possibly 131:12, 140:25, 172:5</p> <p>potential 10:8, 20:24</p> <p>potentially 79:3, 117:3, 118:4, 172:19, 198:9</p> <p>power 50:3, 50:4</p> <p>pre-litigation 9:19</p> <p>pre-pandemic 129:22</p> <p>preceded 120:22</p> <p>precinct 49:20, 51:9, 51:11, 51:19, 52:1, 58:2, 58:18, 59:8, 59:12, 59:15, 59:16, 59:20, 59:23, 174:9, 174:21, 174:22, 175:10, 175:20, 175:21, 176:8, 177:9, 177:10, 177:12, 183:11, 191:14</p> <p>precincts 49:12, 49:18, 51:8, 51:22, 52:3, 52:6, 55:10, 57:22, 58:5, 58:9, 60:13, 174:25, 175:4, 175:6,</p>	<p>175:14, 195:5, 195:16</p> <p>precisely 175:23</p> <p>precondition 20:16</p> <p>preconditions 27:12</p> <p>predominant 193:7, 198:16, 198:20</p> <p>preferable 102:10</p> <p>preference 160:21</p> <p>preferences 64:21</p> <p>preferred 28:15, 46:12, 46:20, 46:25, 48:21, 49:5, 57:19, 70:17, 76:18, 77:7, 77:8, 77:9, 89:19, 90:6, 90:13, 92:8, 93:17, 94:10, 95:16, 95:22, 96:6, 96:20, 97:15, 97:16, 97:25, 98:4, 98:11, 98:13, 98:19, 98:20, 99:2, 99:3, 108:19, 109:5, 109:9, 109:16, 109:17, 110:5, 110:7, 110:11, 110:12, 111:2, 111:9, 111:21, 112:9, 112:14, 113:6</p> <p>preliminary 11:10, 12:4</p> <p>preponderance 53:14</p> <p>presence 78:20, 100:24</p>
---	--	--	--

<p>present 38:14, 55:6, 59:14, 72:22, 99:1 presentation 93:11 presented 71:15 president 5:10, 29:13 presidential 29:19, 30:2, 30:16, 31:23, 32:6, 34:18, 42:4, 81:22, 82:2, 82:7, 83:2, 83:8, 83:10, 83:18, 84:10, 85:6, 86:8, 87:1, 87:4, 87:14, 104:7 pretty 74:17, 81:25, 86:24, 106:16, 117:16, 173:12, 177:4, 184:13, 186:12 prevailed 28:15, 51:10, 90:13, 90:20, 98:11, 98:13, 107:15, 110:1, 110:7, 111:21 previous 105:11, 118:9, 122:20, 129:5, 132:11 previously 12:12, 53:20, 64:17, 76:3, 123:10, 179:13, 180:11, 183:12, 184:6 primarily 196:5 primary 138:24, 196:7</p>	<p>principle 68:12, 175:1 principles 148:1, 181:11, 198:23, 200:17 prior 12:20, 52:10, 53:9, 121:2, 128:25, 178:22, 179:1, 179:15, 180:24, 182:3, 182:25, 186:20, 186:22, 187:2, 190:12, 199:16 priorities 159:24 priority 168:14 probably 8:5, 20:7, 22:17, 27:7, 27:15, 34:24, 40:19, 47:8, 50:5, 73:5, 74:15, 74:24, 81:6, 95:15, 99:11, 103:3, 103:6, 103:17, 104:22, 105:12, 106:4, 107:11, 120:11, 136:17, 137:25, 138:7, 156:24, 173:12, 173:19, 175:16, 181:7, 185:25, 194:13 probative 39:5, 39:17, 39:21, 41:10, 42:21, 42:23, 43:6, 43:11, 43:16, 43:22, 44:4, 44:6, 45:17, 45:20, 65:18, 65:25, 67:12, 68:6, 68:16, 68:24, 69:1, 69:2,</p>	<p>69:15, 69:23, 70:3, 70:8, 70:23, 71:8, 71:20, 72:9, 72:14, 73:2, 73:9, 78:2, 78:11, 91:15, 91:22, 123:7, 123:20 problem 116:10, 118:1, 118:4, 118:5, 141:13 procedure 49:25, 50:2 proceed 7:24 proceeding 8:24, 12:4 proceedings 205:6, 205:9 process 159:25 produced 8:20, 30:1, 36:11, 88:25, 140:16, 140:20, 141:4, 141:21, 174:13, 180:22 prof 12:18, 12:21, 26:1, 32:21, 35:4, 35:15, 35:17, 38:21, 57:21, 66:1, 70:6, 93:21, 102:22, 109:20, 145:9, 152:23, 154:2 professor 8:7 professors 126:19 profile 104:23 profs 124:16, 125:5 promise 19:18</p>	<p>prong 20:22, 21:12, 21:15, 22:2, 22:8, 29:5, 35:6, 35:22, 37:11, 39:18, 43:17, 45:21, 66:12, 68:23, 69:4, 70:12, 70:21, 71:19, 72:10, 72:16, 73:12, 77:18, 78:6, 78:20, 88:15, 93:14, 93:15, 94:5, 95:4, 96:8, 96:25, 99:1, 100:1, 100:24, 101:6, 111:14, 158:2, 158:9, 158:16, 158:17, 159:9 prongs 157:15, 157:19 proper 55:10, 66:5, 201:7 propose 126:2 proposed 123:21, 138:21, 148:2, 148:19, 150:20, 151:12, 156:18, 177:22, 177:23, 178:5, 188:23 proposing 153:1 proposition 44:13, 84:5, 84:9, 97:4 protection 183:19, 184:4, 185:11 provide 7:23, 25:2, 32:15, 53:13, 71:18, 98:17,</p>
---	---	--	--

<p>115:10, 115:20 provided 66:1, 71:23, 127:7 providing 17:24 proximate 177:14 public 2:7, 103:7, 104:11, 107:7, 108:11 pull 18:17, 47:7, 48:15, 76:23, 83:1, 137:5, 139:5, 139:7, 143:8, 152:14, 164:12 pulled 18:19, 127:21 pure 114:21 purely 115:4, 202:9 purplish-gray 176:15 purpose 93:15, 95:7, 117:9, 117:23 purposes 71:19, 123:19, 141:3, 148:11, 151:10, 151:14, 163:9 pursuant 2:6, 8:15 push 53:2 put 93:4, 141:9, 141:10, 188:7 puts 167:18</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifier 91:18, 146:4</p>	<p>qualify 144:11 qualitative 78:16 quality 37:4 question 7:24, 27:15, 27:23, 36:25, 38:15, 41:12, 42:5, 70:14, 100:4, 114:4, 114:21, 114:23, 115:17, 117:21, 119:14, 123:7, 134:3, 148:9, 163:5, 192:21, 193:1, 203:13, 203:16 questioning 28:6, 41:18, 63:2, 63:15, 74:9, 119:5, 119:9, 135:6, 137:8 questions 7:23, 27:15, 195:21, 196:14, 196:15, 199:24, 204:7 quite 120:3, 126:15 quote 145:24</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race 29:19, 31:23, 33:12, 33:19, 33:21, 34:4, 34:17, 34:18, 48:2, 51:14, 57:2, 60:2, 76:14, 78:17, 90:2, 103:8, 103:18, 103:19, 103:23, 103:25, 104:4, 104:5,</p>	<p>104:10, 104:11, 104:13, 104:22, 105:1, 105:5, 105:10, 105:24, 107:3, 107:4, 107:6, 107:13, 193:6, 198:16, 198:24 races 38:3, 62:8, 70:6, 70:11, 72:4, 72:6, 72:10, 98:8, 101:4, 103:3, 103:22, 104:18, 104:23, 105:14, 106:12, 106:14, 106:18, 108:13, 198:2 racial 11:19, 15:11, 31:16, 36:22, 58:7, 87:13, 94:10, 125:6, 192:23, 192:25, 193:5, 193:25, 195:3, 195:6, 195:22, 196:23, 197:3, 197:25, 198:8, 198:12, 199:1, 199:2, 199:13, 199:23, 200:5, 201:23, 202:5, 202:9, 202:22, 203:5 racially 28:19, 28:21, 35:8, 35:12, 35:19, 38:13, 38:19, 38:24, 47:16, 50:1, 51:18, 57:7, 57:25, 71:9, 73:7, 80:3, 94:8, 98:6, 100:1, 106:21, 113:18 raise 195:21</p>	<p>raises 192:21, 199:24, 203:13 raising 24:11 ramsey 166:10 ran 156:4 range 144:10, 149:5, 160:9, 160:23 ranged 122:3, 122:7, 122:11, 143:10 ranges 126:7, 186:12, 186:13 rank 8:11, 8:13, 161:7 ranking 146:20 rate 31:2, 38:4, 56:14, 56:25, 57:12, 82:23, 85:4, 85:10, 85:13, 85:22, 86:19, 92:7, 104:13, 111:2, 111:8 rather 33:7, 97:17, 99:14, 111:25, 146:7, 151:20, 202:23 rationale 116:8, 116:13, 117:10 raw 84:22, 86:13, 86:14 rdr 1:25, 2:6, 205:3, 205:22 re-election 183:24</p>
--	--	---	---

<p>reach 62:6, 74:5, 74:12, 77:17, 126:11</p> <p>reached 12:9, 58:9, 61:6, 77:17, 125:21</p> <p>reaching 42:7, 42:13, 66:12, 74:22, 122:17, 178:2</p> <p>read 80:22, 80:23, 114:5, 114:24, 130:7, 193:25</p> <p>reading 71:22, 81:7, 126:4, 205:11</p> <p>real 148:17</p> <p>really 13:12, 24:18, 67:1, 69:23, 79:10, 185:5</p> <p>reason 40:23, 46:23, 48:23, 49:10, 54:3, 61:22, 73:18, 75:20, 101:19, 102:5, 104:15, 105:8, 108:4, 108:22, 108:24, 114:13, 115:8, 115:13, 116:24, 135:6, 137:8, 146:3, 175:24, 197:9, 199:10</p> <p>reasonable 49:20, 142:19, 151:13</p> <p>reasonably 123:18, 123:22, 133:22, 134:20, 135:18, 137:18, 137:19, 138:5, 138:17, 142:14,</p>	<p>142:22, 143:23, 144:2, 144:12, 144:21, 144:25, 145:12, 145:21, 146:2, 147:2, 148:13, 148:16, 148:20, 149:2, 149:6, 150:23, 151:9, 189:4, 201:8, 201:17</p> <p>reasoning 79:11</p> <p>reasons 36:12, 134:10, 199:22</p> <p>rebuttal 5:12</p> <p>recall 15:15, 40:3, 42:9, 46:14, 52:11, 57:20, 58:8, 58:10, 71:22, 76:11, 79:4, 87:16, 87:18, 111:21, 119:16, 122:23, 124:19, 139:25, 140:1, 150:10, 150:18, 155:1, 157:6, 160:1, 161:10, 170:10, 173:24, 174:11, 174:16, 175:22, 179:20</p> <p>recalling 47:3</p> <p>receiving 12:20</p> <p>recent 9:23, 43:5, 43:23, 44:19, 44:25, 45:11, 45:23, 46:7, 65:17, 66:8, 68:2, 68:21, 71:9, 73:7, 75:4, 90:2, 90:19, 91:23,</p>	<p>101:20, 102:11, 102:16, 112:5, 183:24</p> <p>recess 62:23, 113:10, 154:11, 196:12</p> <p>recognize 18:21, 26:23, 27:1, 33:10, 35:24, 88:24, 118:17, 127:24, 154:21, 154:24, 159:18, 162:7, 178:21, 180:21</p> <p>recollection 24:24, 76:20, 82:13, 109:6, 109:7</p> <p>recomposing 36:23</p> <p>reconstituted 33:17, 37:17, 71:17, 75:25, 82:17</p> <p>record 33:14, 62:25, 113:11, 114:5, 141:16, 154:17, 204:11, 204:16, 205:8</p> <p>records 114:24</p> <p>rectangle 148:7, 148:12</p> <p>rectified 187:24</p> <p>redistricting 10:13, 10:15, 13:8, 13:11, 13:14, 14:5, 15:9, 15:10, 33:16, 58:19, 114:6, 114:10, 116:4, 159:21, 159:22, 159:25, 184:11, 186:3, 187:13, 187:18, 188:8, 188:16,</p>	<p>192:13, 193:17, 195:24, 203:10, 203:24, 204:2</p> <p>redrawn 33:15</p> <p>reduced 205:10</p> <p>reelection 185:12, 185:13</p> <p>refer 11:16, 11:23</p> <p>reference 63:12, 141:3, 141:5</p> <p>referring 11:16, 24:18</p> <p>refers 48:19</p> <p>reflection 134:16</p> <p>reflects 170:8</p> <p>refresh 82:13</p> <p>regard 24:3, 99:21, 114:4, 152:6</p> <p>regarding 74:12</p> <p>regardless 54:11</p> <p>region 54:2, 100:15, 100:16</p> <p>regional 99:21, 100:8</p> <p>relate 29:11, 202:14</p> <p>related 17:2, 17:4, 17:16, 26:16, 30:1, 32:23, 45:9, 129:2, 185:12, 205:13</p> <p>relating 128:25</p> <p>relation 11:9</p>
--	---	--	---

<p>relations 16:13 relevance 41:9 relevant 42:5, 78:8, 87:25, 88:14, 187:8 reliable 63:8, 65:13, 123:1, 126:19 relied 8:19, 63:17 rely 114:3 rema 118:19 remain 42:11 remained 182:17 remaining 181:1 remember 14:2, 24:16, 28:25, 47:2, 51:6, 73:25, 76:21, 82:14, 93:3, 93:5, 99:12, 101:3, 121:21, 124:3, 128:2, 128:16, 129:18, 131:13, 191:5, 194:14 remembering 49:3, 49:9, 50:12 reminder 7:14 remotely 2:4 reock 121:4, 121:5, 121:9, 122:3, 125:10, 125:23, 125:24, 127:4, 136:17, 136:20, 140:1, 142:2,</p>	<p>142:6, 156:16 rep 52:10 rephrase 139:13 replicate 36:9, 36:16, 37:1 reported 1:25, 23:7, 43:22, 77:6, 110:6, 152:24 reporter 7:17, 11:22, 92:25, 140:14, 141:7, 204:10, 204:14, 205:27 reporting 38:9 reports 47:15, 53:25, 64:20, 76:10, 174:13, 180:25 represent 29:4, 29:17, 99:20, 163:2 representation 202:14 representative 53:10, 53:21, 60:2 represented 106:23, 184:6 representing 58:15, 94:16, 143:12 reproduction 205:24 republican 13:21, 62:10, 62:18, 105:23, 106:15, 107:14 requested 205:12 required 24:10, 113:22, 129:14 requirement 14:24, 20:16,</p>	<p>118:25, 123:3, 123:9, 133:11, 159:10, 165:21 researcher 69:9, 69:15, 70:5, 71:3, 78:13, 106:4 researchers 73:2, 76:7, 126:12 reservation 50:21, 50:23, 58:17, 149:14, 149:24, 150:15, 165:4, 165:7, 165:22, 165:24, 168:14, 168:18, 168:22, 169:11, 169:22, 180:2, 180:8, 191:16 reservations 150:9, 165:11, 192:20, 199:9, 202:5, 202:22 reside 54:13 respect 16:12, 17:7, 17:16, 17:25, 20:15, 20:22, 22:1, 24:9, 38:22, 43:21, 45:18, 50:6, 52:2, 55:17, 63:10, 64:21, 73:12, 77:18, 78:5, 88:9, 100:21, 116:13, 117:1, 117:2, 122:1, 123:8, 126:24, 127:2, 131:17, 133:11, 134:5, 147:17, 149:11, 157:14, 157:20, 159:7, 161:1, 161:8, 161:22, 163:25, 170:12, 182:8,</p>	<p>182:12, 182:14, 182:22, 183:9, 184:2, 184:12, 185:23, 189:7, 189:9, 201:6, 202:14, 203:2 respected 168:18 respectfully 51:16, 79:10 respecting 150:8, 168:14 respects 202:21 respond 12:18 responding 35:14, 93:21, 152:23, 154:1 response 125:6, 140:20 rest 50:23, 66:22, 170:7 restores 190:11 result 112:23, 156:14, 195:21 results 26:15, 33:16, 37:17, 53:13, 66:5, 71:16, 80:1, 99:24, 100:11, 100:20, 100:22, 101:10, 101:14, 101:21, 110:18, 153:10, 192:22, 192:25, 199:25 retain 12:9 retained 8:22, 9:3, 9:7, 9:22, 10:8, 11:6, 12:3, 40:3, 118:22, 179:13, 183:13,</p>
--	---	--	---

<p>185:9 retention 9:2, 13:3, 181:10, 181:15, 182:9, 182:10, 182:22, 183:18, 184:18, 185:16, 185:24, 186:8, 190:12 returns 49:18, 179:11 review 37:10, 99:8 reviewed 99:14 reviewing 78:20 richard 47:25, 48:25, 56:20, 183:23 rights 11:3, 11:25, 16:15, 23:22, 113:22, 114:12, 115:6, 115:14, 116:9, 116:11, 116:17, 116:19, 123:19, 148:10 rigor 60:15 rigorous 61:1, 63:4, 64:4 rios-andino 5:12, 39:23, 40:4 river 136:22, 137:2, 155:9, 155:15, 155:21, 156:15, 156:22, 156:25, 165:5 rivers 136:8, 136:10, 136:12 role 134:13, 134:15, 184:15</p>	<p>rolette 50:7, 162:16, 162:24, 163:4, 163:10, 164:20, 177:3, 177:11, 177:14, 177:18, 182:6, 182:16, 183:12, 191:8, 191:14, 191:18, 191:25, 192:1, 197:23 roughly 59:18 round 34:13 rpv 49:13, 106:8 rule 68:11 running 105:23 rural 170:13, 198:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 3:1, 99:24 said 53:18, 54:18, 57:21, 61:16, 81:18, 90:24, 97:5, 126:9, 128:20, 129:18, 142:14, 149:9, 156:12, 177:25, 195:2, 197:14, 201:18, 202:18, 204:1, 205:6, 205:9 salience 149:19 samantha 4:4 same 16:12, 17:7, 22:22, 28:8, 32:1, 33:19, 34:6, 35:25,</p>	<p>41:8, 43:9, 49:6, 49:12, 60:15, 62:5, 66:1, 72:25, 75:9, 76:2, 83:7, 86:21, 97:1, 109:23, 111:5, 111:6, 118:2, 121:15, 131:17, 135:6, 137:8, 140:22, 147:7, 150:15, 152:3, 152:16, 153:1, 164:24, 166:2, 166:17, 166:24, 167:4, 167:13, 182:18, 182:23, 183:14, 187:20, 187:21, 189:13, 189:16, 189:23, 197:17, 197:21, 204:5, 205:25 sample 91:2, 91:7 satisfied 35:6, 70:21, 126:1, 133:6, 185:23 satisfies 123:2, 151:13, 161:18, 188:24 satisfy 142:19, 159:9, 184:3 saved 29:22 saw 16:17, 35:23, 36:8, 100:20, 100:21 say 8:4, 11:8, 13:11, 15:21, 21:2, 22:24, 23:13, 23:17, 23:21, 26:3, 36:4, 42:1,</p>	<p>43:11, 50:21, 51:25, 60:7, 65:2, 66:16, 69:9, 70:13, 73:7, 73:13, 73:16, 74:2, 79:24, 85:14, 86:5, 95:13, 97:2, 103:21, 105:21, 106:25, 118:3, 126:12, 137:25, 138:3, 138:5, 151:8, 153:16, 156:10, 157:18, 158:1, 159:3, 159:5, 163:19, 164:4, 164:10, 173:19, 175:8, 180:6, 184:18, 185:25, 188:3, 191:17, 192:17, 195:7, 199:20, 199:23, 200:2, 200:10, 203:8 saying 27:21, 35:25, 46:15, 46:18, 66:24, 67:23, 69:22, 70:1, 82:4, 91:17, 100:17, 106:17, 117:4, 125:17, 129:17, 165:16, 183:8, 199:7, 199:23, 200:3 says 41:6, 48:5, 70:16, 129:23, 150:5, 174:5, 199:24, 203:12 scale 126:16 scenario 32:11, 123:4, 123:5 scholarly 16:9</p>
--	---	---	---

<p>scholarship 15:17, 124:15</p> <p>schwartzberg 121:6, 121:20, 122:11, 136:18, 156:13</p> <p>science 8:8, 44:13, 44:21</p> <p>scientist 17:3, 67:23, 81:20</p> <p>scientists 125:17</p> <p>scope 12:15, 12:18, 27:16, 41:16, 70:19, 74:10, 101:24, 114:1, 133:25, 135:7, 137:9, 139:3, 139:23, 145:23, 152:17, 203:21</p> <p>score 125:10, 125:11, 125:23, 126:11, 127:1, 136:4, 136:7, 136:14, 136:20, 139:17, 140:1, 140:8, 142:6, 142:20, 143:3, 146:15, 152:2, 152:8, 156:6, 156:18, 167:2, 167:4</p> <p>scores 121:5, 121:6, 122:3, 122:7, 122:11, 122:22, 124:11, 134:10, 134:15, 134:16, 135:24, 137:20, 137:23, 139:10, 141:22, 142:2, 143:2, 143:10, 150:21, 151:11, 152:25, 156:1, 156:3, 156:4,</p>	<p>156:14, 156:23, 161:9, 201:20</p> <p>scratch 104:8</p> <p>screen 18:17, 18:19, 95:20, 140:15, 141:11, 163:14</p> <p>scroll 26:24, 48:16, 128:10, 129:7, 130:8, 160:3, 172:14, 181:5</p> <p>scrutiny 41:8</p> <p>se 67:25, 100:16</p> <p>seat 115:11</p> <p>seats 187:4</p> <p>second 21:9, 23:21, 30:5, 41:6, 89:2, 104:10, 114:22, 124:7, 128:11, 128:23, 129:4, 153:14</p> <p>secretary 10:22, 102:2, 104:13, 107:20</p> <p>section 11:3, 11:24, 13:14, 13:15, 13:24, 14:13, 15:5, 19:25, 20:10, 20:12, 22:21, 23:22, 24:11, 38:2, 41:1, 157:10, 160:4, 160:5, 163:16</p> <p>sections 30:10</p> <p>see 20:5, 21:5, 22:12, 23:25, 28:19, 29:23,</p>	<p>33:22, 37:2, 37:19, 41:6, 47:15, 47:19, 47:24, 47:25, 48:19, 48:22, 52:21, 63:24, 77:5, 77:9, 77:25, 82:21, 83:3, 83:8, 84:17, 84:21, 85:3, 85:20, 86:16, 101:11, 101:13, 101:16, 113:3, 123:10, 124:9, 124:24, 127:23, 130:17, 130:22, 131:2, 131:4, 132:2, 133:15, 133:19, 133:22, 138:1, 138:10, 140:10, 142:3, 142:4, 142:6, 143:6, 144:5, 146:1, 149:17, 151:13, 152:15, 155:3, 155:6, 155:8, 160:5, 160:8, 160:18, 162:18, 162:24, 163:1, 163:21, 164:2, 167:22, 168:1, 168:17, 169:9, 170:2, 171:9, 171:22, 172:15, 172:20, 173:7, 173:9, 174:12, 174:20, 176:10, 176:14, 176:18, 177:3, 177:21, 178:7, 178:12, 179:1, 179:18, 180:10, 187:8, 187:10, 188:18, 195:10, 201:24</p> <p>seeing 45:9</p> <p>seek 36:9, 150:21</p>	<p>seem 41:23, 60:22, 150:17, 170:21, 180:5</p> <p>seen 83:15, 87:12, 130:1, 134:17, 194:11, 194:13</p> <p>select 75:1</p> <p>selection 55:18</p> <p>self 183:5</p> <p>sells 4:6</p> <p>senate 5:11, 14:22, 33:1, 33:12, 33:21, 34:8, 34:17, 45:19, 46:11, 48:2, 62:9, 76:14, 82:16, 103:14, 103:18, 104:24, 105:1, 105:5, 107:3, 108:9, 108:10, 118:24, 119:18, 120:18, 125:22, 126:25, 128:1, 129:12, 163:25, 164:6, 167:9, 182:10, 183:15, 190:4</p> <p>senator 183:22</p> <p>send 127:12, 132:21, 135:2</p> <p>sense 22:18, 48:13, 53:4, 59:15, 60:17, 60:24, 69:25, 94:6, 94:7, 95:2, 95:18, 100:10, 103:9, 103:15, 104:3, 104:25,</p>
---	---	--	---

<p>109:14, 110:19, 152:19, 153:6, 153:9, 153:17, 188:6 sent 140:13, 140:24 sentence 23:21, 25:24, 41:6, 41:25, 42:1, 129:9, 149:13 sentences 22:21 separated 177:8 seriously 200:14 served 188:9 service 103:7, 104:11, 107:7, 108:11, 199:1 set 15:7, 19:3, 20:2, 20:10, 24:17, 27:7, 34:22, 59:8, 69:16, 72:4, 87:23, 96:14, 102:16, 205:18 sets 72:23, 160:8 setting 90:18, 163:23 seven 105:18 shape 172:24 share 140:15, 141:11 shared 17:17, 202:13 shaw 194:3, 194:17 shayenne 155:9, 155:14, 165:5</p>	<p>shift 113:16, 118:6 shifted 187:23 short 152:18 shorter 197:17 should 41:9, 42:6, 63:17, 64:9, 66:13, 70:11, 72:14, 86:21, 87:24, 88:7, 88:8, 89:8, 94:11, 164:4, 164:10, 184:10, 190:1 shouldn't 64:5 show 24:11, 31:13, 34:7, 34:14, 56:6, 77:4, 89:9, 95:21, 111:1, 140:15 showed 30:15, 37:18, 49:5, 64:23, 106:8, 127:18 showing 53:8, 112:8, 133:13 shown 77:7, 77:8 shows 88:7, 88:11, 130:10 side 15:12, 179:23, 180:3, 195:6, 195:8 signals 73:6 signature-k9lvk 205:20 significance 78:17</p>	<p>significant 88:7 significantly 67:4 signing 205:12 similar 10:15, 57:4, 72:19, 123:16, 124:10, 151:18, 153:18, 172:4, 187:11, 190:22, 192:5 simply 24:4, 102:5 since 8:11, 124:21, 128:8, 132:16, 141:10, 184:8 single 45:17, 55:9, 58:7, 67:25, 169:23 single-member 20:18, 23:8, 115:20 single-race 23:11 sir 8:2 sitting 46:14, 51:22, 58:11, 74:1, 81:2, 83:20, 87:10, 109:7, 174:11 situation 153:18 six 29:4, 61:6, 74:4, 74:19, 75:1, 75:11, 91:3, 108:13, 109:4, 109:5, 109:15, 110:3, 110:4, 119:18, 119:24, 122:1, 130:3, 132:12,</p>	<p>143:22 size 91:3, 91:7, 170:18, 171:11, 176:23 skip 41:25, 90:10 slight 25:8 slightly 36:14, 83:9, 136:3, 172:5, 172:16 slower 7:19 small 48:12, 191:15 smaller 133:16, 136:21, 190:18 smallest 121:11, 160:17 socioeconomic 17:18 sociological 169:3 sociology 17:2 some 10:21, 12:23, 13:23, 19:5, 19:23, 26:2, 26:13, 26:14, 32:18, 32:22, 35:16, 44:20, 45:9, 46:21, 59:23, 60:16, 69:14, 70:7, 71:23, 72:24, 72:25, 74:16, 75:9, 76:7, 78:16, 83:24, 88:24, 99:13, 100:10, 102:1, 102:12, 102:23, 103:2, 103:21, 104:18, 120:3, 123:25, 124:5,</p>
--	---	---	--

<p>124:11, 133:11, 136:6, 136:17, 137:21, 138:7, 138:11, 141:12, 146:3, 156:8, 160:21, 170:7, 170:12, 182:15, 186:1, 188:16, 192:5, 192:13, 192:14, 192:18, 193:22, 194:13, 194:14, 195:24, 196:1, 199:11, 200:19, 201:1 someone 21:3, 23:8, 67:8 someone's 134:17 something 11:15, 26:15, 40:13, 40:18, 45:9, 58:14, 60:25, 70:4, 95:14, 113:14, 135:22, 151:23, 152:11, 187:8 sometimes 10:21, 10:22, 16:3, 36:17, 59:11, 61:3, 64:17, 66:20, 74:17, 123:5, 136:2, 153:6, 175:6, 176:6, 201:5 somewhat 91:15, 170:14 somewhere 27:6, 93:5 sorry 30:21, 41:11, 46:1, 56:8, 105:18, 117:20, 141:1, 154:22, 156:25, 162:14, 165:15, 165:18, 172:15, 178:2,</p>	<p>180:6, 185:4, 191:1, 199:20, 200:24 sort 9:19, 15:23, 26:5, 30:10, 33:16, 38:15, 40:8, 44:3, 44:12, 58:11, 64:3, 66:1, 66:19, 68:11, 75:6, 89:5, 93:11, 115:23, 116:19, 124:7, 127:17, 135:25, 142:1, 142:2, 142:3, 143:1, 157:3, 173:7, 174:6, 176:18 sorting 141:12 sound 8:1, 11:20, 29:8, 31:24, 46:17, 129:21, 139:19, 143:11, 146:13, 153:3, 191:17 sounds 14:11, 139:20 source 23:2, 36:15 south 15:18, 16:1, 16:4, 16:6, 171:14, 172:6, 172:14, 172:17, 176:15, 191:4 southeastern 172:3 southern 15:19, 15:22, 16:5, 171:20 southernmost 131:10 southwest 172:13 sovereign 202:6, 202:24</p>	<p>span 170:24, 172:5, 172:7, 190:22 sparsely 170:14 speak 66:18 speaking 69:14, 72:20 special 78:7, 78:22, 79:1, 81:14, 87:22, 112:16 specialty 15:18 specific 15:1, 124:21, 151:6, 185:19 specifically 17:6, 35:5, 56:4, 56:17, 61:16, 77:23, 79:17, 131:13, 185:20, 203:14 speculate 114:20 speculation 65:8, 66:16, 69:6, 77:21, 101:2, 114:1, 114:21, 115:17, 117:14, 139:24, 145:2, 151:15 spend 147:20 spent 128:4 spirit 17:8, 17:13, 149:14, 150:15, 165:4, 180:2, 180:8, 189:21 split 162:25, 163:11, 163:24, 164:6, 164:23, 164:24, 165:19, 165:23, 166:3, 166:14,</p>	<p>166:19, 166:25, 167:10, 167:14, 168:6, 174:13, 175:7, 179:16, 189:23, 195:5, 195:6 splits 162:16, 162:22, 163:18, 163:19, 164:3, 164:19, 165:18, 167:2, 168:4, 174:15, 174:21, 174:22, 178:13, 179:6, 189:7, 189:10, 189:13, 189:17, 189:20, 190:2, 190:7 splitting 115:18 spoken 17:12, 123:6, 123:24 spreadsheet 29:20, 30:1, 33:6, 139:7, 140:16, 141:20 spreadsheets 29:18, 109:22 spring 11:8, 13:5 squiggly 136:15, 155:5, 156:15, 157:3 stage 109:2 stamp 141:2 stamped 89:4, 101:11, 141:8 stand 42:16, 62:2, 78:12 standing 28:6, 41:18, 63:14, 74:9, 119:8, 119:11,</p>
--	---	---	--

<p>128:25, 134:4, 148:13, 148:19, 200:23, 200:24, 201:8 start 19:21, 19:24, 82:12, 104:22, 106:14, 154:23 state 1:10, 6:4, 8:23, 9:13, 10:19, 10:21, 10:22, 10:25, 11:7, 13:2, 14:4, 14:22, 14:24, 16:13, 23:3, 23:6, 23:18, 36:13, 45:19, 46:1, 46:8, 46:11, 48:2, 52:9, 53:9, 59:9, 60:2, 62:8, 62:9, 76:14, 102:3, 104:13, 107:20, 108:10, 113:19, 114:7, 114:15, 115:11, 116:22, 118:13, 118:18, 118:19, 118:24, 119:18, 119:21, 120:8, 120:18, 123:6, 123:8, 123:13, 128:1, 133:7, 138:10, 138:12, 139:9, 139:18, 144:19, 145:12, 145:20, 147:16, 150:9, 151:5, 151:20, 152:8, 154:25, 157:22, 162:8, 162:15, 162:22, 163:6, 163:9, 163:23, 163:25, 164:6, 166:2, 166:4, 167:9, 172:4,</p>	<p>172:15, 172:21, 176:15, 179:24, 180:4, 182:8, 182:9, 182:23, 183:1, 183:2, 183:15, 183:22, 186:2, 187:23, 189:17, 190:4, 190:7, 192:9, 193:11, 202:15 state's 102:2, 123:10, 150:7, 165:9, 170:24, 197:18 state-specific 145:5, 145:7 state-wide 28:12, 28:13 stated 28:9, 133:1, 157:24 statement 41:14, 41:24, 42:17, 44:12, 45:6, 69:5, 81:21, 91:13, 91:18, 120:4, 142:24, 149:25, 164:1, 199:13 statements 40:23 states 1:1, 15:19, 16:19 statewide 47:17, 61:6, 71:16, 74:5, 75:5, 89:12, 90:3, 103:2, 103:13, 103:22, 103:23, 104:22, 104:23, 105:18, 107:6, 107:15, 146:18, 148:24, 153:10, 154:22, 162:2 statistical 49:4, 49:6,</p>	<p>50:3, 50:4, 52:18, 55:23, 61:1, 63:18, 64:4, 64:12, 78:15, 102:4 statistically 63:4 stats 66:2 status 17:18 staying 182:22 stenographically 205:10 step 28:20, 35:22, 36:20, 38:15, 176:19 stick 101:18, 146:4 still 22:22, 40:18, 41:14, 184:22 stirling 4:7 stood 61:22 straight 10:24, 136:16, 136:23, 156:17, 156:22, 184:6 street 3:7 stretches 171:14, 171:18, 177:18, 198:5 strickland 24:6 striking 86:25 strong 186:8 stronger 100:23 studied 79:15 study 15:24, 79:21,</p>	<p>80:6, 80:16, 83:21, 84:6, 87:20 subdistrict 11:17, 30:6, 30:7, 48:21, 50:6, 55:23, 57:8, 57:24, 60:3, 61:18, 93:8, 115:5, 115:25, 116:3, 116:7, 117:24 subdistricts 49:11, 56:2, 57:23, 64:24, 65:4, 113:20, 114:12, 114:14, 115:7, 115:19, 116:25, 182:13, 182:15, 190:9 submit 102:7 submitting 19:10 subordinate 203:9, 203:17 subordinated 198:23 subordinates 203:4 subpoena 8:16, 140:20 subsequent 76:3 subset 70:7, 112:11 substantial 32:9 subtract 84:20 subverts 200:16 success 44:11 sufficient 49:11, 63:8, 74:11, 185:8 sufficiently 20:17, 129:13,</p>
---	---	--	--

<p>130:5, 130:20, 130:25, 131:7, 131:23, 132:6, 132:13, 138:17, 145:25, 146:2, 147:2, 147:12, 149:3, 149:6, 189:4 suggest 54:14, 63:25 suite 3:8 sum 98:12, 125:11 summary 120:4, 188:13 summed 37:19, 38:6, 92:6 super 156:21 supervision 205:11, 205:26 supplemental 99:9 supreme 10:14, 24:6, 25:15, 123:17, 151:8, 194:4, 194:6, 195:3, 198:18 sure 28:7, 41:20, 42:16, 60:6, 103:2, 114:22, 120:3, 126:5, 129:19, 134:8, 139:14, 140:18, 153:15, 155:20, 168:21, 169:15, 169:16, 184:5, 187:25 surface 64:18 surprise 169:5 surprised 161:11</p>	<p>surprising 64:22 surrounding 80:12, 94:14, 95:1 suspect 7:12 swings 131:4 switch 166:7 switching 178:10 sworn 7:3, 205:5</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t 4:1 tab 77:3, 167:25, 178:11 table 38:1, 38:2, 47:21, 48:18, 89:6, 92:3, 92:11, 98:9 tables 38:1, 120:14 tabulation 174:24 take 31:19, 42:18, 48:12, 58:13, 62:22, 77:25, 80:7, 84:17, 84:19, 85:14, 85:15, 97:4, 112:25, 125:1, 146:15, 154:10, 155:11, 157:7, 166:8, 167:21, 187:22, 196:10 taken 169:21, 205:9, 205:15 taking 7:11</p>	<p>talk 7:16, 7:18, 41:4, 64:8, 163:18, 181:9, 183:17, 197:11 talked 33:20, 53:19, 64:16, 76:5, 78:10, 93:10, 158:6, 168:13, 168:25, 189:2, 191:9, 193:20, 193:23, 197:15, 201:6, 201:10 talking 44:14, 55:22, 93:11, 107:2, 126:17, 154:4, 155:6, 163:6, 167:7, 169:17, 176:13 talks 78:24 tallies 26:15 tasked 87:21 taxing 19:18 taylor 4:2 teal-colored 172:3 tech 141:13 technically 119:22 technician 4:2 teleconference 1:17 tell 95:25, 99:11, 104:6, 140:11, 155:14, 174:1 telling 106:25 ten 68:11, 68:13,</p>	<p>68:15 ten-minute 196:10 term 27:20, 100:15, 125:15, 125:16, 142:15, 149:3, 168:6 termed 190:18 terms 11:13, 13:22, 16:19, 27:11, 39:17, 45:10, 49:3, 66:4, 70:15, 80:1, 80:25, 101:3, 115:24, 136:3, 146:11, 146:20, 147:22, 147:25, 148:10, 161:12, 185:15, 187:25, 188:1, 190:12, 190:16, 192:6, 196:23, 201:10 territory 153:21 test 20:11, 49:24, 49:25, 52:12, 53:2, 78:21, 81:8, 151:13, 193:4, 198:18 tested 95:23 testified 7:4, 13:10, 13:13, 13:19, 13:20, 15:3, 118:7, 132:16, 143:19, 201:2, 203:13 testimony 13:16, 115:16, 116:15, 116:16, 116:20, 116:22, 194:23, 199:16, 200:4, 200:15,</p>
--	---	--	---

<p>203:2, 203:12, 203:23 testing 53:6, 55:24, 57:7, 57:16, 61:1, 63:4, 63:18, 64:4, 65:11 th 3:7, 129:24, 205:19 thank 113:15, 135:15, 162:13, 167:25, 196:16, 196:19, 204:8, 204:15 themselves 159:8 thereafter 205:10 therefore 61:22, 62:13, 115:10 thing 28:20, 33:19, 35:25, 72:25, 121:15, 151:10 things 36:17, 49:24, 53:3, 53:6, 59:10, 81:17, 117:17, 120:13, 136:2, 136:6, 136:19, 138:9, 152:13, 159:20, 175:3, 175:16, 176:5, 187:19, 187:24, 193:10, 193:16 think 8:14, 10:3, 16:17, 20:6, 21:10, 22:22, 25:13, 35:1, 36:15, 37:10, 38:12, 39:20, 47:7, 49:2, 57:6, 57:21,</p>	<p>61:16, 63:3, 64:3, 64:9, 67:8, 68:18, 70:4, 70:18, 71:7, 72:2, 75:15, 75:16, 75:17, 75:18, 75:19, 76:12, 78:13, 81:9, 83:19, 87:11, 95:20, 97:5, 98:8, 101:10, 103:24, 104:2, 105:20, 106:16, 108:4, 112:19, 113:8, 116:19, 117:22, 118:6, 119:21, 120:5, 120:11, 123:7, 123:23, 124:4, 132:9, 140:4, 140:21, 140:24, 141:1, 142:14, 143:18, 143:19, 145:24, 146:22, 148:25, 152:7, 152:10, 153:25, 154:15, 156:11, 158:6, 160:13, 167:23, 171:7, 173:1, 173:3, 173:11, 174:23, 175:9, 185:22, 191:9, 194:16, 195:2, 197:1, 199:17, 200:12, 203:23, 204:1, 204:14 thinking 115:2, 197:6 thinness 131:22 third 20:7, 21:15, 22:1, 30:6, 124:14, 167:25 thornburg 20:11</p>	<p>thought 74:12, 114:11, 116:18, 185:6 thoughts 196:8 three 28:11, 28:12, 28:13, 38:5, 38:23, 44:5, 45:12, 90:12, 90:19, 90:21, 92:6, 93:12, 122:15, 145:8, 162:20, 163:24, 164:5, 164:20, 165:19, 166:6, 166:14, 166:18, 167:11, 167:14, 184:21, 185:1, 185:3, 190:2, 190:8 three-quarters 94:4 threshold 21:7, 126:13, 126:16, 126:18, 147:5, 186:7, 186:11 through 19:22, 37:19, 37:24, 61:2, 109:21, 111:5, 126:25, 178:16, 188:20, 200:13, 200:25 throughout 193:24 thrown 185:6 ticked 83:9 ticks 44:4 time 1:19, 2:5, 12:3, 12:6, 19:6, 40:12, 40:17, 40:21,</p>	<p>43:6, 67:20, 75:22, 81:24, 82:3, 83:7, 90:5, 91:19, 94:10, 98:15, 98:19, 98:20, 102:25, 105:4, 110:11, 113:8, 120:3, 128:5, 128:6, 132:16, 147:20, 157:18, 180:6, 187:18, 196:16, 199:21 time-intensive 74:17 times 7:13, 8:4, 13:10, 13:13, 59:14 timing 102:6 title 26:25, 29:21, 29:23, 33:6, 33:7 titled 29:23, 88:20, 132:19, 154:15, 159:14, 160:5 tm 18:8, 47:8, 76:24, 77:3 today 7:11, 7:20, 8:15, 42:11, 68:17, 158:7, 193:20, 196:17 today's 19:13 together 38:6, 59:7, 93:24, 99:6, 100:11, 111:17, 112:13, 167:18, 188:7 took 37:16, 38:18, 102:1, 113:5</p>
--	--	---	--

<p>top 20:1, 29:23, 33:8, 77:3, 162:12, 181:8, 194:15 topic 9:14, 44:14, 113:18 topical 15:23 topics 14:21, 17:1 total 31:14, 31:21, 38:23, 86:16, 89:10, 89:11, 89:23, 97:12, 110:4 totality 17:25 totally 139:2 totals 80:2 touched 12:24 touches 175:21 towards 41:1, 48:18, 188:13 towner 50:8, 50:18, 162:16, 163:10, 163:20, 164:3, 166:11, 177:24, 178:6, 178:13, 179:2, 179:6, 179:12, 190:11 traditional 52:17, 174:25, 176:4, 181:10, 188:16, 192:6, 192:13, 193:17, 195:24, 198:22, 198:25, 199:11, 200:13, 200:16, 203:3, 203:9,</p>	<p>203:17, 203:24 transcript 5:6, 6:2, 18:10, 26:21, 29:15, 33:3, 40:1, 88:22, 118:15, 127:14, 132:23, 135:4, 137:12, 141:18, 154:19, 159:16, 162:5, 178:19, 180:19, 204:13, 205:8, 205:24 transcripts 114:5 transparent 23:13 treated 72:4 trey 5:14 tribal 16:13 tribe 168:20, 169:7 tribes 17:13, 17:16, 198:11, 202:13 true 16:12, 17:7, 38:12, 38:13, 39:2, 43:7, 43:13, 43:14, 52:5, 54:10, 54:11, 59:21, 60:11, 64:16, 65:2, 74:21, 82:3, 88:12, 91:5, 97:5, 131:17, 142:24, 147:7, 175:7, 190:14, 192:2, 197:20, 205:8 trump 186:3 trust 168:19, 168:22, 169:6, 169:17,</p>	<p>169:22 try 37:1, 55:4 trying 53:17, 96:4, 97:21, 98:2, 115:1, 116:22, 116:23, 124:3 turn 82:1, 120:10, 160:2, 160:25 turned 33:24, 66:3, 82:22, 84:23, 84:24 turnout 25:11, 28:1, 30:11, 30:23, 31:2, 33:11, 33:22, 36:21, 80:7, 80:9, 80:13, 81:21, 82:6, 82:11, 83:4, 83:8, 83:9, 83:16, 83:17, 84:1, 84:7, 84:9, 84:20, 84:21, 85:3, 85:4, 85:23, 86:6, 86:19, 87:4, 87:12, 87:13, 88:9, 88:11 turns 201:1 turtle 1:4, 11:14, 11:18, 12:1, 17:5, 17:13, 50:8, 58:17, 168:20, 169:7 two 9:3, 9:6, 15:23, 17:16, 22:21, 29:10, 30:10, 34:22, 38:1, 38:18, 43:12, 49:1,</p>	<p>66:25, 72:21, 72:23, 90:2, 98:5, 98:8, 100:14, 100:15, 109:10, 109:11, 115:20, 120:14, 125:11, 125:16, 132:11, 164:5, 167:10, 186:18, 186:19, 190:1, 191:6, 192:20, 198:10, 199:8, 199:22 two-party 105:21, 106:6, 106:19, 107:13, 107:23 two-thirds 167:9 type 26:14, 32:12, 39:9, 49:13, 67:19, 73:4, 87:25, 138:14, 138:15, 150:25, 151:18, 169:20 types 44:6, 61:2, 71:21, 72:15, 73:9, 78:3, 105:14, 106:17, 151:1, 156:15, 201:14 typewriting 205:11 typical 50:2, 58:11, 195:4 typically 13:19, 21:17, 44:17, 58:6, 67:22, 67:23, 68:8, 68:10, 68:13, 78:18, 81:22, 82:8, 84:10, 87:4, 91:14, 93:12, 105:21, 106:16,</p>
---	--	--	---

<p>106:18, 111:12, 193:6, 193:16, 195:10</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 88:15, 119:23, 129:10</p> <p>uncontested 105:14</p> <p>uncover 51:18</p> <p>uncovered 65:1</p> <p>under 11:3, 11:24, 15:23, 20:11, 23:22, 24:6, 41:8, 45:20, 48:17, 59:20, 64:18, 97:3, 110:14, 113:7, 116:11, 118:1, 123:21, 126:10, 143:25, 144:4, 145:13, 149:12, 150:22, 169:12, 189:2, 189:14, 192:22, 198:6, 205:11, 205:25</p> <p>underlying 80:6, 89:5</p> <p>underneath 48:16</p> <p>understand 26:5, 48:4, 48:8, 52:8, 59:4, 78:19, 94:12, 99:7, 99:13, 99:15, 105:16, 108:17, 117:4, 148:9, 150:3, 158:8, 170:13, 174:8, 181:19, 182:5, 193:4, 193:14, 202:4, 202:8, 202:12</p>	<p>understanding 21:11, 22:10, 22:11, 23:6, 27:10, 37:15, 39:11, 39:15, 44:10, 46:13, 50:10, 50:17, 51:5, 59:6, 59:20, 81:2, 93:2, 105:25, 106:2, 113:19, 139:8, 148:15, 170:4, 198:20, 199:3, 199:6</p> <p>understood 119:13</p> <p>unique 81:9, 81:15</p> <p>united 1:1</p> <p>university 8:8</p> <p>unknown 8:5</p> <p>unless 19:4, 93:4, 196:13, 205:25</p> <p>unlikely 65:4</p> <p>unquote 145:25</p> <p>unreasonably 134:20</p> <p>until 62:23, 76:25, 113:10, 154:11, 196:12</p> <p>unusual 81:25, 84:3, 86:25, 88:8</p> <p>unwritten-on 18:14</p> <p>upheld 122:21, 150:22</p> <p>use 11:13, 11:14, 11:21, 37:6, 49:25, 51:18,</p>	<p>105:21, 126:23, 131:9, 135:23, 136:1, 136:8, 142:1, 145:8, 146:4, 149:4, 192:17</p> <p>useable 57:23</p> <p>useful 153:22</p> <p>using 36:10, 36:13, 36:14, 36:19, 51:25, 52:17, 58:1, 59:11, 63:4, 100:15, 100:24, 127:6, 134:11, 136:5, 142:16, 143:25</p> <p>usual 81:16, 82:5</p> <p>usually 21:17, 59:23, 61:1, 70:16, 96:5, 96:22, 99:2, 104:21, 111:9, 112:9</p> <p>utilize 76:8</p> <p>utilized 74:21, 75:10</p> <p>utilizing 154:2</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value 39:17, 39:21, 41:10, 67:13, 68:6, 68:16, 70:3, 70:23, 71:8, 71:20, 72:9</p> <p>values 39:5, 72:14, 78:3</p> <p>vap 32:8, 59:17, 93:9</p>	<p>varies 54:22</p> <p>various 63:5, 114:7, 127:6</p> <p>varying 77:24, 78:2</p> <p>veering 117:16</p> <p>vein 123:16</p> <p>venn 72:24</p> <p>version 40:8, 121:13, 146:11, 147:22, 148:3, 148:6, 163:7, 163:24, 163:25, 164:6, 177:17, 181:21, 188:17, 197:22, 199:12</p> <p>versions 122:3, 146:8</p> <p>versus 8:23, 14:10, 20:11, 25:16, 26:18, 39:23, 40:4, 60:25, 67:18, 106:6, 118:12, 118:19, 180:16, 190:2, 194:8</p> <p>vesilind 5:15, 14:18, 118:12, 118:19, 119:17, 124:24, 126:21, 127:17, 129:5, 144:7, 151:1, 151:2, 152:14, 152:22</p> <p>via 1:17, 2:4</p> <p>victories 97:23, 98:3</p> <p>video 1:17</p> <p>view 5:18, 5:20,</p>
---	---	---	---

<p>5:22, 54:6, 57:17, 69:1, 72:13, 122:25, 130:10, 133:5, 139:1, 154:22, 154:25, 198:7 violate 117:11 violated 113:23 violation 14:14, 15:5, 117:3, 120:7 virginia 5:16, 14:4, 14:18, 14:22, 118:13, 118:18, 118:19, 118:23, 118:25, 119:21, 120:18, 125:22, 127:10, 127:25, 129:14, 138:8, 139:12, 139:16, 140:2, 142:10, 142:12, 142:21, 143:9, 143:22, 144:14, 145:3, 145:4, 145:14, 147:5, 147:9, 147:18, 149:9, 151:5, 151:19, 152:22, 154:4, 189:3, 201:19, 201:21, 201:23 virtually 34:23 visual 155:19 visuals 134:14 vita 8:14 vote 9:17, 14:15, 15:19, 26:15, 36:23, 39:4, 42:7, 42:13, 44:23, 66:20,</p>	<p>69:10, 72:22, 74:12, 78:5, 80:2, 87:20, 87:21, 99:20 voter 28:1, 80:7, 80:8, 81:21, 82:11 voters 14:13, 14:14, 14:15, 21:22, 21:23, 25:2, 30:11, 31:3, 31:6, 31:13, 31:20, 32:2, 32:3, 32:10, 33:24, 34:2, 34:4, 34:8, 34:14, 34:19, 47:22, 48:2, 49:1, 51:9, 52:2, 52:13, 52:23, 53:11, 54:1, 54:9, 54:12, 54:19, 55:1, 55:19, 56:22, 60:4, 61:7, 61:21, 62:11, 62:19, 64:10, 70:16, 81:25, 82:22, 82:24, 85:5, 86:7, 86:14, 87:7, 88:10, 93:16, 93:18, 94:4, 94:14, 94:25, 95:1, 95:5, 95:9, 96:5, 106:10, 111:19, 114:16, 182:4, 182:17, 183:1, 183:12, 185:2, 186:19, 198:1, 198:2, 198:6 votes 22:4 voting 9:16, 11:3,</p>	<p>11:25, 16:10, 16:15, 16:19, 23:1, 23:22, 28:19, 28:22, 32:8, 35:9, 35:13, 35:19, 38:14, 38:19, 38:25, 45:5, 47:16, 50:1, 51:7, 51:19, 57:7, 57:25, 58:18, 64:21, 65:5, 73:8, 80:4, 92:20, 94:9, 94:15, 96:21, 98:6, 100:1, 111:10, 111:18, 112:9, 113:2, 113:18, 113:22, 114:12, 115:6, 115:14, 116:9, 116:11, 116:17, 116:19, 123:19, 148:10, 158:19, 158:23, 169:2, 174:9, 174:24, 176:8, 177:9, 183:11, 184:15 vra 116:13, 116:24, 117:3, 117:8, 117:12, 117:24, 118:1, 123:22, 150:22, 151:10, 151:14, 151:20 vs 1:7 vtd 59:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>walen 5:9, 8:23, 11:11, 11:14, 11:16, 11:21, 12:4, 26:18, 27:2, 27:9,</p>	<p>61:5, 63:7, 63:12, 65:14, 74:3, 75:12, 77:14, 77:18, 91:3, 91:8, 101:21, 101:23, 108:14, 109:3 walk 19:22 want 18:13, 19:25, 22:19, 31:11, 35:2, 40:25, 47:6, 58:14, 59:23, 63:1, 76:23, 82:9, 86:12, 119:13, 124:21, 142:3, 148:18, 149:4, 150:1, 184:5 wanted 26:5, 74:15 wants 20:8 warrant 112:17 washington 3:9 way 26:2, 35:18, 36:6, 52:12, 60:1, 70:1, 72:3, 81:14, 86:21, 95:9, 106:13, 136:13, 141:4, 171:20, 173:12, 179:23, 193:3, 194:20 ways 32:20, 35:24, 76:6, 76:7, 85:9 wayside 199:1 we'll 7:24, 18:17, 26:4, 41:25, 58:13, 150:12, 163:13</p>
--	--	--	--

<p>we're 19:22, 27:7, 36:19, 44:14, 45:9, 55:21, 64:12, 69:20, 69:22, 79:19, 90:5, 96:4, 98:2, 100:14, 108:6, 129:3, 134:11, 144:18, 164:13, 167:7, 169:17</p> <p>we've 18:19, 45:14, 65:12, 66:10, 68:18, 69:21, 70:8, 71:6, 71:12, 72:8, 76:5, 78:10, 92:19, 130:1, 146:24, 154:3, 168:13, 188:20, 190:15, 193:19, 200:13, 200:25</p> <p>website 23:3, 58:20, 102:2</p> <p>weigh 38:9, 66:13, 67:21, 69:24, 88:5</p> <p>weighing 65:22, 72:5, 79:2, 79:3, 111:24, 112:1</p> <p>weight 39:1, 42:6, 42:13, 66:6, 67:3, 67:5, 70:14, 71:1, 71:7, 73:10, 87:24, 112:4, 112:5, 112:7</p> <p>welcome 113:13, 154:13</p> <p>went 111:4, 111:5, 136:23</p>	<p>west 3:18, 191:2</p> <p>western 172:20</p> <p>whatever 32:16, 69:23</p> <p>whatnot 169:3</p> <p>whenever 152:18</p> <p>whereof 205:18</p> <p>whether 14:22, 21:6, 21:9, 21:16, 25:1, 26:10, 26:15, 28:14, 32:13, 37:20, 38:13, 43:17, 49:25, 52:12, 52:16, 60:1, 60:9, 70:16, 70:21, 78:21, 81:9, 81:14, 82:15, 87:22, 93:16, 95:5, 96:5, 96:21, 98:3, 110:17, 123:2, 123:21, 124:9, 138:10, 138:16, 148:12, 148:18, 151:13, 155:24, 158:9, 168:17, 169:9, 169:16, 169:21, 174:20, 175:6, 187:10, 192:21, 193:5, 193:8, 195:21, 199:25, 201:8, 201:22</p> <p>whichever 149:3</p> <p>white 14:13, 14:15, 21:22, 30:12, 31:2, 32:1, 32:3, 32:10, 34:2, 34:14,</p>	<p>43:12, 43:18, 45:5, 46:12, 50:19, 51:11, 52:2, 55:18, 62:11, 62:18, 62:19, 65:21, 70:16, 73:8, 77:8, 77:9, 82:24, 83:8, 87:7, 90:19, 93:16, 95:5, 96:5, 96:21, 97:15, 98:4, 98:11, 98:19, 99:1, 110:11, 111:10, 111:20, 112:8, 112:14, 113:1, 195:7, 198:1, 198:5</p> <p>whole 26:2, 49:14, 56:19, 63:10, 64:11, 64:13, 64:14, 64:22, 65:6, 73:20, 76:19, 77:19, 100:2, 103:3, 115:19, 119:5, 119:8, 129:7, 148:24, 152:3, 153:11, 153:22, 166:4, 166:15, 166:19, 167:14, 167:18, 168:1, 172:15, 177:10, 179:12, 185:24, 195:17</p> <p>wholly 163:4</p> <p>wider 176:9, 176:12</p> <p>wiederholt 3:17</p> <p>win 22:17, 94:11, 96:20</p> <p>winding 137:2</p>	<p>winning 98:19, 98:21</p> <p>wins 60:20, 77:10, 95:22, 97:15, 97:16, 112:14</p> <p>within 24:17, 29:21, 30:16, 33:6, 49:18, 55:10, 58:17, 64:23, 68:15, 70:7, 73:20, 77:10, 80:2, 139:2, 144:10, 144:18, 144:19, 147:11, 148:24, 149:5, 160:10, 160:22, 161:3, 161:15, 161:20, 162:25, 163:5, 163:10, 165:25, 168:23, 169:13, 183:13, 187:25, 199:9</p> <p>without 28:25, 53:6, 57:16, 65:10, 107:12, 127:22, 128:21, 172:9</p> <p>witness 47:11, 63:1, 140:24, 196:19, 205:4, 205:18</p> <p>won 36:24, 60:2, 90:7, 109:5, 109:10, 109:18, 110:25, 113:7</p> <p>word 131:9, 155:11</p> <p>words 71:7</p> <p>work 12:15, 12:21, 12:23, 13:1, 13:16, 13:22, 15:13, 19:5, 31:11, 37:4,</p>
--	---	--	--

41:16, 42:16, 61:13, 63:13, 89:5, 101:24, 114:2, 119:6, 134:1, 135:8, 137:10, 139:3, 140:17 worked 14:3 working 75:3 works 12:1, 16:9, 27:22, 141:6, 142:4 worse 188:15 wouldn't 17:21, 51:15, 53:16, 104:17, 135:21, 138:4, 156:5 write 101:13 writing 62:3 written 16:8, 41:23, 42:15, 68:9, 71:12, 125:5, 145:9, 174:22 wrong 16:8, 30:23, 63:25, 64:1, 106:24, 144:5 wrote 81:8, 93:9	128:6, 128:10, 129:23, 132:10, 140:12, 150:18, 152:7, 153:16, 156:7, 157:24, 158:5, 161:24, 163:1, 164:10, 168:16, 172:13, 177:7, 180:7, 182:1, 183:9, 190:6, 193:22 year 89:13 years 64:3, 68:11, 68:14, 68:16, 87:4, 87:5, 97:11, 112:2 yellow 162:13 yep 28:10, 152:20 yield 57:22, 110:3 yields 31:21, 32:2 york 9:13, 10:2, 10:4, 10:5 yourself 16:23, 64:9	.8188 3:20 <hr/> 0 <hr/> 0.06 125:11 0.08 122:8, 143:10 0.1 122:12 0.14 122:8, 143:10 0.15 122:3, 125:23, 142:10, 142:25 0.16 122:12, 125:10 0.17 142:6 0.19 143:5, 143:20 0.22 122:4, 125:12 00001 5:23 0001 141:9 0002 6:6 00022 1:7 0013 6:6 02 113:10 0211 5:25 0240 5:25 0244 5:13 0252 101:11 0256 89:4 0257 5:13 08 154:11	09 62:23 <hr/> 1 <hr/> 1 113:10, 158:17 1,243 84:22 10 1:19, 2:5, 5:19, 101:12, 134:25, 135:3, 135:10, 160:10, 160:23, 188:12 100 50:19, 56:14, 56:24, 57:12, 95:22, 184:25, 186:13, 186:14 108 38:23, 92:12 11 5:21, 62:23, 137:6, 137:11 1101 3:7 118 5:14 12 5:23, 62:23, 129:24, 141:17 1243 85:2 127 5:16 13 1:18, 2:4, 5:24, 89:3, 95:21, 124:23, 154:15, 154:18, 164:13, 164:14, 167:24 132 5:17 135 5:19 137 5:21
<hr/> Y <hr/> yeah 14:17, 25:13, 27:22, 29:9, 37:24, 44:16, 47:8, 49:9, 68:8, 71:11, 76:23, 86:23, 91:21, 96:16, 119:10, 121:13,	<hr/> Z <hr/> zero 160:22, 182:21, 186:13 zoom 2:4, 127:24, 135:13, 164:15, 171:5, 171:17, 172:12 zooming 162:12, 170:2	<hr/> . <hr/> .15 140:1 .2222 3:10	

<p>14 3:7, 5:25, 89:23, 90:7, 159:13, 159:15, 170:7, 171:18, 179:16</p> <p>141 5:23</p> <p>15 6:4, 35:6, 47:14, 94:20, 99:16, 99:24, 100:12, 100:23, 101:4, 101:6, 150:14, 157:10, 157:15, 157:20, 158:2, 158:18, 159:1, 162:2, 162:4, 164:16, 164:25, 166:8, 166:9, 166:10, 166:14, 167:5, 167:14, 170:6, 177:22, 178:6, 178:13, 179:2, 179:6, 180:4, 180:13, 189:13, 189:24, 190:13, 192:7, 201:4, 205:19</p> <p>154 5:24</p> <p>159 5:25</p> <p>16 6:5, 178:16, 178:18</p> <p>162 6:4</p> <p>17 6:6, 77:2, 77:4, 180:15, 180:18</p> <p>178 6:5</p> <p>18 5:8</p> <p>180 6:6</p>	<p>19 120:18, 128:11, 128:17, 130:3, 154:11</p> <p>1999 8:12</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 113:10</p> <p>20 83:16, 83:25, 84:15</p> <p>20005 3:9</p> <p>2006 184:8</p> <p>2011 14:22, 118:24, 120:17, 120:22, 120:23, 121:2, 122:2, 127:21, 127:25, 129:12</p> <p>2012 5:16, 6:5, 127:11, 178:16, 178:23, 186:23, 186:24</p> <p>2013 8:14</p> <p>2014 37:19, 71:16</p> <p>2016 53:23, 90:11, 111:25</p> <p>2017 129:19, 129:24</p> <p>2018 5:11, 28:12, 32:25, 33:12, 33:21, 34:8, 34:17, 75:5, 78:25, 79:11, 79:15, 79:23, 80:17, 80:21, 81:10, 82:12, 82:16, 82:21, 83:10, 84:1,</p>	<p>84:18, 84:20, 84:23, 85:5, 85:11, 85:15, 85:18, 86:6, 86:14, 88:9, 90:10, 90:18, 103:24, 105:6, 112:15, 112:25, 113:5</p> <p>202.736 3:10</p> <p>2020 5:10, 5:16, 6:5, 28:13, 29:12, 29:19, 30:2, 30:16, 31:22, 33:19, 34:18, 75:5, 82:12, 83:2, 83:7, 83:9, 84:2, 84:21, 84:24, 85:2, 85:6, 85:11, 85:15, 85:17, 86:8, 86:15, 86:16, 89:22, 90:6, 90:11, 127:11, 178:16, 178:24, 186:23, 186:24</p> <p>2021 5:17, 5:19, 5:21, 6:4, 133:8, 162:8, 179:6</p> <p>2022 37:19, 45:17, 45:19, 45:25, 46:4, 46:5, 46:22, 47:1, 47:17, 48:2, 48:21, 52:25, 53:13, 53:15, 56:22, 58:18, 71:16, 75:2, 75:3, 75:21, 75:24, 76:10, 76:18, 77:11,</p>	<p>89:16, 89:22, 90:6, 90:11, 91:6, 91:17, 101:9, 101:14, 102:4, 102:10, 102:19, 102:23, 102:24, 103:4, 103:7, 103:14, 104:4, 104:9, 105:9, 105:19, 105:20, 107:4, 108:9, 108:19, 109:15, 109:25, 110:25, 112:5</p> <p>2023 1:18, 2:5, 205:19</p> <p>205 1:24</p> <p>21 48:15, 90:16, 90:24, 120:18, 128:12, 128:18, 130:3</p> <p>22 1:7, 152:15, 196:12</p> <p>2250 31:20, 84:21, 85:3</p> <p>23 97:22, 172:21, 176:13, 179:17, 179:20, 180:3, 180:11</p> <p>24 129:6</p> <p>25 113:10, 184:12</p> <p>26 5:9</p> <p>28 120:18, 125:22, 126:25, 130:11, 130:17, 131:18, 140:4, 142:9, 142:13, 160:2, 172:2</p>
---	--	--	--

<p>29 5:10, 120:19, 130:11, 130:22, 131:18, 170:7</p> <hr/> <p>3</p> <p>3 154:11</p> <p>3.14 161:2</p> <p>30 97:15, 97:25, 98:12, 120:19, 130:11, 131:2</p> <p>300 3:18</p> <p>31 138:1</p> <p>32 196:11</p> <p>33 5:11, 138:1, 196:12</p> <p>34 137:20, 137:25, 138:3, 142:7, 143:3</p> <p>3493 84:20</p> <p>35 1:19, 2:5</p> <p>36 131:5</p> <p>37 120:19, 130:11, 132:2, 132:6</p> <p>37.8 31:21</p> <p>38.8 30:17</p> <p>38.9 30:17, 30:24, 83:5, 86:10</p> <p>39 5:12, 172:11, 172:14</p> <p>3:-cv-000-pdw-ars 1:7</p>	<p>4</p> <hr/> <p>4 196:11, 196:12, 204:16</p> <p>4.53 161:25</p> <p>4.88 160:16</p> <p>4.99 160:17</p> <p>40 8:5, 97:16, 97:18, 97:20, 98:3</p> <p>400 3:8</p> <p>42 97:17, 98:3, 98:10, 98:20, 111:20, 112:13, 113:2</p> <p>44 204:16</p> <p>46 143:4</p> <p>47.3 34:14</p> <p>481134 1:23</p> <p>49 34:9</p> <p>49.0 34:13</p> <p>49.8 34:4, 82:24</p> <p>4a 11:17</p> <hr/> <p>5</p> <p>50 24:13, 86:7, 186:9, 186:14, 186:15</p> <p>50.0 31:6</p> <p>51.7 22:25, 25:22,</p>	<p>32:7</p> <p>53 62:23</p> <p>55 85:4, 86:22</p> <p>57.7 32:2</p> <p>58 98:15, 98:18</p> <p>58503 3:19</p> <p>5955 31:21</p> <hr/> <p>6</p> <p>60 73:23, 83:4, 110:10, 111:1, 111:8</p> <p>60.4 33:23, 82:23, 86:9</p> <p>68.3 34:2, 82:23</p> <p>69.7 31:3</p> <hr/> <p>7</p> <p>701.751 3:20</p> <p>72 97:12, 97:14, 98:1, 111:20, 112:13, 113:3</p> <p>75 181:15, 181:23, 184:9, 184:17</p> <p>77.0 93:8</p> <hr/> <p>8</p> <p>8's 176:24</p> <p>80 92:24, 93:1</p> <p>88 5:13</p> <hr/> <p>9</p> <p>9 30:5, 184:7</p>	<p>9's 181:23, 182:25, 183:1</p> <p>9.87 160:15</p> <p>90 58:7</p> <p>93.7 59:17</p> <p>9a 11:18, 30:6, 38:3, 51:4, 56:2, 57:19, 58:4, 60:3, 60:10, 61:8, 61:23, 89:10, 92:5, 92:17, 92:20, 93:8, 93:23, 94:13, 94:19, 94:24, 95:23, 96:2, 96:14, 97:8, 101:15, 162:15, 163:1</p> <p>9b 30:7, 38:4, 45:25, 46:8, 48:21, 50:6, 50:15, 51:2, 51:3, 56:3, 57:5, 57:12, 62:14, 62:20, 89:10, 92:5, 92:17, 93:23, 94:20, 97:10, 97:23, 98:12, 99:6, 99:25, 100:22, 101:15, 111:17, 112:13</p>
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EXHIBIT 4

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

MICHAEL HOWE, in his official capacity as
Secretary of State for the State of North Dakota,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

DECLARATION OF JAMIE AZURE

I, Jamie Azure, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Turtle Mountain Band of Chippewa Indians (“Turtle Mountain Band”). I currently serve as the Turtle Mountain Band’s Chairman and live on the Turtle Mountain Reservation.

2. The Turtle Mountain Band is a federally recognized tribe and located on the Turtle Mountain Reservation. The Tribal Headquarters are located at 4180 Highway 281, Belcourt, ND 58316.

3. The Turtle Mountain Band has over 30,000 enrolled members, a substantial portion of whom vote or are eligible to vote in federal, state, and local elections on and near the Turtle Mountain Reservation and off-reservation trust lands.

4. The Turtle Mountain Reservation covers 72 square-miles in Rolette County. Its population is 5,113 according to the 2020 United States Census. This includes a sizeable population of eligible voters. Substantial populations of tribal citizens also live in the areas

surrounding the Reservation, including St. John, Dunseith, and Rolette, as well as the Turtle Mountain trust lands.

5. The Turtle Mountain Reservation is in Legislative Senate District 9 and Legislative House District 9A under the 2021 enacted redistricting plan, which is comprised of one single-member state senate district and one single-member state house district. Off-reservation lands held in trust for the Turtle Mountain Band of Chippewa Indians are located in House District 9B under the 2021 enacted redistricting plan. A substantial population of Turtle Mountain citizens live in House Districts 9A and 9B.

6. The Turtle Mountain Reservation is geographically close to the reservation of the Spirit Lake Tribe, being less than 60 miles apart.

7. Although each tribe is a separate sovereign government, the Spirit Lake and Turtle Mountain reservations are a community of interest, with many shared values between our tribes. The State of North Dakota recognizes as much on its website, explaining that “North Dakota’s tribal communities have shaped our state’s history. Though individual tribes have distinct and different origins, histories and languages, Plains Indians are united by core beliefs and values including respect for the earth and humankind’s relationship with nature.”¹

8. In addition to shared values and beliefs, the residents of the Turtle Mountain and Spirit Lake reservations share the experience of living in rural North Dakota tribal communities. As such, we share similar representational needs from our state legislature related to economic investment, state-sponsored services, and legislative appropriations that differ from other North Dakota rural communities, where agricultural and energy interests predominate, and from the state’s urban areas. The members of Spirit Lake and Turtle Mountain share similar socio-

¹ State of North Dakota, <https://www.nd.gov/government/tribal-governments>.

economic statuses, which make the need for dedicated and cohesive representation in the legislature important.

9. The Spirit Lake Tribe and Turtle Mountain Band partner together in many political, economic, educational, and public safety organizations, including with the United Tribes of North Dakota, United Tribes Technical College, National Congress of American Indians, First Nations Women's Alliance, North Dakota Tribal College System, North Dakota Native Tourism Alliance, and the National Indian Gaming Association.

10. Both tribes interact with the North Dakota government and legislature on many similar levels, including through the North Dakota Indian Affairs Commission and the legislature's Tribal and State Relations Committee.²

11. Both tribes frequently join together to pursue similar policy objectives, including working with the State of North Dakota and the North Dakota Legislature on the following issues, to just name a few: funding for tribal colleges, negotiating the tribal-state gaming compact, taxation on tribal lands, hunting and fishing regulation, tribal and state law enforcement, and funding for education, foster care, health care, etc.

12. Both tribes are often similarly affected by legislation that is considered or enacted by the State Legislature. For example, House Bill 1536 would adopt a state Indian Child Welfare Act, which was introduced this year in the State Legislature by Representative Jayme Davis, who is a Turtle Mountain Band member. Both tribes also joined in an amicus brief last year in the United States Supreme Court to defend the Indian Child Welfare Act.

² The Tribal and State Relations Committee Background Memorandum, which provides more detail into the relationship between the State and the Tribes, including a summary of the legislation and State laws that directly affect the Spirit Lake Tribe and the Turtle Mountain band, can be found at, <https://www.ndlegis.gov/sites/default/files/resource/committee-memorandum/23.9069.01000.pdf>.

13. I serve on the North Dakota Indian Affairs Commission, along with the Governor and the Chairs of the other North Dakota Tribes, including Chairman Yankton of the Spirit Lake Tribe. As the Commission explains on its website, “[o]ne of the roles of the North Dakota Indian Affairs Commission is to keep the public informed about current laws and legislative issues that impact Indian country.”³

14. The Spirit Lake and Turtle Mountain Tribes chartered the United Tribes Technical College along with the other North Dakota Tribes and I serve on its Board along with Chairman Yankton from the Spirit Lake Tribe and the other North Dakota tribal chairmen and a delegate from each Tribe.

15. Our joint efforts at ensuring quality educational opportunities for members and non-members of North Dakota tribes illustrate the type of shared representational interests Spirit Lake and Turtle Mountain have with respect to the legislature. Over the past decade the Tribes and the tribal colleges have sought and secured state funding from the legislature for workforce development grants for the state’s tribal colleges to help address the high unemployment and poverty rates among American Indians living on North Dakota’s reservations.

16. Spirit Lake and Turtle Mountain also work together with the other North Dakota Tribes to ensure legislative funding for the state’s tribal colleges to support non-beneficiary students who attend the colleges.

17. These representational needs are unique and illustrate the type of shared representational interests between Spirit Lake and Turtle Mountain.

³ N.D. Indian Affairs Comm’n, <https://www.indianaffairs.nd.gov/state-government>.

18. Native American candidates of choice in northeastern North Dakota tend to support legislative policies and priorities supported by voters from both the Turtle Mountain Band and the Spirit Lake Tribe.

19. On November 8, 2021, I testified before the North Dakota Legislative Council Redistricting Committee to express the desire for the Turtle Mountain Band to be drawn into the same legislative district as the Spirit Lake Tribe. I testified that the two tribes have similar economic interests, as well as cultural and political values; and that both tribes being in the same district would improve the government-to-government relationships with the state. The Redistricting Committee disregarded my testimony and approved a redistricting plan that separates our two tribes into different legislative districts and dilutes the voting strength of the Turtle Mountain Band tribal members.

20. The Turtle Mountain Band sued the North Dakota Secretary of State on its own behalf and on behalf of its members because the Legislature's redistricting plan violates the Voting Rights Act by unlawfully diluting the voting strength of Native American voters living on and near the Turtle Mountain reservation.

21. The 2018 midterm election in North Dakota featured a tightly contested race for the United States Senate.

22. Then-incumbent Senator Heidi Heitkamp had received substantial support from Native American Voters when she was first elected in 2012.

23. After Senator Heitkamp won election to the U.S. Senate in 2012, the North Dakota legislature enacted a new voter ID law that required voters to provide ID listing their residential street address in order to vote.

24. This law disproportionately affected Native American voters in North Dakota, particularly those living on or near reservations, where the state's residential addressing system did not adequately reach.

25. After the law was initially put on hold due to legal challenges, the Eighth Circuit and the United States Supreme Court allowed the law to go into effect just weeks before the 2018 election.

26. The impact of these decisions created a number of unique circumstances that impacted the 2018 election.

27. As a result, there were substantial amounts of money spent by national, local, and regional organizations focused on educating and turning out Native voters in the weeks leading up to the 2018 election.

28. National celebrities like Mark Ruffalo and the Dave Matthews Band came to North Dakota and toured between several Native American reservations as part of these effort to turn out Native voters for the 2018 election.

29. This sort of national focus and sustained spending on electoral education and advocacy among Native American voters was not typical for North Dakota elections. It had not occurred in prior elections and has not occurred since.

30. There was substantial outrage among Native American voters at what seemed clearly to us to be a blatant effort to suppress our voting power. A huge backlash was created that lead to historic voter participation.

31. I have never seen voter such attention to Native American voter engagement or the resulting Native American turnout in any other election. The circumstances surrounding the

2018 election were extraordinarily unusual and unlike any other election with respect to Native American inclusion in the political process that I have ever observed.

32. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2023,

A handwritten signature in black ink, appearing to read 'Jamie Azure', written over a horizontal line.

Jamie Azure

EXHIBIT 5

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

MICHAEL HOWE, in his official capacity as
Secretary of State for the State of North Dakota,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

DECLARATION OF DOUGLAS YANKTON

I, Douglas Yankton, Sr., pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Spirit Lake Tribe. I currently serve as the Spirit Lake Tribe's Chairman and live on the Spirit Lake Reservation.
2. The Spirit Lake Tribe is a federally recognized tribe and located on the Spirit Lake Reservation. The Tribal Headquarters are located at 816 3rd Ave. North, Fort Totten, ND 58335.
3. The Spirit Lake Tribe has approximately 7,559 enrolled members, a substantial portion of whom vote or are eligible to vote in federal, state, and local elections on and near the Spirit Lake Reservation.
4. The Spirit Lake Reservation covers approximately 405 square miles, primarily in Benson County and Eddy County.
5. The Spirit Lake Reservation was established in 1867 through a treaty between the Sisseton Wahpeton Sioux Bands and the United States. The Treaty forced the relocation of the Sisseton Wahpeton Sioux Bands from a more expansive territory in present-day Minnesota and the

Northern Plains onto the Reservation with the Sisseton, Wahpeton and the Cuthead Bands of the Yanktonais, who had already been forced onto the Reservation. These Bands make up the present-day Spirit Lake Tribe.

6. The Spirit Lake Reservation is in Legislative District 15 under the 2021 enacted redistricting plan, which is comprised of one single-member state senate district and a two-member at-large state house district.

7. The Spirit Lake Reservation is geographically close to the reservation of the Turtle Mountain Band of Chippewa Indians (“Turtle Mountain Band”), being less than 60 miles apart.

8. Although each tribe is a separate sovereign government, the Spirit Lake and Turtle Mountain reservations are a community of interest, with many shared values between our tribes. The State of North Dakota recognizes as much on its website, explaining that “North Dakota’s tribal communities have shaped our state’s history. Though individual tribes have distinct and different origins, histories and languages, Plains Indians are united by core beliefs and values including respect for the earth and humankind’s relationship with nature.”¹

9. In addition to shared values and beliefs, the residents of the Turtle Mountain and Spirit Lake reservations share the experience of living in rural North Dakota tribal communities. As such, we share similar representational needs from our state legislature related to economic investment, state-sponsored services, and legislative appropriations that differ from other North Dakota rural communities, where agricultural and energy interests predominate, and from the state’s urban areas. The members of Spirit Lake and Turtle Mountain share similar socio-economic statuses, which make the need for dedicated and cohesive representation in the legislature important.

¹ State of North Dakota, <https://www.nd.gov/government/tribal-governments>.

10. The Spirit Lake Tribe and Turtle Mountain Band partner together in many political, economic, educational, and public safety organizations, including with, the United Tribes of North Dakota, United Tribes Technical College, National Congress of American Indians, First Nations Women's Alliance, North Dakota Tribal College System, North Dakota Native Tourism Alliance, and the National Indian Gaming Association.

11. Both tribes interact with the North Dakota government and legislature on many similar levels, including through the North Dakota Indian Affairs Commission and the legislature's Tribal and State Relations Committee.²

12. Both tribes frequently join together to pursue similar policy objectives, including working with the State of North Dakota and the North Dakota Legislature on the following issues, to just name a few: funding for tribal colleges, negotiating the tribal-state gaming compact, taxation on tribal lands, hunting and fishing regulation, tribal and state law enforcement, and funding for education, foster care, health care, etc.

13. Both tribes are often similarly affected by legislation that is considered or enacted by the State Legislature. For example, House Bill 1536 would adopt a state Indian Child Welfare Act, which was introduced this year in the State Legislature by Representative Jayme Davis, who is a Turtle Mountain Band member. Both tribes also joined in an amicus brief last year in the United States Supreme Court to defend the Indian Child Welfare Act.

14. I serve on the North Dakota Indian Affairs Commission, along with the Governor and the Chairs of the other North Dakota Tribes, including Chairman Azure of the Turtle

² The Tribal and State Relations Committee Background Memorandum, which provides more detail into the relationship between the State and the Tribes, including a summary of the legislation and State laws that directly affect the Spirit Lake Tribe and the Turtle Mountain band, can be found at, <https://www.ndlegis.gov/sites/default/files/resource/committee-memorandum/23.9069.01000.pdf>.

Mountain Band. As the Commission explains on its website, “[o]ne of the roles of the North Dakota Indian Affairs Commission is to keep the public informed about current laws and legislature issues that impact Indian country.”³

15. The Spirit Lake and Turtle Mountain Tribes chartered the United Tribes Technical College along with the other North Dakota Tribes and I serve on its Board along with Chairman Azure from Turtle Mountain and the other North Dakota tribal chairmen and a delegate from each Tribe.

16. Our joint efforts at ensuring quality educational opportunities for members and non-members of North Dakota tribes illustrate the type of shared representational interests Spirit Lake and Turtle Mountain have with respect to the legislature. Over the past decade the Tribes and the tribal colleges have sought and secured state funding from the legislature for workforce development grants for the state’s tribal colleges to help address the high unemployment and poverty rates among American Indians living on North Dakota’s reservations.

17. Spirit Lake and Turtle Mountain also work together with the other North Dakota Tribes to ensure legislative funding for the state’s tribal colleges to support non-beneficiary students who attend the colleges.

18. These representational needs are unique and illustrate the type of shared representational interests between Spirit Lake and Turtle Mountain.

19. Native American candidates of choice in northeastern North Dakota tend to support legislative policies and priorities supported by voters from both the Turtle Mountain Band and the Spirit Lake Tribe.

³ N.D. Indian Affairs Comm’n, <https://www.indianaffairs.nd.gov/state-government>.

20. On November 8, 2021, I testified before the North Dakota Legislative Council Redistricting Committee to express the desire for the Spirit Lake Nation to be drawn into the same legislative district as the Turtle Mountain Band. I testified that the two Tribes have similar economic interests, as well as cultural and political values; and that both tribes being in the same district would improve the government-to-government relationships with the state. The Redistricting Committee disregarded my testimony and approved a redistricting plan that separates our two tribes into different legislative districts and dilutes the voting strength of Spirit Lake tribal members.

21. The Spirit Lake Tribe sued the North Dakota Secretary of State on its own behalf and on behalf of its members because the Legislature's redistricting plan violates the Voting Rights Act by unlawfully diluting the voting strength of Native American voters living on and near the Spirit Lake reservation.

22. The 2018 midterm election in North Dakota featured a tightly contested race for the United States Senate.

23. Then-incumbent Senator Heidi Heitkamp had received substantial support from Native American Voters when she was first elected in 2012.

24. After Senator Heitkamp won election to the U.S. Senate in 2012, the North Dakota legislature enacted a new voter ID law that required voters to provide ID listing their residential street address in order to vote.

25. This law disproportionately affected Native American voters in North Dakota, particularly those living on or near reservations, where the state's residential addressing system did not adequately reach.

26. After the law was initially put on hold due to legal challenges, the Eighth Circuit and the United States Supreme Court allowed the law to go into effect just weeks before the 2018 election.

27. The impact of these decisions created a number of unique circumstances that impacted the 2018 election.

28. First, the Spirit Lake Tribe became concerned that our membership would not have the physical addresses necessary to comply with the requirement to show ID listing a residential street address.

29. As a result, Spirit Lake spent substantial resources in the weeks leading up to the 2018 election to ensure its members had the IDs necessary to vote. The Tribe put out public service announcements online, on social media, and on the radio to inform members of the new ID requirements.

30. The Tribe expanded their office hours for issuing tribal IDs, waived the \$11 cost of issuing a Tribal IDs to ensure that tribal members could obtain an ID, and assisted members in determining their residential address.

31. The Tribe spent far more resources on the 2018 election and assisting their members than they had in previous or subsequent elections because of the unique barriers to voting imposed by the court decisions allowing the residential ID requirement to go into effect just weeks before the election.

32. In addition to the substantial resources the Spirit Lake Tribe dedicated to ensuring its members would not be denied the right to vote due to the residential address requirement, the 2018 election in North Dakota also drew substantial resources from out of state.

33. The high-profile court decisions combined with the tight Senate race brought national attention both to the barriers to Native voting in North Dakota and the impact of Native turnout in competitive elections in North Dakota.

34. As a result, there were substantial amounts of money spent by national, local, and regional organizations focused on educating and turning out Native voters in the weeks leading up to the 2018 election.

35. National celebrities like Mark Ruffalo and the Dave Matthews Band came to North Dakota and toured between several Native American reservations as part of these effort to turn out Native voters for the 2018 election.

36. This sort of national focus and sustained spending on electoral education and advocacy among Native American voters was not typical for North Dakota elections. It had not occurred in prior elections and has not occurred since.

37. There was substantial outrage among Native American voters at what seemed clearly to us to be a blatant effort to suppress our voting power. A huge backlash was created that lead to historic voter participation.

38. I have never seen voter such attention to Native American voter engagement or the resulting Native American turnout in any other election. The circumstances surrounding the 2018 election were extraordinarily unusual and unlike any other election with respect to Native American inclusion in the political process that I have ever observed.

39. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2023,



Douglas Yankton, Sr.

EXHIBIT 6

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

Turtle Mountain Band of Chippewa
Indians, *et al.*,

Plaintiffs,

v.

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

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

DECLARATION OF COLLETTE BROWN

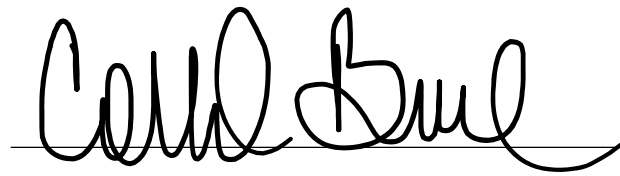
I, Collette Brown, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Spirit Lake Tribe.
2. I live on the Spirit Lake Reservation. I have lived at my current residence for 20 years and on the Spirit Lake Reservation for 44 years.
3. I am eligible to vote in federal, state, and local elections in North Dakota at my residence on the Spirit Lake Reservation and do so regularly. I voted in the 2022 Election and plan to continue to vote in federal, state, and local elections in North Dakota in the future, including elections for the North Dakota State Legislature. My current state legislative district is District 15.
4. In District 15, I am unable to elect any of my candidates of choice to the State Senate or the State House.
5. I ran in District 15 for the State Senate seat in 2022. Despite winning in the portion of District 15 on the Spirit Lake Reservation, I ultimately lost. During my campaign, I had strong

support from other Members of the Spirit Lake Tribe, but my candidacy was not as well received by non-Native voters.

6. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 23, 2023,

A handwritten signature in black ink, appearing to read "Collette Brown", written over a horizontal line.

Collette Brown

EXHIBIT 7

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

Turtle Mountain Band of Chippewa
Indians, *et al.*,

Plaintiffs,

v.

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

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

DECLARATION OF WESLEY DAVIS

I, Wesley Davis, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Turtle Mountain Band of Chippewa Indians.
2. I live on the Turtle Mountain Reservation. I have lived at my current residence for 11 years and on the Spirit Lake Reservation for 31 years.
3. I am eligible to vote in federal, state, and local elections in North Dakota at my residence on the Turtle Mountain Reservation and do so regularly. I voted in the 2022 Election and plan to continue to vote in federal, state, and local elections in North Dakota in the future, including elections for the North Dakota State Legislature. My current state legislative districts are Senate District 9 and State House Subdistrict 9A.
4. The creation of Senate District 9 and Subdistrict 9A deprives me of the opportunity to elect my candidate of choice to the North Dakota State Senate, and to elect two candidates of my choice for the North Dakota State House.

5. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2023,

A handwritten signature in black ink, appearing to read 'Wesley Davis', written over a horizontal line.

Wesley Davis

EXHIBIT 8

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

Turtle Mountain Band of Chippewa
Indians, *et al.*,

Plaintiffs,

v.

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

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

DECLARATION OF ZACHERY S. KING

I, Zachery S. King, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Turtle Mountain Band of Chippewa Indians.
2. I live on the Turtle Mountain Reservation, and have so for the past 36 years.
3. I am eligible to vote in federal, state, and local elections in North Dakota at my residence on the Turtle Mountain Reservation and do so regularly. I voted in the 2022 Election and plan to continue to vote in federal, state, and local elections in North Dakota in the future, including elections for the North Dakota State Legislature. My current state legislative districts are Senate District 9 and State House Subdistrict 9A.
4. The creation of Senate District 9 and Subdistrict 9A deprives me of the opportunity to elect my candidate of choice to the North Dakota State Senate, and to elect two candidates of my choice for the North Dakota State House.
5. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2023,

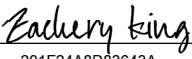
DocuSigned by:

201F24A8D83643A...
Zachery S. King

EXHIBIT 9



North Dakota Legislative Council

Prepared for the Redistricting Committee
LC# 23.9119.01000
August 2021

2020 CENSUS - POPULATION CHANGE SUMMARY

On August 12, 2021, the United States Census Bureau released the results of the 2020 Census. The data indicated North Dakota experienced the fourth largest percentage increase in population nationwide with a population increase of 15.8 percent over the state's 2010 population. The state also is home to the county with the largest population increase in the nation with McKenzie County increasing in population by 131 percent over the county's 2010 population. However, in regard to rural counties, North Dakota's population trends tracked with the nationwide trend of less populous counties further losing population. This memorandum provides a summary of the change in the population of North Dakota's legislative districts, counties, and cities when comparing the results of the 2010 Census to the results of the 2020 Census.

LEGISLATIVE DISTRICTS

When comparing the 2010 Census results to the 2020 Census results, the five legislative districts with the largest percentage increase in population are Districts 2, 27, 16, 7, and 39; with a population increase of 102 percent, 94 percent, 81 percent, 61 percent, and 54 percent, respectively. The five legislative districts with the largest percentage decrease in population are Districts 9, 42, 23, 10, and 14; with a population decrease of 13 percent, 9 percent, 7 percent, 6 percent, and 6 percent, respectively. The following table summarizes the population change in legislative districts when comparing the 2010 Census results to the 2020 Census results, including the resulting deviation from the newly calculated ideal district size of 16,576 when using 47 legislative districts. The attached [appendix](#) provides a visual representation of the percentage deviation from the ideal district size in each legislative district.

Legislative District	Population		Increase (Decrease)		Change Needed to Match Ideal District Size Based on 2020 Population	
	2010 ¹	2020 ²	Amount	Percent	Amount	Percent
1	14,395	19,120	4,725	32.82%	(2,544)	(15.35%)
2	14,657	29,622	14,965	102.10%	(13,046)	(78.70%)
3	14,626	16,692	2,066	14.13%	(116)	(0.70%)
4	14,081	16,794	2,713	19.27%	(218)	(1.32%)
5	14,129	14,638	509	3.60%	1,938	11.69%
6	14,294	14,006	(288)	(2.01%)	2,570	15.50%
7	13,919	22,437	8,518	61.20%	(5,861)	(35.36%)
8	14,175	15,951	1,776	12.53%	625	3.77%
9	13,937	12,187	(1,750)	(12.56%)	4,389	26.48%
10	14,393	13,483	(910)	(6.32%)	3,093	18.66%
11	14,781	14,646	(135)	(0.91%)	1,930	11.64%
12	13,768	14,144	376	2.73%	2,432	14.67%
13	14,862	14,959	97	0.65%	1,617	9.76%
14	14,431	13,594	(837)	(5.80%)	2,982	17.99%
15	13,697	13,767	70	0.51%	2,809	16.95%
16	14,897	26,960	12,063	80.98%	(10,384)	(62.64%)
17	13,894	20,408	6,514	46.88%	(3,832)	(23.12%)
18	13,929	13,783	(146)	(1.05%)	2,793	16.85%
19	13,812	13,255	(557)	(4.03%)	3,321	20.04%
20	14,314	14,354	40	0.28%	2,222	13.40%
21	14,728	15,294	566	3.84%	1,282	7.73%
22	14,838	21,995	7,157	48.23%	(5,419)	(32.69%)
23	14,455	13,467	(988)	(6.84%)	3,109	18.76%
24	13,818	13,943	125	0.90%	2,633	15.88%
25	14,469	14,891	422	2.92%	1,685	10.17%
26	14,021	14,352	331	2.36%	2,224	13.42%
27	14,014	27,246	13,232	94.42%	(10,670)	(64.37%)
28	13,729	13,969	240	1.75%	2,607	15.73%
29	13,905	13,655	(250)	(1.80%)	2,921	17.62%
30	14,689	16,836	2,147	14.62%	(260)	(1.57%)
31	14,844	16,002	1,158	7.80%	574	3.46%

Legislative District	Population		Increase (Decrease)		Change Needed to Match Ideal District Size Based on 2020 Population	
	2010 ¹	2020 ²	Amount	Percent	Amount	Percent
32	14,541	15,128	587	4.04%	1,448	8.74%
33	14,279	14,910	631	4.42%	1,666	10.05%
34	14,439	18,046	3,607	24.98%	(1,470)	(8.87%)
35	14,787	14,645	(142)	(0.96%)	1,931	11.65%
36	14,084	19,064	4,980	35.36%	(2,488)	(15.01%)
37	14,301	18,817	4,516	31.58%	(2,241)	(13.52%)
38	14,093	17,275	3,182	22.58%	(699)	(4.22%)
39	14,806	22,755	7,949	53.69%	(6,179)	(37.28%)
40	14,257	16,604	2,347	16.46%	(28)	(0.17%)
41	14,668	15,096	428	2.92%	1,480	8.93%
42	14,001	12,677	(1,324)	(9.46%)	3,899	23.52%
43	13,906	15,157	1,251	9.00%	1,419	8.56%
44	14,213	13,519	(694)	(4.88%)	3,057	18.44%
45	14,575	15,590	1,015	6.96%	986	5.95%
46	14,630	15,332	702	4.80%	1,244	7.50%
47	14,510	18,029	3,519	24.25%	(1,453)	(8.77%)
Total	672,591	779,094	N/A	N/A	N/A	N/A

¹For the 2010 population data, the ideal district size was 14,310 based on 47 legislative districts.

²For the 2020 population data, the ideal district size is 16,576 based on 47 legislative districts.

If the committee elected to modify the number of legislative districts, within the constitutionally permissible range of 40 to 54 districts, the ideal district size would be as follows:

Number of Districts	Ideal District Size
40	19,477
41	19,002
42	18,550
43	18,118
44	17,707
45	17,313
46	16,937
47	16,576
48	16,231
49	15,900
50	15,582
51	15,276
52	14,983
53	14,700
54	14,428

COUNTIES

When comparing the 2010 Census results to the 2020 Census results, the five counties with the largest percentage increase in population are McKenzie, Williams, Stark, Mountrail, and Cass; with a population increase of 131 percent, 83 percent, 39 percent, 28 percent, and 23 percent, respectively. The five counties with the largest percentage decrease in population are Rolette, Benson, McIntosh, Steele, and Pierce; with a population decrease of 13 percent, 10 percent, 10 percent, 9 percent, and 8 percent, respectively. The following table summarizes the population changes in counties when comparing the 2010 Census results to the 2020 Census results:

County	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Adams	2,343	2,200	(143)	(6.10%)
Barnes	11,066	10,853	(213)	(1.92%)
Benson	6,660	5,964	(696)	(10.45%)
Billings	783	945	162	20.69%
Bottineau	6,429	6,379	(50)	(0.78%)
Bowman	3,151	2,993	(158)	(5.01%)
Burke	1,968	2,201	233	11.84%
Burleigh	81,308	98,458	17,150	21.09%
Cass	149,778	184,525	34,747	23.20%
Cavalier	3,993	3,704	(289)	(7.24%)
Dickey	5,289	4,999	(290)	(5.48%)

County	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Divide	2,071	2,195	124	5.99%
Dunn	3,536	4,095	559	15.81%
Eddy	2,385	2,347	(38)	(1.59%)
Emmons	3,550	3,301	(249)	(7.01%)
Foster	3,343	3,397	54	1.62%
Golden Valley	1,680	1,736	56	3.33%
Grand Forks	66,861	73,170	6,309	9.44%
Grant	2,394	2,301	(93)	(3.88%)
Griggs	2,420	2,306	(114)	(4.71%)
Hettinger	2,477	2,489	12	0.48%
Kidder	2,435	2,394	(41)	(1.68%)
LaMoure	4,139	4,093	(46)	(1.11%)
Logan	1,990	1,876	(114)	(5.73%)
McHenry	5,395	5,345	(50)	(0.93%)
McIntosh	2,809	2,530	(279)	(9.93%)
McKenzie	6,360	14,704	8,344	131.20%
McLean	8,962	9,771	809	9.03%
Mercer	8,424	8,350	(74)	(0.88%)
Morton	27,471	33,291	5,820	21.19%
Mountrail	7,673	9,809	2,136	27.84%
Nelson	3,126	3,015	(111)	(3.55%)
Oliver	1,846	1,877	31	1.68%
Pembina	7,413	6,844	(569)	(7.68%)
Pierce	4,357	3,990	(367)	(8.42%)
Ramsey	11,451	11,605	154	1.34%
Ransom	5,457	5,703	246	4.51%
Renville	2,470	2,282	(188)	(7.61%)
Richland	16,321	16,529	208	1.27%
Rolette	13,937	12,187	(1,750)	(12.56%)
Sargent	3,829	3,862	33	0.86%
Sheridan	1,321	1,265	(56)	(4.24%)
Sioux	4,153	3,898	(255)	(6.14%)
Slope	727	706	(21)	(2.89%)
Stark	24,199	33,646	9,447	39.04%
Steele	1,975	1,798	(177)	(8.96%)
Stutsman	21,100	21,593	493	2.34%
Towner	2,246	2,162	(84)	(3.74%)
Traill	8,121	7,997	(124)	(1.53%)
Walsh	11,119	10,563	(556)	(5.00%)
Ward	61,675	69,919	8,244	13.37%
Wells	4,207	3,892	(315)	(7.49%)
Williams	22,398	40,950	18,552	82.83%
Total	672,591	779,094	N/A	N/A

CITIES

When comparing the 2010 Census results to the 2020 Census results, the five cities with the largest percentage increase in population are Watford City, Arnegard, Venturia, Williston, and Tioga; with a population increase of 256 percent, 145 percent, 110 percent, 98 percent, and 79 percent, respectively. The five cities with the largest percentage decrease in population are Ruso, Wales, Calio, Bantry, and Ardoch; with a population decrease of 75 percent, 68 percent, 64 percent, 57 percent, and 54 percent, respectively. The following table summarizes the population changes in cities and census designated places (CDPs) when comparing the 2010 Census results to the 2020 Census results:

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Abercrombie	263	244	(19)	(7.22%)
Adams	127	127	0	0.00%
Alamo	57	53	(4)	(7.02%)
Alexander	223	319	96	43.05%
Alice	40	41	1	2.50%
Almont	122	100	(22)	(18.03%)
Alsen	35	32	(3)	(8.57%)
Ambrose	26	24	(2)	(7.69%)

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Amenia	94	85	(9)	(9.57%)
Amidon	20	24	4	20.00%
Anamoose	227	230	3	1.32%
Aneta	222	234	12	5.41%
Antler	27	22	(5)	(18.52%)
Ardoch	67	31	(36)	(53.73%)
Argusville	475	480	5	1.05%
Arnegard	115	282	167	145.22%
Arthur	337	328	(9)	(2.67%)
Ashley	749	613	(136)	(18.16%)
Auburn CDP	48	31	(17)	(35.42%)
Ayr	17	11	(6)	(35.29%)
Balfour	26	20	(6)	(23.08%)
Balta	65	66	1	1.54%
Bantry	14	6	(8)	(57.14%)
Barney	52	40	(12)	(23.08%)
Barton CDP	20	13	(7)	(35.00%)
Bathgate	43	47	4	9.30%
Beach	1,019	981	(38)	(3.73%)
Belcourt CDP	2,078	1,510	(568)	(27.33%)
Belfield	800	996	196	24.50%
Benedict	66	68	2	3.03%
Bergen	7	10	3	42.86%
Berlin	34	31	(3)	(8.82%)
Berthold	454	490	36	7.93%
Beulah	3,121	3,058	(63)	(2.02%)
Binford	183	170	(13)	(7.10%)
Bisbee	126	110	(16)	(12.70%)
Bismarck	61,272	73,622	12,350	20.16%
Blanchard CDP	26	16	(10)	(38.46%)
Bottineau	2,211	2,194	(17)	(0.77%)
Bowbells	336	301	(35)	(10.42%)
Bowdon	131	137	6	4.58%
Bowman	1,650	1,470	(180)	(10.91%)
Braddock	21	18	(3)	(14.29%)
Briarwood	73	57	(16)	(21.92%)
Brinsmade	35	30	(5)	(14.29%)
Brocket	57	34	(23)	(40.35%)
Brooktree Park CDP	80	76	(4)	(5.00%)
Buchanan	90	87	(3)	(3.33%)
Bucyrus	27	18	(9)	(33.33%)
Buffalo	188	195	7	3.72%
Burlington	1,060	1,291	231	21.79%
Butte	68	70	2	2.94%
Buxton	323	348	25	7.74%
Caledonia CDP	39	37	(2)	(5.13%)
Calio	22	8	(14)	(63.64%)
Calvin	20	15	(5)	(25.00%)
Cando	1,115	1,117	2	0.18%
Cannon Ball CDP	875	864	(11)	(1.26%)
Carpio	157	144	(13)	(8.28%)
Carrington	2,065	2,080	15	0.73%
Carson	293	254	(39)	(13.31%)
Casselton	2,329	2,479	150	6.44%
Cathay	43	20	(23)	(53.49%)
Cavalier	1,302	1,246	(56)	(4.30%)
Cayuga	27	40	13	48.15%
Center	571	588	17	2.98%
Christine	150	151	1	0.67%
Churchs Ferry	12	9	(3)	(25.00%)
Cleveland	83	57	(26)	(31.33%)
Clifford	44	30	(14)	(31.82%)
Cogswell	99	73	(26)	(26.26%)
Coleharbor	79	59	(20)	(25.32%)
Colfax	121	172	51	42.15%

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Columbus	133	139	6	4.51%
Conway	23	15	(8)	(34.78%)
Cooperstown	984	983	(1)	(0.10%)
Courtenay	45	36	(9)	(20.00%)
Crary	142	113	(29)	(20.42%)
Crosby	1,070	1,065	(5)	(0.47%)
Crystal	138	116	(22)	(15.94%)
Dahlen CDP	18	17	(1)	(5.56%)
Davenport	252	256	4	1.59%
Dawson	61	74	13	21.31%
Dazey	104	78	(26)	(25.00%)
Deering	98	94	(4)	(4.08%)
De Lamere CDP	30	25	(5)	(16.67%)
Denhoff CDP	20	13	(7)	(35.00%)
Des Lacs	204	185	(19)	(9.31%)
Devils Lake	7,141	7,192	51	0.71%
Dickey	42	42	0	0.00%
Dickinson	17,787	25,679	7,892	44.37%
Dodge	87	89	2	2.30%
Donnybrook	59	75	16	27.12%
Douglas	64	93	29	45.31%
Drake	275	292	17	6.18%
Drayton	824	757	(67)	(8.13%)
Driscoll CDP	82	68	(14)	(17.07%)
Dunn Center	146	227	81	55.48%
Dunseith	773	632	(141)	(18.24%)
Dwight	82	80	(2)	(2.44%)
East Dunseith CDP	500	500	0	0.00%
East Fairview CDP	76	73	(3)	(3.95%)
Edgeley	563	585	22	3.91%
Edinburg	196	199	3	1.53%
Edmore	182	139	(43)	(23.63%)
Egeland	28	32	4	14.29%
Elgin	642	543	(99)	(15.42%)
Ellendale	1,394	1,125	(269)	(19.30%)
Elliott	25	24	(1)	(4.00%)
Embden CDP	59	41	(18)	(30.51%)
Emerado	414	443	29	7.00%
Enderlin	886	881	(5)	(0.56%)
Englevale CDP	40	36	(4)	(10.00%)
Epping	100	84	(16)	(16.00%)
Erie CDP	50	54	4	8.00%
Esmond	100	91	(9)	(9.00%)
Fairdale	38	30	(8)	(21.05%)
Fairmount	367	343	(24)	(6.54%)
Fargo	105,549	125,990	20,441	19.37%
Fessenden	479	462	(17)	(3.55%)
Fingal	97	92	(5)	(5.15%)
Finley	445	401	(44)	(9.89%)
Flasher	232	217	(15)	(6.47%)
Flaxton	66	60	(6)	(9.09%)
Forbes	53	36	(17)	(32.08%)
Fordville	212	207	(5)	(2.36%)
Forest River	125	109	(16)	(12.80%)
Forman	504	509	5	0.99%
Fort Ransom	77	91	14	18.18%
Fort Totten CDP	1,243	1,160	(83)	(6.68%)
Fortuna	22	30	8	36.36%
Fort Yates	184	176	(8)	(4.35%)
Four Bears Village CDP	517	500	(17)	(3.29%)
Foxholm CDP	75	56	(19)	(25.33%)
Fredonia	46	38	(8)	(17.39%)
Frontier	214	195	(19)	(8.88%)
Fullerton	54	62	8	14.81%
Gackle	310	281	(29)	(9.35%)

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Galesburg	108	118	10	9.26%
Gardena	29	24	(5)	(17.24%)
Gardner	74	129	55	74.32%
Garrison	1,453	1,462	9	0.62%
Gascoyne	16	21	5	31.25%
Gilby	237	243	6	2.53%
Gladstone	239	271	32	13.39%
Glenburn	380	404	24	6.32%
Glenfield	91	94	3	3.30%
Glen Ullin	807	732	(75)	(9.29%)
Golden Valley	182	191	9	4.95%
Golva	61	84	23	37.70%
Goodrich	98	106	8	8.16%
Grace City	63	53	(10)	(15.87%)
Grafton	4,284	4,170	(114)	(2.66%)
Grand Forks	52,838	59,166	6,328	11.98%
Grand Forks AFB CDP	2,367	2,002	(365)	(15.42%)
Grandin	173	186	13	7.51%
Grano	7	9	2	28.57%
Granville	241	240	(1)	(0.41%)
Great Bend	60	49	(11)	(18.33%)
Green Acres CDP	575	605	30	5.22%
Grenora	244	221	(23)	(9.43%)
Gwinner	753	924	171	22.71%
Hague	71	70	(1)	(1.41%)
Halliday	188	241	53	28.19%
Hamberg	21	11	(10)	(47.62%)
Hamilton	61	46	(15)	(24.59%)
Hampden	48	29	(19)	(39.58%)
Hankinson	919	921	2	0.22%
Hannaford	131	126	(5)	(3.82%)
Hannah	15	8	(7)	(46.67%)
Hansboro	12	15	3	25.00%
Harmon CDP	145	259	114	78.62%
Harvey	1,783	1,650	(133)	(7.46%)
Harwood	718	794	76	10.59%
Hatton	777	712	(65)	(8.37%)
Havana	71	67	(4)	(5.63%)
Haynes	23	15	(8)	(34.78%)
Hazelton	235	223	(12)	(5.11%)
Hazen	2,411	2,281	(130)	(5.39%)
Hebron	747	794	47	6.29%
Heil CDP	15	15	0	0.00%
Heimdal CDP	27	16	(11)	(40.74%)
Hettinger	1,226	1,074	(152)	(12.40%)
Hillsboro	1,603	1,649	46	2.87%
Hoople	242	247	5	2.07%
Hope	258	272	14	5.43%
Horace	2,430	3,085	655	26.95%
Hunter	261	332	71	27.20%
Hurdsfield	84	64	(20)	(23.81%)
Inkster	50	38	(12)	(24.00%)
Jamestown	15,427	15,849	422	2.74%
Jessie CDP	25	22	(3)	(12.00%)
Jud	72	65	(7)	(9.72%)
Karlsruhe	82	87	5	6.10%
Kathryn	52	66	14	26.92%
Kenmare	1,096	961	(135)	(12.32%)
Kensal	163	146	(17)	(10.43%)
Kief	13	8	(5)	(38.46%)
Killdeer	751	939	188	25.03%
Kindred	692	889	197	28.47%
Knox	25	22	(3)	(12.00%)
Kramer	29	24	(5)	(17.24%)
Kulm	354	368	14	3.95%

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Lakota	672	683	11	1.64%
LaMoure	889	764	(125)	(14.06%)
Landa	38	41	3	7.89%
Langdon	1,878	1,909	31	1.65%
Lankin	98	102	4	4.08%
Lansford	245	238	(7)	(2.86%)
Larimore	1,346	1,260	(86)	(6.39%)
Larson CDP	12	9	(3)	(25.00%)
Lawton	30	15	(15)	(50.00%)
Leal	20	27	7	35.00%
Leeds	427	442	15	3.51%
Lehr	80	81	1	1.25%
Leith	16	28	12	75.00%
Leonard	223	248	25	11.21%
Lidgerwood	652	600	(52)	(7.98%)
Lignite	155	141	(14)	(9.03%)
Lincoln	2,406	4,257	1,851	76.93%
Linton	1,097	1,071	(26)	(2.37%)
Lisbon	2,154	2,204	50	2.32%
Litchville	172	169	(3)	(1.74%)
Logan CDP	194	247	53	27.32%
Loma	16	10	(6)	(37.50%)
Lorraine	9	9	0	0.00%
Ludden	23	15	(8)	(34.78%)
Luverne	31	28	(3)	(9.68%)
McClusky	380	322	(58)	(15.26%)
McHenry	56	64	8	14.29%
McLeod CDP	27	22	(5)	(18.52%)
McVille	349	392	43	12.32%
Maddock	382	402	20	5.24%
Makoti	154	148	(6)	(3.90%)
Mandan	18,331	24,206	5,875	32.05%
Mandaree CDP	596	691	95	15.94%
Manning CDP	74	47	(27)	(36.49%)
Mantador	64	67	3	4.69%
Manvel	360	377	17	4.72%
Mapleton	762	1,320	558	73.23%
Marion	133	125	(8)	(6.02%)
Marmarth	136	101	(35)	(25.74%)
Martin	78	63	(15)	(19.23%)
Max	334	331	(3)	(0.90%)
Maxbass	84	89	5	5.95%
Mayville	1,858	1,854	(4)	(0.22%)
Medina	308	264	(44)	(14.29%)
Medora	112	121	9	8.04%
Menoken CDP	70	78	8	11.43%
Mercer	94	88	(6)	(6.38%)
Michigan City	294	263	(31)	(10.54%)
Milnor	653	624	(29)	(4.44%)
Milton	58	39	(19)	(32.76%)
Minnewaukan	224	199	(25)	(11.16%)
Minot	40,888	48,377	7,489	18.32%
Minot AFB CDP	5,521	5,017	(504)	(9.13%)
Minto	604	616	12	1.99%
Mohall	783	694	(89)	(11.37%)
Monango	36	30	(6)	(16.67%)
Montpelier	87	85	(2)	(2.30%)
Mooreton	197	177	(20)	(10.15%)
Mott	721	653	(68)	(9.43%)
Mountain	92	80	(12)	(13.04%)
Munich	210	190	(20)	(9.52%)
Mylo	20	21	1	5.00%
Napoleon	792	749	(43)	(5.43%)
Nash CDP	32	13	(19)	(59.38%)
Neche	371	344	(27)	(7.28%)

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Nekoma	50	31	(19)	(38.00%)
Newburg	110	96	(14)	(12.73%)
New England	600	683	83	13.83%
New Leipzig	221	218	(3)	(1.36%)
New Rockford	1,391	1,361	(30)	(2.16%)
New Salem	946	973	27	2.85%
New Town	1,925	2,764	839	43.58%
Niagara	53	46	(7)	(13.21%)
Nome	62	51	(11)	(17.74%)
Noonan	121	137	16	13.22%
North River	56	55	(1)	(1.79%)
Northwood	945	982	37	3.92%
Oakes	1,856	1,798	(58)	(3.13%)
Oberon	105	101	(4)	(3.81%)
Oriska	118	114	(4)	(3.39%)
Orrin CDP	22	7	(15)	(68.18%)
Osnabrock	134	105	(29)	(21.64%)
Overly	18	10	(8)	(44.44%)
Oxbow	305	381	76	24.92%
Page	232	190	(42)	(18.10%)
Palermo	74	125	51	68.92%
Park River	1,403	1,424	21	1.50%
Parshall	903	949	46	5.09%
Pekin	70	75	5	7.14%
Pembina	592	512	(80)	(13.51%)
Perth	9	6	(3)	(33.33%)
Petersburg	192	162	(30)	(15.63%)
Pettibone	70	60	(10)	(14.29%)
Pick City	123	123	0	0.00%
Pillsbury	12	12	0	0.00%
Pingree	60	41	(19)	(31.67%)
Pisek	106	89	(17)	(16.04%)
Plaza	171	211	40	23.39%
Porcupine CDP	146	197	51	34.93%
Portal	126	125	(1)	(0.79%)
Portland	606	578	(28)	(4.62%)
Powers Lake	280	385	105	37.50%
Prairie Rose	73	56	(17)	(23.29%)
Raleigh CDP	12	14	2	16.67%
Ray	592	740	148	25.00%
Reeder	162	125	(37)	(22.84%)
Regan	43	35	(8)	(18.60%)
Regent	160	170	10	6.25%
Reile's Acres	513	703	190	37.04%
Reynolds	301	277	(24)	(7.97%)
Rhame	169	158	(11)	(6.51%)
Richardton	529	692	163	30.81%
Riverdale	205	223	18	8.78%
Robinson	37	36	(1)	(2.70%)
Rocklake	101	94	(7)	(6.93%)
Rogers	46	49	3	6.52%
Rolette	594	484	(110)	(18.52%)
Rolla	1,280	1,223	(57)	(4.45%)
Ross	97	95	(2)	(2.06%)
Rugby	2,876	2,509	(367)	(12.76%)
Ruso	4	1	(3)	(75.00%)
Ruthville CDP	191	151	(40)	(20.94%)
Rutland	163	163	0	0.00%
Ryder	85	108	23	27.06%
St. John	341	322	(19)	(5.57%)
St. Thomas	331	323	(8)	(2.42%)
Sanborn	192	161	(31)	(16.15%)
Sarles	28	16	(12)	(42.86%)
Sawyer	357	319	(38)	(10.64%)
Scranton	281	258	(23)	(8.19%)

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Selfridge	160	127	(33)	(20.63%)
Seiz CDP	46	40	(6)	(13.04%)
Sentinel Butte	56	61	5	8.93%
Sharon	96	86	(10)	(10.42%)
Sheldon	116	95	(21)	(18.10%)
Shell Valley CDP	1,197	1,146	(51)	(4.26%)
Sherwood	242	194	(48)	(19.83%)
Sheyenne	204	186	(18)	(8.82%)
Sibley	30	19	(11)	(36.67%)
Solen	83	70	(13)	(15.66%)
Souris	58	37	(21)	(36.21%)
South Heart	301	394	93	30.90%
Spiritwood CDP	18	29	11	61.11%
Spiritwood Lake	90	97	7	7.78%
Springbrook	27	37	10	37.04%
Stanley	1,458	2,321	863	59.19%
Stanton	366	368	2	0.55%
Starkweather	117	100	(17)	(14.53%)
Steele	715	665	(50)	(6.99%)
Strasburg	409	379	(30)	(7.34%)
Streeter	170	149	(21)	(12.35%)
Surrey	934	1,357	423	45.29%
Sutton CDP	17	17	0	0.00%
Sykeston	117	105	(12)	(10.26%)
Tappen	197	217	20	10.15%
Taylor	148	230	82	55.41%
Thompson	986	1,101	115	11.66%
Tioga	1,230	2,202	972	79.02%
Tolley	47	41	(6)	(12.77%)
Tolna	166	136	(30)	(18.07%)
Tower City	253	268	15	5.93%
Towner	533	479	(54)	(10.13%)
Turtle Lake	581	542	(39)	(6.71%)
Tuttle	80	60	(20)	(25.00%)
Underwood	778	784	6	0.77%
Upham	130	135	5	3.85%
Valley City	6,585	6,575	(10)	(0.15%)
Velva	1,084	1,086	2	0.18%
Venturia	10	21	11	110.00%
Verona	85	59	(26)	(30.59%)
Voltaire	40	46	6	15.00%
Wahpeton	7,766	8,007	241	3.10%
Walcott	235	262	27	11.49%
Wales	31	10	(21)	(67.74%)
Walhalla	996	893	(103)	(10.34%)
Warwick	65	55	(10)	(15.38%)
Washburn	1,246	1,300	54	4.33%
Watford City	1,744	6,207	4,463	255.91%
West Fargo	25,830	38,626	12,796	49.54%
Westhope	429	374	(55)	(12.82%)
Wheatland CDP	68	92	24	35.29%
White Earth	80	100	20	25.00%
White Shield CDP	336	363	27	8.04%
Wildrose	110	115	5	4.55%
Williston	14,716	29,160	14,444	98.15%
Willow City	163	149	(14)	(8.59%)
Wilton	711	718	7	0.98%
Wimbledon	216	178	(38)	(17.59%)
Wing	152	132	(20)	(13.16%)
Wishek	1,002	864	(138)	(13.77%)
Wolford	36	43	7	19.44%
Woodworth	50	44	(6)	(12.00%)
Wyndmere	429	454	25	5.83%
York	23	17	(6)	(26.09%)
Ypsilanti CDP	104	109	5	4.81%

City/CDP	Population		Increase (Decrease)	
	2010	2020	Amount	Percent
Zap	237	221	(16)	(6.75%)
Zeeland	86	82	(4)	(4.65%)

ATTACH:1

The following illustrates the percentage deviation from the ideal district size of 16,576 when applying the 2020 population to current legislative districts.

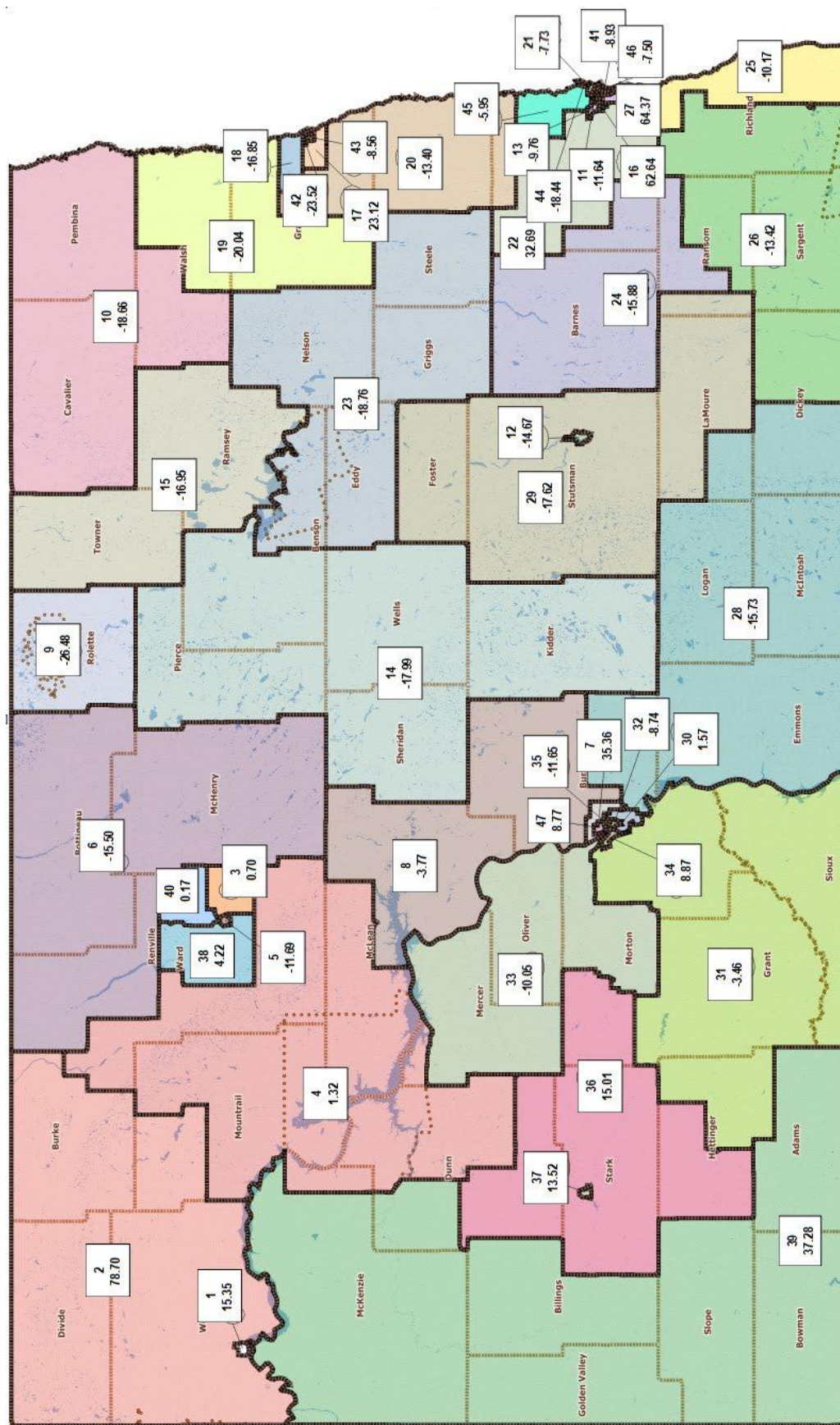


EXHIBIT 10



OFFICIAL 2022 GENERAL ELECTION RESULTS

November 8, 2022
Results last updated: 11/29/2022 2:43:07 PM

STATEWIDE TURNOUT

Voter Turnout **242,526**
Eligible Voters **564,935**



PRECINCTS REPORTED

Precincts Partially **0**
Precincts Fully **398**
Total Precincts **398**



STATEWIDE LEGISLATIVE MAP

Legislative District Results

EXPORT PAGE

District 9

State Senator District 9
Vote For 1

Precincts Fully: 8 / 8

Track this Contest

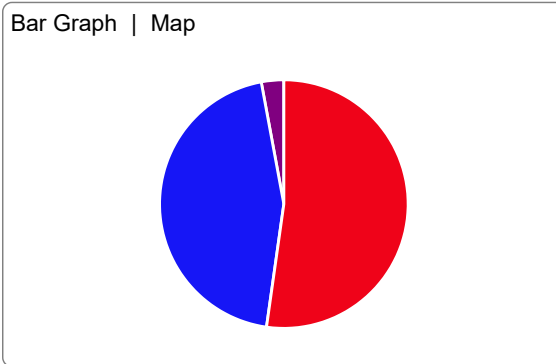
| Partially: 0 / 8

EXPORT



Kent Weston ✓ Republican	2,335	53.69%
Richard Marcellais Democratic-NPL	2,005	46.10%
write-in	9	0.21%
TOTAL VOTES	4,349	

Bar Graph | Map



COUNTY TOP ↑

Cavalier County

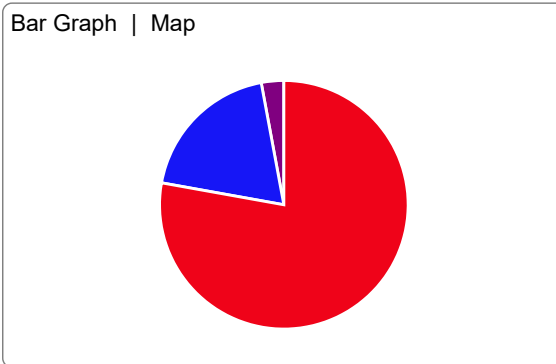
State Senator District 9
Vote For 1

Precincts Fully: 1 / 1

| Partially: 0 / 1

Kent Weston ✓ Republican	1,051	79.92%
Richard Marcellais Democratic-NPL	260	19.77%
write-in	4	0.30%
TOTAL VOTES	1,315	

Bar Graph | Map



PRECINCT

Rolette County

State Senator District 9

Precincts Fully: 5 / 5

Vote For 1

| Partially: 0 / 5

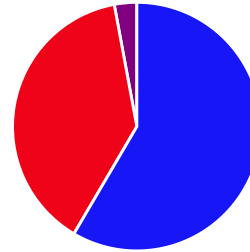
Richard Marcellais 1,637 60.12%
[Democratic-NPL](#)

Kent Weston ✓ 1,082 39.74%
Republican

write-in 4 0.15%

TOTAL VOTES 2,723

Bar Graph | Map



PRECINCT

Towner County

State Senator District 9

Precincts Fully: 2 / 2

Vote For 1

| Partially: 0 / 2

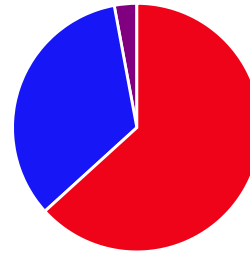
Kent Weston ✓ 202 64.95%
Republican

Richard Marcellais 108 34.73%
[Democratic-NPL](#)

write-in 1 0.32%

TOTAL VOTES 311

Bar Graph | Map



PRECINCT

ELECTION RESOURCES

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:35AM

State Senator District 9	County	Number of Precincts	Kent Weston		Richard Marcellais	
			Republican	Democratic-NPL	write-in	
	Cavalier	1	1,051	260	4	
	Rolette	5	1,082	1,637	4	
	Towner	2	202	108	1	
	TOTALS	8	2,335	2,005	9	

Cavalier

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:01AM

State Senator	Precinct	Kent Weston	Richard Marcellais	write-in
District 9	100901	1,051	260	4
	TOTALS	1,051	260	4

Rolette

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:01AM

State Senator	Precinct	Kent Weston	Richard Marcellais	write-in
District 9	400901	285	185	2
	400902	316	402	0
	400903	106	733	1
	400904	61	182	0
	400905	314	135	1
	TOTALS	1,082	1,637	4

Towner

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:01AM

State Senator	Precinct	Kent Weston	Richard Marcellais	write-in
District 9	480902	107	39	0
	480903	95	69	1
	TOTALS	202	108	1

EXHIBIT 11



OFFICIAL 2022 GENERAL ELECTION RESULTS November 8, 2022 Results last updated: 11/29/2022 2:43:07 PM	STATEWIDE TURNOUT Voter Turnout 242,526 Eligible Voters 564,935	42.93%	PRECINCTS REPORTED Precincts Partially 0 Precincts Fully 398 Total Precincts 398	100%
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STATEWIDE LEGISLATIVE MAP

Legislative District Results EXPORT PAGE

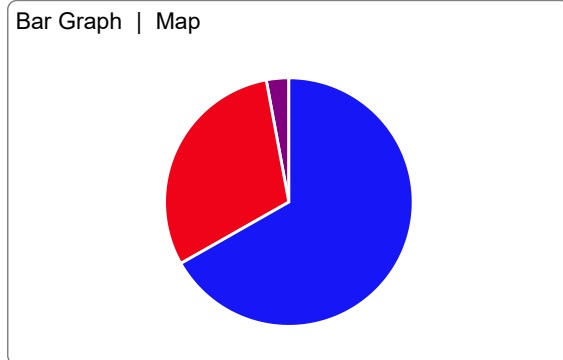
District 09a

State Representative District 09a Track this Contest

Vote For 1 Precincts Fully: 3 / 3 EXPORT

| Partially: 0 / 3

Jayme M Davis ✓ Democratic-NPL	1,049	68.61%
Brenda Malo Republican	476	31.13%
write-in	4	0.26%
TOTAL VOTES	1,529	



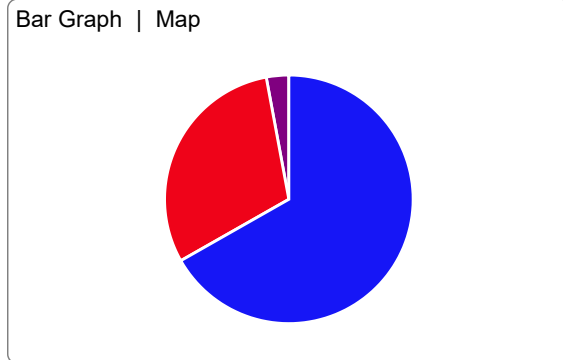
COUNTY TOP ↑

Rolette County

State Representative District a Precincts Fully: 3 / 3

Vote For 1 | Partially: 0 / 3

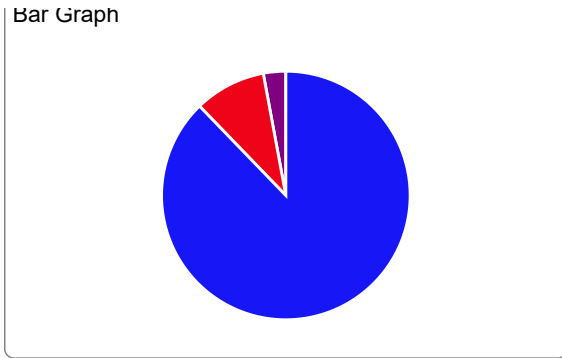
Jayme M Davis ✓ Democratic-NPL	1,049	68.61%
Brenda Malo Republican	476	31.13%
write-in	4	0.26%
TOTAL VOTES	1,529	



PRECINCT

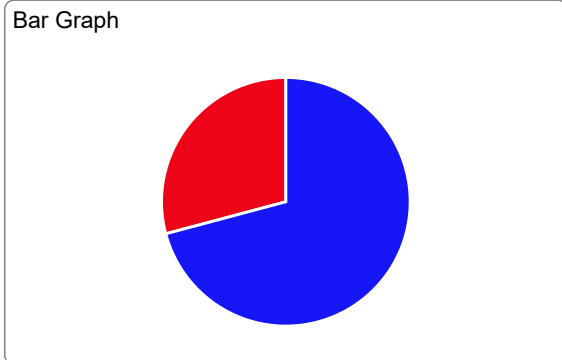
Rolette County

Jayme M Davis ✓ Democratic-NPL	754	90.30%
Brenda Malo Republican	80	9.58%
write-in	1	0.12%
TOTAL VOTES	835	



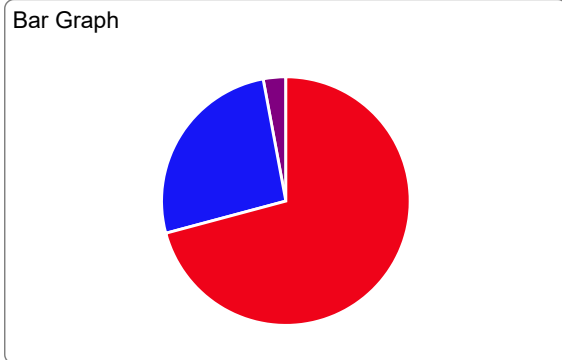
400904 Fully Reported

Jayme M Davis ✓ Democratic-NPL	175	70.85%
Brenda Malo Republican	72	29.15%
write-in	0	0%
TOTAL VOTES	247	



400905 Fully Reported

Brenda Malo Republican	324	72.48%
Jayme M Davis ✓ Democratic-NPL	120	26.85%
write-in	3	0.67%
TOTAL VOTES	447	



ELECTION RESOURCES

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:12AM

State Representative District 09a	County	Number of Precincts	Brenda Malo		Jayme M Davis	
			Republican		Democratic-NPL	write-in
	Rolette	3	476	1,049	4	
	TOTALS	3	476	1,049	4	

Rolette

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:12AM

State Representative	Precinct	Brenda Malo	Jayme M Davis	write-in
District 09a	400903	80	754	1
	400904	72	175	0
	400905	324	120	3
	TOTALS	476	1,049	4

EXHIBIT 12



OFFICIAL 2022 GENERAL ELECTION RESULTS

November 8, 2022
Results last updated: 11/29/2022 2:43:07 PM

STATEWIDE TURNOUT

Voter Turnout **242,526**
Eligible Voters **564,935**



PRECINCTS REPORTED

Precincts Partially **0**
Precincts Fully **398**
Total Precincts **398**



STATEWIDE LEGISLATIVE MAP

Legislative District Results

EXPORT PAGE

District 09b

State Representative District 09b
Vote For 1

Precincts Fully: 5 / 5

Track this Contest

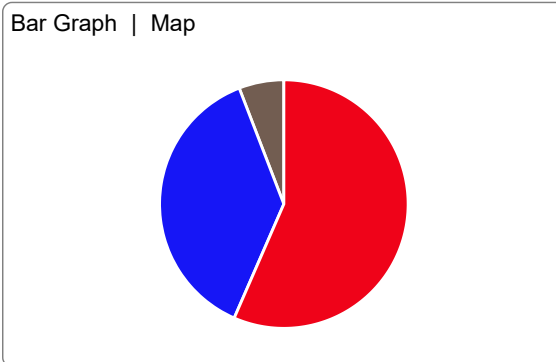
| Partially: 0 / 5

EXPORT



Donna Henderson ✓ Republican	1,595	56.54%
Marvin E Nelson Democratic-NPL	1,061	37.61%
write-in	165	5.85%
TOTAL VOTES	2,821	

Bar Graph | Map



COUNTY TOP ↑

Cavalier County

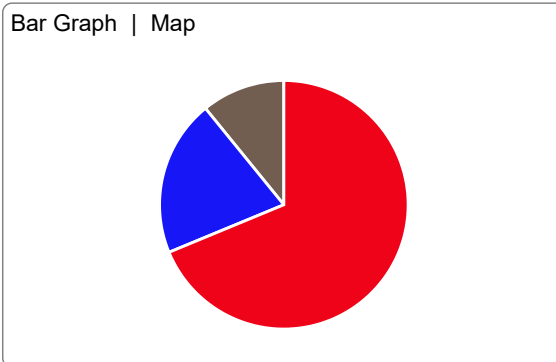
State Representative District b
Vote For 1

Precincts Fully: 1 / 1

| Partially: 0 / 1

Donna Henderson ✓ Republican	911	68.75%
Marvin E Nelson Democratic-NPL	270	20.38%
write-in	144	10.87%
TOTAL VOTES	1,325	

Bar Graph | Map



PRECINCT

Rolette County

State Representative District b

Precincts Fully: 2 / 2

Vote For 1

| Partially: 0 / 2

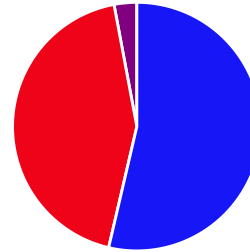
Marvin E Nelson 650 54.62%
[Democratic-NPL](#)

Donna Henderson ✓ 526 44.20%
Republican

write-in 14 1.18%

TOTAL VOTES 1,190

Bar Graph | Map



PRECINCT

Towner County

State Representative District b

Precincts Fully: 2 / 2

Vote For 1

| Partially: 0 / 2

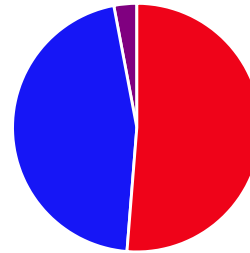
Donna Henderson ✓ 158 51.63%
Republican

Marvin E Nelson 141 46.08%
[Democratic-NPL](#)

write-in 7 2.29%

TOTAL VOTES 306

Bar Graph | Map



PRECINCT

ELECTION RESOURCES

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:14AM

State Representative	County	Number of Precincts	Donna Henderson Republican	Marvin E Nelson Democratic-NPL	write-in
District 09b	Cavalier	1	911	270	144
	Rolette	2	526	650	14
	Towner	2	158	141	7
	TOTALS	5	1,595	1,061	165

Cavalier

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:14AM

State Representative	Precinct	Donna Henderson	Marvin E Nelson	write-in
District 09b	100901	911	270	144
	TOTALS	911	270	144

Rolette

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:14AM

State Representative	Precinct	Donna Henderson	Marvin E Nelson	write-in
District 09b	400901	234	234	7
	400902	292	416	7
	TOTALS	526	650	14

Towner

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:14AM

State Representative	Precinct	Donna Henderson	Marvin E Nelson	write-in
District 09b	480902	93	50	4
	480903	65	91	3
	TOTALS	158	141	7

EXHIBIT 13



OFFICIAL 2022 GENERAL ELECTION RESULTS

November 8, 2022
Results last updated: 11/29/2022 2:43:07 PM

STATEWIDE TURNOUT

Voter Turnout **242,526**
Eligible Voters **564,935**



PRECINCTS REPORTED

Precincts Partially **0**
Precincts Fully **398**
Total Precincts **398**



STATEWIDE LEGISLATIVE MAP

Legislative District Results

EXPORT PAGE

District 15

State Senator District 15
Vote For 1

Precincts Fully: 9 / 9

Track this Contest

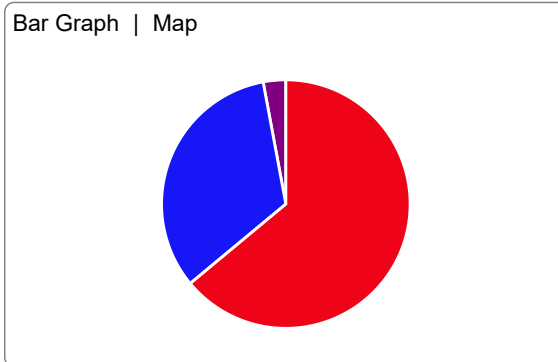
Partially: 0 / 9

EXPORT



Judy Estenson ✓ Republican	3,417	65.48%
Collette Brown Democratic-NPL	1,768	33.88%
write-in	33	0.63%
TOTAL VOTES	5,218	

Bar Graph | Map



COUNTY TOP ↑

State Representative District 15
Vote For 2

Precincts Fully: 9 / 9

Track this Contest

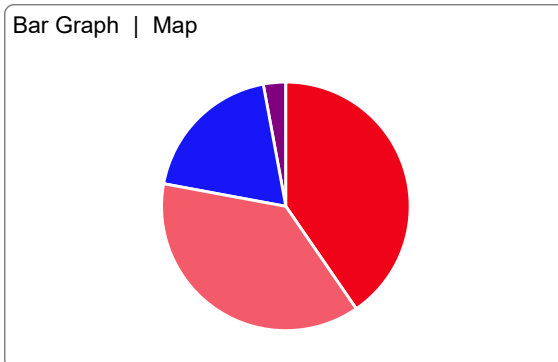
Partially: 0 / 9

EXPORT



Kathy Frelich ✓ Republican	3,405	41.56%
Dennis Johnson ✓ Republican	3,160	38.57%
Heather Lawrence-Skadsem Democratic-NPL	1,615	19.71%
write-in	12	0.15%
TOTAL VOTES	8,192	

Bar Graph | Map



COUNTY TOP ↑

2022 Official General Election Results
 State of North Dakota
 Downloaded at Mar 01 2023 11:20AM

State Senator District 15	County	Number of Precincts	Judy Estenson	Collette Brown	write-in
			Republican	Democratic-NPL	
	Benson	3	246	433	4
	Eddy	1	41	22	0
	Ramsey	4	2,718	1,192	28
	Towner	1	412	121	1
	TOTALS	9	3,417	1,768	33

Benson

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:20AM

State Senator	Precinct	Judy Estenson	Collette Brown	write-in
District 15	031502	121	53	1
	031503	60	296	1
	031504	65	84	2
	TOTALS	246	433	4

Eddy

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:20AM

State Senator	Precinct	Judy Estenson	Collette Brown	write-in
District 15	141503	41	22	0
	TOTALS	41	22	0

Ramsey

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:20AM

State Senator	Precinct	Judy Estenson	Collette Brown	write-in
District 15	361501	1,337	723	8
	361502	408	149	7
	361503	716	240	10
	361504	257	80	3
	TOTALS	2,718	1,192	28

Towner

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:20AM

State Senator	Precinct	Judy Estenson	Collette Brown	write-in
District 15	481501	412	121	1
	TOTALS	412	121	1

2022 Official General Election Results
 State of North Dakota
 Downloaded at Mar 01 2023 11:27AM

State Representative	County	Number of Precincts	Kathy Frelich	Dennis Johnson	Heather Lawrence-Skadsem	write-in
			Republican	Republican	Democratic-NPL	
District 15	Benson	3	225	260	416	4
	Eddy	1	37	39	19	0
	Ramsey	4	2,771	2,493	1,061	8
	Towner	1	372	368	119	0
	TOTALS	9	3,405	3,160	1,615	12

Benson

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:27AM

State Representative	Precinct	Kathy Frelich	Dennis Johnson	Heather Lawrence-Skadsem	write-in
District 15	031502	90	125	52	1
	031503	71	73	287	3
	031504	64	62	77	0
	TOTALS	225	260	416	4

Eddy

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:27AM

State Representative	Precinct	Kathy Frelich	Dennis Johnson	Heather Lawrence-Skadsem	write-in
District 15	141503	37	39	19	0
	TOTALS	37	39	19	0

Ramsey

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:27AM

State Representative	Precinct	Kathy Frelich	Dennis Johnson	Heather Lawrence-Skadsem	write-in
District 15	361501	1,398	1,237	632	2
	361502	403	396	132	0
	361503	728	627	215	4
	361504	242	233	82	2
	TOTALS	2,771	2,493	1,061	8

Towner

2022 Official General Election Results
State of North Dakota
Downloaded at Mar 01 2023 11:27AM

State Representative	Precinct	Kathy Frelich	Dennis Johnson	Heather Lawrence-Skadsem	write-in
District 15	481501	372	368	119	0
	TOTALS	372	368	119	0

EXHIBIT 14

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

CHARLES WALEN, an individual; and PAUL
HENDERSON, an individual.

Plaintiffs,

v.

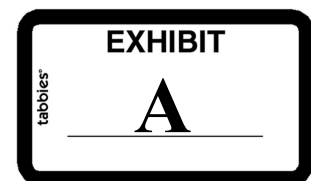
DOUG BURGUM, in his official capacity as
Governor of the State of North Dakota;
ALVIN JAEGER in his official capacity as
Secretary of State of the State of North Dakota,

Defendants.

Civil Action No. 1:22-cv-0031-CRH

EXPERT REPORT OF M.V. HOOD III

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



I. INTRODUCTION AND BACKGROUND

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

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

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

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

II. SCOPE AND OVERVIEW

I have been asked by counsel for the defendant to provide a functional analysis for LD 9 and LD 4 in the North Dakota legislative districting plan as enacted following the 2020 apportionment.

III. FUNCTIONALITY ANALYSIS

In *Alabama Legislative Black Caucus v. Alabama* the U.S. Supreme Court ruled that, in relation to the use of race in redistricting, the pertinent question was to be found in Section 2, not Section 5, of the Voting Rights Act. Specifically, the issue is not *how to maintain the present minority percentages in majority-minority districts, instead the issue is the extent to which [the State] must preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice.*¹ With this guidance I have undertaken an analysis using the three prongs of the standard *Gingles*² test in order to answer the following question: if said district is not constituted as a majority-minority district, would the preferred candidate of the Native American community in an open seat scenario most likely be defeated? In order to answer this question, I rely on what is known as a district functionality analysis. Such an analysis can be used to gain insight into how a proposed or enacted district would perform electorally.

The functionality analyses presented in this expert report consist of several components which are then combined in a final step. First, one needs to estimate the manner in which various racial groups are voting. Here, I rely on precinct-level vote returns and racial voting age population data to estimate how various groups are casting ballots. The next step in the process involves producing turnout estimates by race. The final piece of requisite information concerns the racial population (VAP) breakdown of the district to be analyzed. One can then take these voting age population figures and combine them with the aforementioned turnout estimates to create an estimate of the number of white, Native American, and *other* minority voters participating in a given election. Finally, one can combine these turnout numbers with the estimated vote percentages by race to obtain vote share estimates. Aggregating these estimates, one can then determine the estimated vote share for each candidate in a given race. In the case of a general election, the process would terminate with a vote estimate for each political party in the race being analyzed. For example, a calculation of the overall estimated Democratic (Republican) vote share in said district.

IV. ANALYSIS OF LD 9

A. Can a Majority-Minority District Be Created?

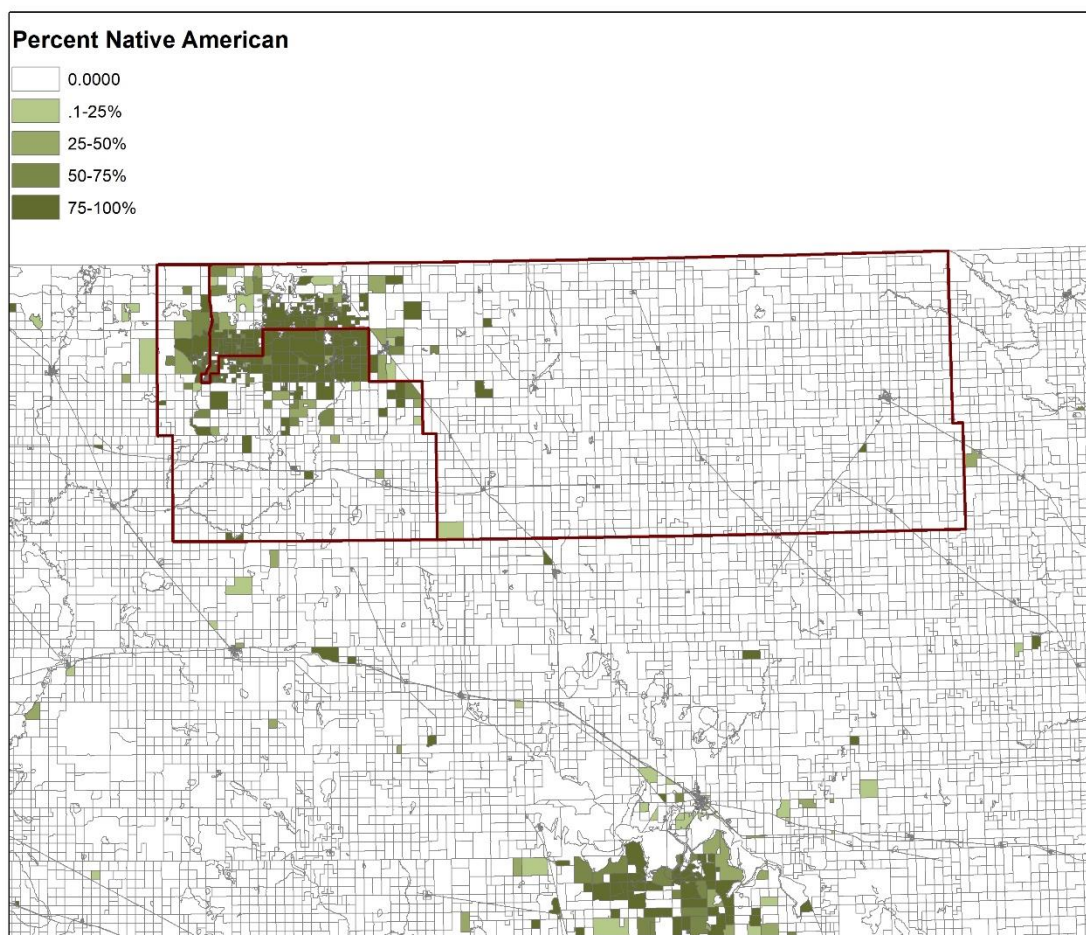
Prong 1 of the *Gingles* test reads as follows: The minority group must be of sufficient size and geographically compact enough to allow for the creation of a single-member district for the group in question.

¹See *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. ___ (2015). Page 4. Alabama was a Section 5 covered jurisdiction prior to *Shelby County v. Holder*, 570 U.S. 529 (2013). The quoted passage relating to Section 2 and its applicability to redistricting, however, pertains to any jurisdiction engaged in drawing new districts as Section 2 has nationwide coverage.

²See M.V. Hood III, Peter A. Morrison, and Thomas M. Bryan. 2017. "From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses." *Social Science Quarterly* for a discussion of how to conduct a Section 2 vote dilution analysis.

LD 9 in the enacted legislative plan³ is comprised of 51.7% Native American voting age population.⁴ As such, under Section 2 of the Voting Rights Act it would be described as a minority, opportunity-to-elect district.⁵ LD 9 is also subdivided into LD 9A and LD 9B, where each subdistrict serves as a single-member district for the purpose of electing members to the North Dakota House. Subdistrict 9A is 77.0% Native American VAP and LD 9B is 29.4% Native American VAP. Given LD 9 is majority Native American in terms of voting age, per prong 1 it is certainly possible to create a district where the minority group in question to comprises a majority of the district's population. Figure 1 below displays enacted LD 9 along with its subdistricts. The Native American population at the Census block-level is also presented for reference.

Figure 1. Enacted LD 9 (with subdistricts) and Block-Level Native American Population



³Throughout this report the enacted plan refers to the legislative districting plan passed by the North Dakota Legislature following the 2020 Census that was in place for the 2022 election-cycle.

⁴Measured as single-race Native Americans of voting age population from the 2020 decennial Census. North Dakota 2022 Legislative Plan Statistics (<https://www.ndlegis.gov/assembly/67-2021/session-interim/2021-legislative-redistricting-maps>).

⁵See *Bartlett v. Strickland*, 556 U.S. 1 (2009).

B. Is racially polarized voting present in the geographic area under study?

Prong 2 of the *Gingles* test seeks to determine if racially polarized voting is present in the geographic area under study. In order to determine if this is the case, one needs to estimate the manner in which various racial groups are voting. Here, I rely on precinct-level vote returns and racial voting age population data to estimate how whites, Native Americans, and *other* minorities are casting ballots. More specifically, I analyze six recent state-level contests: the 2020 presential election, the 2020 U.S. House election, the 2020 gubernatorial election, the 2018 U.S. Senate election, the 2018 U.S. House election, and the 2018 Attorney General election.

For each election analyzed, precinct vote returns are collected for the precincts that that make up enacted LD 9. In the case where a precinct is split between LD 9 and another legislative district, the precinct was retained for purposes of estimating vote shares by race.⁶ Block-level racial data from the 2020 Census was then aggregated to the precinct-level to be used for analysis. The three demographic groups analyzed are non-Hispanic whites, Native Americans, and *other* minorities.⁷

Ecological Inference is a statistical method that allows one to use aggregate-level data (precincts in this case) to make extrapolations concerning individual-level behavior. Using this technique one can estimate the percentages of each racial group that voted for a particular candidate.⁸ Sometimes this step is referred to as a racially polarized voting (or racial bloc voting) analysis.

Table 1 details racial voting estimates for enacted LD 9 along with 95% confidence intervals. For all six elections analyzed, there is a clear candidate of choice for Native American voters in LD 9, with the candidate of choice being the Democratic candidate in each of these contests. On the other side, white voters consistently support the Republican candidate in all six races. Racially polarized voting would then appear to be the norm in LD 9.

⁶There were not enough precincts to produce estimates for the two subdistricts: LD 9A and LD 9B.

⁷Outside of Native Americans, all other minorities are grouped into a category labeled *Other*.

⁸For more information on EI see: Gary King. 1997. *A Solution to the Ecological Inference Problem*. Princeton, NJ: Princeton University Press. For more information on the specific variant of EI I use in this report see: Ori Rosen, Wenxin Jiang, Gary King, and Martin A. Tanner. 2001. "Bayesian and Frequentist Inference for Ecological Inference: The R x C Case." *Statistica Neerlandica* 55: 134-156. EI estimates for this report are estimated using the eiPack procedure in the statistical program R.

Table 1. Racial Voting Estimates, LD 9

Election	White		Native American	
	Republican	Democrat	Republican	Democrat
2020 Presidential	71.9 [66.0, 77.4]	27.0 [21.5, 32.8]	10.1 [2.0, 20.1]	89.3 [79.3, 97.4]
2020 U.S. House	75.7 [69.8, 81.1]	23.1 [17.7, 29.0]	12.7 [3.5, 23.1]	85.7 [75.3, 94.9]
2020 Governor	78.0 [72.0, 83.4]	20.4 [15.0, 26.4]	18.9 [8.9, 29.1]	80.0 [69.8, 90.0]
2018 U.S. Senate	56.3 [50.2, 62.2]	43.7 [37.8, 49.8]	5.0 [0.6, 11.0]	95.0 [89.0, 99.4]
2018 U.S. House	67.7 [55.7, 67.4]	35.6 [30.0, 41.6]	11.2 [4.7, 17.9]	83.8 [77.1, 90.2]
2018 Attorney General	71.2 [64.6, 77.3]	28.8 [22.7, 35.4]	12.6 [5.4, 20.1]	87.3 [79.9, 94.6]

Notes: Entries are estimates of vote share by race and party with 95% confidence estimates in parentheses.

C. Is the Native American Candidate of Choice Typically Defeated?

For each of the six elections analyzed there is a clear candidate of choice for Native American voters in LD 9. In each of these case that candidate of choice is the Democrat. The question now becomes is the Native American candidate of choice typically defeated by the white voting bloc.

In order to answer this question, I produce turnout estimates for whites, Native Americans, and *others*. Because racial turnout data are not available in North Dakota, I again rely on ecological inference to estimate turnout by race using precinct-level data. In this case I use voting age counts by racial group and turnout measured as the number of ballots cast in a specific election (with the number of nonvoters calculated as ballots cast subtracted from the total voting age population).

The estimated turnout rates by race are then used to partition the voting age population into the electorate for a given race. For example, if there are 1,000 whites of voting age and the estimated turnout rate for this group is 45%, then it would be estimated that there would be 450 whites in the electorate. This process is repeated for Native Americans and the *other* minority category.

The next step would be to decompose these voters by candidate choice. To continue the present hypothetical example, one would divide these 450 white voters into categories based on vote choice. If the white vote was estimated to have split 60% Republican and 40% Democratic, there would be 270 white votes for the Republican candidate and 180 white votes for the Democratic candidate. The same process would then be repeated for the other two racial categories under analysis. Finally, votes by party across racial groups would be summed and then divided by the

total number of estimated votes. The end product would then be an estimate of the Democratic and Republican vote in enacted LD 9 for the election contest under study.⁹ With this accomplished, it is then possible to determine which party would have won the election within the geographic boundaries of enacted LD 9 (and LD 9A and LD 9B).

The predicted vote share by party for the six election contests analyzed for LD 9 is presented in Table 2 below. The table also contains an analysis of the predicted vote for LD 9A and LD 9B. Looking at Table 2, the estimates produced indicate that the Native American preferred candidate of choice, the Democratic candidate in each case, would have prevailed in LD 9 in four of the six elections analyzed, or 67% of the time. In LD 9A, the Native American preferred candidate would win six of six elections analyzed, or 100% of the time. In LD 9B, the Native American preferred candidate would win two of six races, or 33% of the time.

Table 2. LD 9-Predicted Vote by Party

Election	LD 9		LD 9A		LD 9B	
	Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
2020 Presidential	51.2	47.2	68.8	29.8	39.6	58.8
2020 U.S. House	47.2	50.6	64.8	32.8	35.6	62.3
2020 Governor	44.1	53.7	60.9	37.0	32.9	64.9
2018 U.S. Senate	69.1	30.9	82.6	17.4	58.0	42.0
2018 U.S. House	58.9	36.3	71.7	23.0	48.5	47.2
2018 Attorney General	58.1	41.9	73.5	26.5	45.5	54.5
Average	54.8	43.4	70.4	27.8	43.4	55.0

Note: Democratic and Republican vote percentages may not sum to 100% due to the presence of a third-party candidate.

D. Summary and Conclusion

Racially polarized voting is present within the boundaries of enacted LD 9 and, in fact, appears to be the prevailing pattern. At present, LD 9 contains a majority of Native American voting age population, as does LD 9A. LD 9, therefore, is a Section 2 minority opportunity-to-elect district for Native Americans. Under its present configuration, LD 9 and LD 9A demonstrate an ability to consistently elect a Native American candidate of choice. Given the presence of racially polarized voting in the district, it is unlikely that the Native American candidate of choice would be regularly elected if the district did not contain a majority Native American voting age population.

⁹If a third-party candidate were present in the race the estimated vote share for this individual would also be calculated.

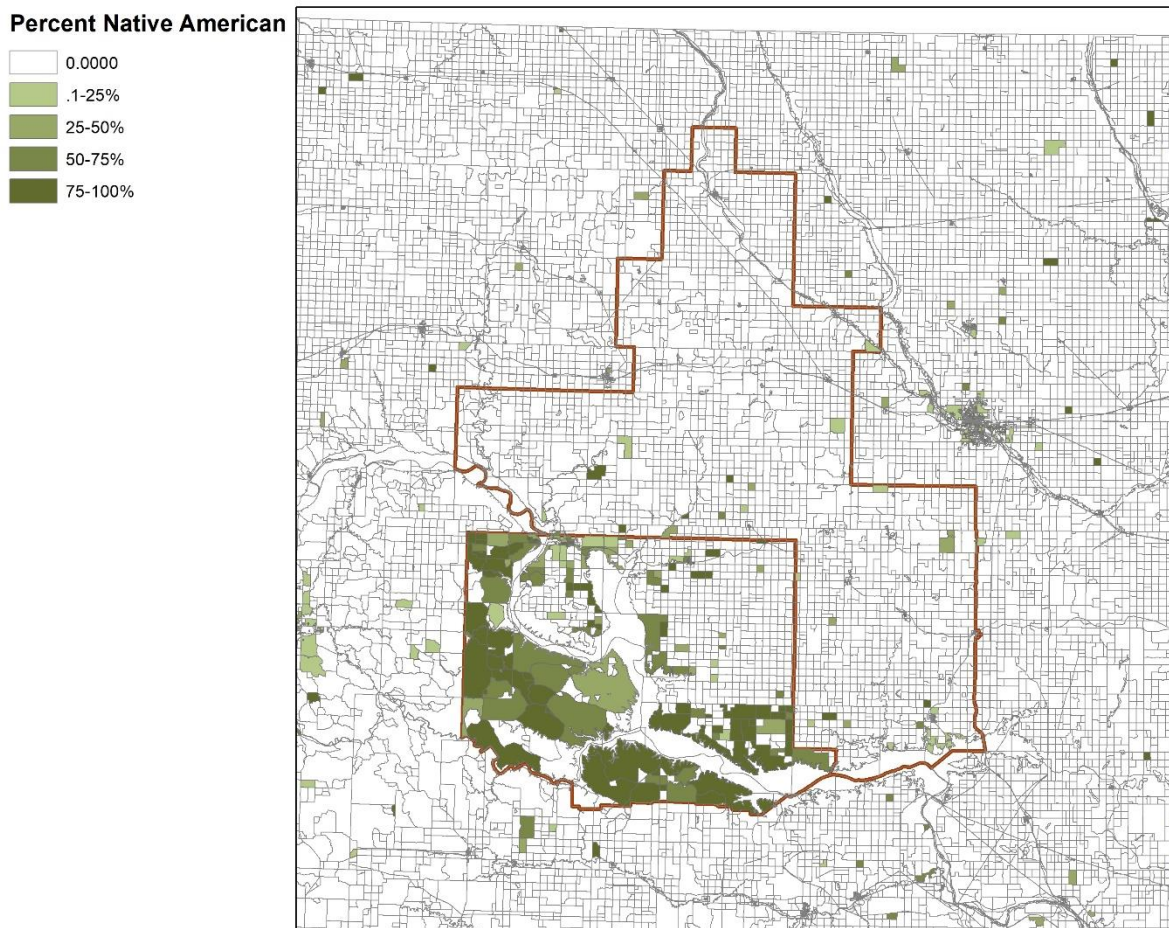
V. ANALYSIS OF LD 4

In this section, I repeat the same process utilized for the functional analysis carried out on LD 9 in Section IV.

A. Can a Majority-Minority District Be Created?

LD 4 in the enacted legislative plan contains a 31.0% Native American voting age population.¹⁰ LD 4 is also subdivided into LD 4A and LD 4B where each subdistrict serves as a single-member district for the purpose of electing members to the North Dakota House. Subdistrict 4A is 62.1% Native American VAP and LD 4B is 2.3% Native American VAP. LD 4 is not majority Native American in terms of voting age population. LD 4A is, however, majority Native American and for the purposes of electing a member to the North Dakota State House can serve as a minority opportunity-to-elect district. In the case of LD 4A, the first prong of the *Gingles* test is met. Figure 2 below displays enacted LD 4 along with its subdistricts. The Native American population at the Census block-level is also presented for reference.

Figure 1. Enacted LD 4 (with subdistricts) and Block-Level Native American Population



¹⁰Measured as single-race Native Americans of voting age population from the 2020 decennial Census. North Dakota 2022 Legislative Plan Statistics (<https://www.ndlegis.gov/assembly/67-2021/session-interim/2021-legislative-redistricting-maps>).

B. Is racially polarized voting present in the geographic area under study?

Table 3 details racial voting estimates for enacted LD 4 along with 95% confidence intervals for the same six elections used for the analysis of LD 9. For all six elections analyzed, there is a clear candidate of choice for Native American voters in LD 4, with the candidate of choice being the Democratic candidate in each of these contests. On the other side, white voters consistently support the Republican candidate in all six races. For the six elections analyzed, racially polarized voting is present 100% of the time.

Table 3. Racial Voting Estimates, LD 4

Election	White		Native American	
	Republican	Democrat	Republican	Democrat
2020 Presidential	82.8 [80.3, 85.2]	16.4 [14.0, 18.7]	9.7 [2.6, 21.5]	88.7 [77.0, 96.1]
2020 U.S. House	83.7 [81.3, 86.1]	15.2 [12.7, 17.4]	12.3 [3.7, 25.3]	84.2 [71.5, 93.3]
2020 Governor	79.5 [76.8, 82.2]	15.9 [13.1, 18.4]	17.6 [7.0, 31.1]	79.7 [66.3, 90.4]
2018 U.S. Senate	71.9 [68.9, 75.0]	28.1 [25.0, 31.1]	7.0 [1.1, 18.0]	93.0 [82.0, 98.9]
2018 U.S. House	77.1 [74.4, 79.7]	20.9 [18.2, 23.4]	9.9 [2.5, 21.6]	88.0 [76.4, 95.8]
2018 Attorney General	81.2 [78.2, 84.3]	18.8 [15.7, 21.8]	9.7 [2.0, 22.5]	90.3 [77.5, 98.0]

Notes: Entries are estimates of vote share by race and party with 95% confidence estimates in parentheses.

C. Is the Native American Candidate of Choice Typically Defeated?

The predicted vote share by party for the six election contests analyzed for LD 4 is presented in Table 4 below. The table also contains an analysis of the predicted vote for LD 4A and LD 4B. Looking at Table 4, the estimates produced indicate that the Native American preferred candidate of choice, the Democratic candidate in each case, would be defeated in LD 4 six out of the six elections analyzed, or 100% of the time. In LD 4A, the Native American preferred candidate would win five of six elections analyzed, or 83% of the time. In LD 4B, the Native American preferred candidate would lose all six races, or 100% of the time.

Table 4. LD 4-Predicted Vote by Party

Election	LD 4		LD 4A		LD 4B	
	Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
2020 Presidential	29.8	68.4	51.3	46.0	18.1	80.7
2020 U.S. House	27.7	69.5	48.1	47.4	16.7	81.6
2020 Governor	27.5	67.4	46.3	48.4	17.3	77.7
2018 U.S. Senate	40.8	59.2	60.8	39.2	30.0	70.1
2018 U.S. House	32.9	63.5	52.4	42.5	22.2	75.0
2018 Attorney General	32.7	67.3	54.6	45.4	20.8	79.2
Average	31.9	65.9	52.3	44.8	20.9	77.4

Note: Democratic and Republican vote percentages may not sum to 100% due to the presence of a third-party candidate.

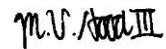
D. Summary and Conclusion

LD 4 in the enacted plan is, without exception, characterized by the presence of racially polarized voting. The Native American candidate of choice in LD 4 and LD 4B would be defeated 100% of the time. Again, LD 4 and LD 4B are majority white voting age population. LD 4A on the other hand contains a majority Native American voting age population. In the case of LD 4A, the Native American candidate of choice would be elected more than a majority of the time (83%). With the exception of LD 4A, it is highly unlikely that a Native American preferred candidate of choice would be elected within the geographic boundaries of LD 4 as a whole.

VI. DECLARATION

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

Executed on January 17, 2023.



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Appendix: Reliance Materials

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

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

North Dakota Precinct Shapefiles. North Dakota Secretary of State.

Precinct Election Returns. North Dakota Secretary of State. (<https://sos.nd.gov/elections.html>).

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

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

Curriculum Vitae
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Director, SPIA Survey Research Center, 2016-present
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Ph.D.	Political Science	Texas Tech University	1997
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Peer-Reviewed Books:

Rural Republican Realignment in the Modern South: The Untold Story. 2022.
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The Rational Southerner: Black Mobilization, Republican Growth, and the Partisan Transformation of the American South. 2012. New York: Oxford University Press.
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- The Resilience of Southern Identity: Why the South Still Matters in the Minds of Its People*. 2018.
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- “Provisionally Admitted College Students: Do They Belong in a Research University?” 1998. In *Developmental Education: Preparing Successful College Students*, Jeanne Higbee and Patricia L. Dwinell, editors. Columbia, SC: National Resource Center for the First-Year Experience & Students in Transition (Don Garnett, co-author).

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Grant-funded Research (UGA):

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

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

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

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

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

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

Curriculum Grants (UGA):

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

Dissertation:

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

Chair: Professor Sue Tolleson-Rinehart

Papers and Activities at Professional Meetings:

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

- “Mail It In: An Analysis of the Peach State’s Response to the Coronavirus Pandemic.” 2020. (with Audrey Haynes). Presented at the Election Science, Reform, and Administrative Conference. Gainesville, FL. [Virtually Presented].
- “Presidential Republicanism and Democratic Darn Near Everything Else.” 2020. (with Seth C. McKee). Presented at the Citadel Southern Politics Symposium. Charleston, SC.
- “Why Georgia, Why? Peach State Residents’ Perceptions of Voting-Related Improprieties and their Impact on the 2018 Gubernatorial Election.” 2019. (with Seth C. McKee). Presented at the Election Science, Reform, and Administrative Conference. Philadelphia, PA.
- “The Demise of White Class Polarization and the Newest American Politics.” 2019. (with Seth C. McKee). Presented at the Annual Meeting of the Southern Political Science Association. Austin, TX.
- “The Geography of Latino Growth in the American South.” 2018. (with Seth C. McKee). State Politics and Policy Conference. State College, PA.
- “A History and Analysis of Black Representation in Southern State Legislatures.” 2018. (with Charles S. Bullock, III, William D. Hicks, Seth C. McKee, Adam S. Myers, and Daniel A. Smith). Presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- Discussant. Panel titled “Southern Distinctiveness?” 2018. The Citadel Symposium on Southern Politics. Charleston, SC.
- Roundtable Participant. Panel titled “The 2018 Elections.” 2018. The Citadel Symposium on Southern Politics. Charleston, SC.
- “Still Fighting the Civil War?: Southern Opinions on the Confederate Legacy.” 2018. (with Christopher A. Cooper, Scott H. Huffmon, Quentin Kidd, H. Gibbs Knotts, and Seth C. McKee). The Citadel Symposium on Southern Politics. Charleston, SC.
- “Tracking Hispanic Growth in the American South.” 2018. (with Seth C. McKee). Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- “An Assessment of Online Voter Registration in Georgia.” 2017. (with Greg Hawrelak and Colin Phillips). Presented at the Annual Meeting of Election Sciences, Reform, and Administration. Portland, Oregon.
- Moderator. Panel titled “What Happens Next.” 2017. The Annual Meeting of Election Sciences, Reform, and Administration. Portland, Oregon.
- “Election Daze: Time of Vote, Mode of Voting, and Voter Preferences in the 2016 Presidential Election.” 2017. (with Seth C. McKee and Dan Smith). Presented at the Annual Meeting of the State Politics and Policy Conference. St. Louis, MO.

- “Palmetto Postmortem: Examining the Effects of the South Carolina Voter Identification Statute.” 2017. (with Scott E. Buchanan). Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- Panel Chair and Presenter. Panel titled “Assessing the 2016 Presidential Election.” 2017. UGA Elections Conference. Athens, GA.
- Roundtable Discussant. Panel titled “Author Meets Critics: Robert Mickey's Paths Out of Dixie.” 2017. The Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- “Out of Step and Out of Touch: The Matter with Kansas in the 2014 Midterm Election.” (with Seth C. McKee and Ian Ostrander). 2016. Presented at the Annual Meeting of the Southern Political Science Association. San Juan, Puerto Rico.
- “Contagious Republicanism in North Carolina and Louisiana, 1966-2008.”(with Jamie Monogan). 2016. Presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- “The Behavioral Implications of Racial Resentment in the South: The Intervening Influence of Party.” (with Quentin Kidd and Irwin L. Morris). 2016. Presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- Discussant. Panel titled “Partisan Realignment in the South.” 2016. The Citadel Symposium on Southern Politics. Charleston, SC.
- “Electoral Implications of Racial Resentment in the South: The Influence of Party.” (with Quentin Kidd and Irwin L. Morris). 2016. Presented at the Annual Meeting of the American Political Science Association. Philadelphia, PA.
- “Racial Resentment and the Tea Party: Taking Regional Differences Seriously.” (with Quentin Kidd and Irwin L. Morris). 2015. Poster presented at the Annual Meeting of the American Political Science Association. San Francisco, CA.
- “Race and the Tea Party in the Palmetto State: Tim Scott, Nikki Haley, Bakari Sellers and the 2014 Elections in South Carolina.” (with Quentin Kidd and Irwin L. Morris). 2015. Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- Participant. Roundtable on the 2014 Midterm Elections in the Deep South. Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- “Race and the Tea Party in the Old Dominion: Split-Ticket Voting in the 2013 Virginia Elections.” (with Irwin L. Morris and Quentin Kidd). 2014. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

- “Race and the Tea Party in the Old Dominion: Down-Ticket Voting and Roll-Off in the 2013 Virginia Elections.” (with Irwin L. Morris and Quentin Kidd). 2014. Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- “Tea Leaves and Southern Politics: Explaining Tea Party Support Among Southern Republicans.” (with Irwin L. Morris and Quentin Kidd). 2013. Paper presented at the Annual Meeting of the Southern Political Science Association. Orlando, FL.
- “The Tea Party and the Southern GOP.” (with Irwin L. Morris and Quentin Kidd). 2012. Research presented at the Effects of the 2012 Elections Conference. Athens, GA.
- “Black Mobilization in the Modern South: When Does Empowerment Matter?” (with Irwin L. Morris and Quentin Kidd). 2012. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- “The Legislature Chooses a Governor: Georgia’s 1966 Gubernatorial Election.” (with Charles S. Bullock, III). 2012. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- “One-Stop to Victory? North Carolina, Obama, and the 2008 General Election.” (with Justin Bullock, Paul Carlsen, Perry Joiner, and Mark Owens). 2011. Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans.
- “Redistricting and Turnout in Black and White.” (with Seth C. McKee and Danny Hayes). 2011. Paper presented the Annual Meeting of the Midwest Political Science Association. Chicago, IL.
- “One-Stop to Victory? North Carolina, Obama, and the 2008 General Election.” (with Justin Bullock, Paul Carlsen, Perry Joiner, Jeni McDermott, and Mark Owens). 2011. Paper presented at the Annual Meeting of the Midwest Political Science Association Meeting. Chicago, IL.
- “Strategic Voting in the 2010 Florida Senate Election.” (with Seth C. McKee). 2011. Paper Presented at the Annual Meeting of the Florida Political Science Association. Jupiter, FL.
- “The Republican Bottleneck: Congressional Emergence Patterns in a Changing South.” (with Christian R. Grose and Seth C. McKee). Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.
- “Capturing the Obama Effect: Black Turnout in Presidential Elections.” (with David Hill and Seth C. McKee) 2010. Paper presented at the Annual Meeting of the Florida Political Science Association. Jacksonville, FL.
- “The Republican Bottleneck: Congressional Emergence Patterns in a Changing South.” (with Seth C. McKee and Christian R. Grose). 2010. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- “Black Mobilization and Republican Growth in the American South: The More Things

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

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

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

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

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

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

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

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

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

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

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

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

- “Backward Mapping: Exploring Questions of Representation via Spatial Analysis of Historical Congressional Districts.” (with Michael Crespin). 2007. Paper presented at the Annual Meeting of the American Political Science Association. Chicago.
- “Worth a Thousand Words? : An Analysis of Georgia’s Voter Identification Statute.” (with Charles S. Bullock, III). 2007. Paper presented at the Annual Meeting of the Southwestern Political Science Association. Albuquerque.
- “Gerrymandering on Georgia’s Mind: The Effects of Redistricting on Vote Choice in the 2006 Midterm Election.” (with Seth C. McKee). 2007. Paper presented at the Annual Meeting of The Southern Political Science Association. New Orleans.
- “Personalismo Politics: Partisanship, Presidential Popularity and 21st Century Southern Politics.” (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Annual Meeting of the American Political Science Association. Philadelphia.
- “Explaining Soft Money Transfers in State Gubernatorial Elections.” (with William Gillespie and Troy Gibson). 2006. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.
- “Two Sides of the Same Coin?: A Panel Granger Analysis of Black Electoral Mobilization and GOP Growth in the South, 1960-2004.” (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.
- “Hispanic Political Emergence in the Deep South, 2000-2004.” (With Charles S. Bullock, III). 2006. Paper presented at the Citadel Symposium on Southern Politics. Charleston.
- “Black Mobilization and the Growth of Southern Republicanism: Two Sides of the Same Coin?” (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “Exploring the Linkage Between Black Turnout and Down-Ticket Challenges to Black Incumbents.” (With Troy M. Gibson). 2006. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “Race and the Ideological Transformation of the Democratic Party: Evidence from the Bayou State.” 2004. Paper presented at the Biennial Meeting of the Citadel Southern Politics Symposium. Charleston.
- “Tracing the Evolution of Hispanic Political Emergence in the Deep South.” 2004. (Charles S. Bullock, III). Paper presented at the Biennial Meeting of the Citadel Southern Politics Symposium. Charleston.
- “Much Ado about Something? Religious Right Status in American Politics.” 2003. (With Mark C. Smith). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

- “Tracking the Flow of Non-Federal Dollars in U. S. Senate Campaigns, 1992-2000.” 2003. (With Janna Deitz and William Gillespie). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.
- “PAC Cash and Votes: Can Money Rent a Vote?” 2002. (With William Gillespie). Paper presented at the Annual Meeting of the Southern Political Science Association. Savannah.
- “What Can Gubernatorial Elections Teach Us About American Politics?: Exploiting and Underutilized Resource.” 2002. (With Quentin Kidd and Irwin L. Morris). Paper presented at the Annual Meeting of the American Political Science Association. Boston.
- “I Know I Voted, But I’m Not Sure It Got Counted.” 2002. (With Charles S. Bullock, III and Richard Clark). Paper presented at the Annual Meeting of the Southwestern Social Science Association. New Orleans.
- “Race and Southern Gubernatorial Elections: A 50-Year Assessment.” 2002. (With Quentin Kidd and Irwin Morris). Paper presented at the Biennial Southern Politics Symposium. Charleston, SC.
- “Top-Down or Bottom-Up?: An Integrated Explanation of Two-Party Development in the South, 1960-2000.” 2001. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “Cash, Congress, and Trade: Did Campaign Contributions Influence Congressional Support for Most Favored Nation Status in China?” 2001. (With William Gillespie). Paper presented at the Annual Meeting of the Southwestern Social Science Association. Fort Worth.
- “Key 50 Years Later: Understanding the Racial Dynamics of 21st Century Southern Politics” 2001. (With Quentin Kidd and Irwin Morris). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “The VRA and Beyond: The Political Mobilization of African Americans in the Modern South.” 2001. (With Quentin Kidd and Irwin Morris). Paper presented at the Annual Meeting of the American Political Science Association. San Francisco.
- “Payola Justice or Just Plain ‘Ole Politics Texas Style?: Campaign Finance and the Texas Supreme Court.” 2001. (With Craig Emmert). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.
- “The VRA and Beyond: The Political Mobilization of African Americans in the Modern South.” 2000. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “Where Have All the Republicans Gone? A State-Level Study of Southern Republicanism.” 1999. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the Southern Political Science Association. Savannah.

- “Elephants in Dixie: A State-Level Analysis of the Rise of the Republican Party in the Modern South.” 1999. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the American Political Science Association. Atlanta.
- “Stimulant to Turnout or Merely a Convenience?: Developing an Early Voter Profile.” 1998. (With Quentin Kidd and Grant Neeley). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.
- “The Impact of the Texas Concealed Weapons Law on Crime Rates: A Policy Analysis for the City of Dallas, 1992-1997.” 1998. (With Grant W. Neeley). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.
- “Analyzing Anglo Voting on Proposition 187: Does Racial/Ethnic Context Really Matter?” 1997. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Norfolk.
- “Capturing Bubba's Heart and Mind: Group Consciousness and the Political Identification of Southern White Males, 1972-1994.” 1997. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.
- “Of Byrds[s] and Bumpers: A Pooled Cross-Sectional Study of the Roll-Call Voting Behavior of Democratic Senators from the South, 1960-1995.” 1996. (With Quentin Kidd and Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Atlanta.
- “Pest Control: Southern Politics and the Eradication of the Boll Weevil.” 1996. (With Irwin Morris). Paper presented to the Annual Meeting of the American Political Science Association. San Francisco.
- “Fit for the Greater Functions of Politics: Gender, Participation, and Political Knowledge.” 1996. (With Terry Gilmour, Kurt Shirkey, and Sue Tolleson-Rinehart). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.
- “¿Amigo o Enemigo?: Racial Context, Attitudes, and White Public Opinion on Immigration.” 1996. (With Irwin Morris). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.
- “¿Quedate o Vente!: Uncovering the Determinants of Hispanic Public Opinion Towards Immigration.” 1996. (With Irwin Morris and Kurt Shirkey). Paper presented to the Annual Meeting of the Southwestern Political Science Association. Houston.
- “Downs Meets the Boll Weevil: When Southern Democrats Turn Left.” 1995. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Tampa.
- “¿Amigo o Enemigo?: Ideological Dispositions of Whites Residing in Heavily Hispanic Areas.” 1995. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Tampa.

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

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

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

Areas of Teaching Competence:

American Politics: Behavior and Institutions
Public Policy
Scope, Methods, Techniques

Teaching Experience:

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

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

Courses Taught:

Undergraduate:

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

Graduate:

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

Editorial Boards:

Social Science Quarterly. Member. 2011-present.

Election Law Journal. Member. 2013-present.

Other Professional Service:

Listed expert. MIT Election Data and Science Lab.

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

Institutional Service (University-Level):

University Information Technology Committee, 2022-present.

University Promotion and Tenure Committee, 2019-2022.

University Program Review Committee, 2009-2011.

Chair, 2010-2011

Vice-Chair, 2009-2010.

Graduate Council, 2005-2008.

Program Committee, 2005-2008.

Chair, Program Committee, 2007-2008.

University Libraries Committee, 2004-2014.

Search Committee for University Librarian and Associate Provost, 2014.

EXHIBIT 15

Response to Motion for PI

Date: April 7th

Transcribing hearings related to redistricting.

↳ Interesting Note: Legislators did not have access to any racial data → nothing had been calculated. They did know about location of I.R. & racial data for these geographic units are available

← Incorrect, racial data were loaded in system

Districts: Racial Gerrymandering (Voters)

Districts 4 & 9 (and subdivisions)

4A → Ft. Berthold Reservation

9A → Turtle Mt. Reservation

Question: Must the number of MI districts be maximized?

Vote District (Turtle Mt. Band)

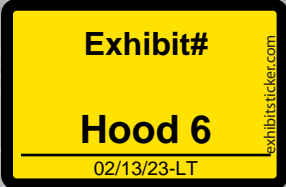
Districts 9 & 15

9 → Turtle Mt. Reservation (9A)

15 → Spirit Lake Reservation

(no subdivisions)

Plaintiffs won a district comprising Turtle Mt. & Spirit Lake (1 SB, 2 CH)



N.D. Data

↳ Precinct Election Data

Available electronically statewide

(2012, 2014, 2016, 2018, 2020)

↳ Precinct boundaries fairly stable w/1
reistricting cycle (but can change)

↳ Need precinct shapes created
in order to calculate racial statistics

↳ Precincts not allowed to be split
across leg. districts

↳ Precincts often nested w/1 I.R.

↳ Precinct Data 2012-2020 for Statewide

Races (including primaries)

↳ Need State Leg. Races by Precinct

(including primaries)

Phone Meeting (March 28th @ 2:00pm)

N.D. Data

↳ Precinct Election Data

Available electronically statewide

(2012, 2014, 2016, 2018, 2020)

↳ Precinct boundaries fairly stable w/II
redistricting cycle (but can change)

↳ Need precinct shapes created
in order to calculate racial statistics

↳ Precincts not allowed to be split
across leg. districts

↳ Precincts often nested w/II IR.

↳ Precinct Data 2012-2020 for Statewide

Races (including primaries)

↳ Need State Leg. Races by Precinct

(including primaries)

Phone Meeting (March 28th @ 2:00pm)

Section 2 Analysis

2010 2020

Districts [redacted]

District 9 2010 AIVAP: 72.51 | 51.72

- 1) Was a VRA district necessary?
- 2) Did they create districts that were compliant?

District	NIW	AI	Other
Precincts	69.2%	21.79	
EEF	60.04	30.05	

Look at 2022 districts foringles test.
 ↳ Should race have been accounted for in the first place?

- 1) Create 2020 precinct shapefile subset for District 4 (2020).
- 2) Clip 2020 Precinct Shapefile to subset to District 4 - Note splits
 16 precincts / 3 splits
- 3) Download & import 2020 VAP block-level data / Download 2020 block shapefiles
- 4) Aggregate blocks into precincts
 ↳ Calculate VAP x Precinct
 (NIW, AI, Other)

(Use 401 for join)

District 4 2020

- ✓ 1) Presidential
- ✓ 2) U.S. House
- ✓ 3) Governor
- 4) Auditor
- 5) Treasurer
- 6) Public Service Com.

2018

- ✓ 1) U.S. Senate
- ✓ 2) U.S. House
- 3) SPS (Not Two-Party Contested)
- ✓ 4) AG.
- 5) Ag Com.
- 6) Public Service Com - A
- 7) Public Service Com - B
- 8) Tax Com.



District 9 - 2022 Precincts

- 1) Rolette (40-09-04)
- 2) Rolette (40-09-05)
- 3) Rolette (40-09-03)
- 4) Rolette (40-09-02)
- 5) Rolette (40-09-01)
- 6) Towner (48-10-23) → 489B01 (Egeland)
- 7) Towner (48-10-18) → 489B02 (Rockdale)
- 8) Cavalier (1) Point

District 15 Racial Comp.

Total:	12,455	
NHVP:	9,186	(73.8)
NHAI:	2,506	(20.1%)
Other:	763	(6.1%)

District 16 Precincts

- 1) Tanner 48-10-01
- 2) Benson-3
- 3) Benson-3
- 4) Benson-4
- 5) Eddy-2 (Partial)
- 6) Ramsey-1
- 7) Ramsey-3
- 8) Ramsey-4
- 9) Ramsey-Devils Lake
- 10) Ramsey-Crook South



2022 Elections

General

District 9 (2R, 10)

* Weston (R) 3,826 53.77
 Marcellais (D) 1,991 48.82

District 9a

* Davis (D) 1,040 68.6%
 Melo (R) 472 31.13

District 9b

* Henderson (R) 1,590 56.54
 Nelson (D) 1,057 37.59

Primary

No (R) Primary

(D) Primary

→ Marcellais 651 59.40
 Jerome 444 40.51

(D) Primary

→ Davis 409 74.77
 Bao 138 25.23

No (R) Primary

(R) Primary

→ Henderson 678 52.68
 Damasio 607 47.16

No (D) Primary



Primary Election Data Collected

District 15 (2022)

Senate *Esterson (R) 3,417

Brown (D) 1,768

State Rep

*Fitch (R) 3,405

*Johnson (R) 3,169

Lawrence-Stadson (D) 1,615

Plaintiff Expert Report (Collingwood)

Illustrative Districts

- ↳ Pop. Deviation
- ↳ Compactness
- ↳ County Splits
- ↳ Racial Composition

Examples:

LD9 (and Subdistricts)

Native Candidate vms 67/110 (62.9%)

Functions as a Section 2 Opportunity to Elect District.

Question: How is % Native American measured?

Plaintiff Shapefiles:

- 1) Final ESRI Shapefile (Enacted Plan)
- 2) ND2 HD - Turtle Spirit Full (LD-2 Dan)
- 3) nd_pl2020_b (Black)
- 4) nd_pl2020_vtd (precinct)
- 5) nd_vest16 (precinct)

Demonstrative

gogjson files

- 1) D9
- 2) D9_1
- 3) D1 White Plan
- 4) D1 White Plan
- 5) D9
- 6) D9_1
- 7) D2 White Plan
- 8) D2 White Plan

Use mapshaper to convert to shapefiles

Also Mapbox

Compass

D-1	Rock	P-P
LD9	.2403	.2791
LD14	.4634	.2733
LD15	.5272	.4871
LD29	.2633	.4219

Enactel	Rock	P-P
LD9	.2722	.4679
LD14	.5053	.3323
LD15	.5148	.3846
LD29	.3877	.2842

Counts:

DD-1: 21/51 times
 DD-2: 20/49 times
 Enactel: 20/49 times

D-2	Rock	P-P
LD9	.1923 (49th)	.1957 (46th)

Split Precincts:

Pop. Density:

LD9
 Enactel -2.52
 DD-1
 DD-2

Distance Between Reservations

77 miles (central to central)

Prong 3 - Calling vial Report

No RPV → 2014 S.C.

2016 Supervisor of Public Instruction

	LD9	LD9a	LD9b	Total
2022	0	8	0	8
2020	4	6	0	6
2018	8	8	5	8
2016	5	7	0	7
2014	6	7	2	7
	23	36	7	36
	63.9%	100%	19.4%	

Total: $66/108 = 61.1\%$

Industry 2 races w. no RPV
Total: 110

25	36	7
65.5%	100%	6.4%
Total: $68/110 = 61.2\%$		

How is race measured in H.D.?

Am Indian (Race: Am Indian Alone

Total Population)

1st Ind (Race (Age +): Am

Indian Alone VAP)

So, these figures include Hispanics or non-Hispanics

Total VAP

1) NH/NA NA

2) NHW NHW

3) Other VAP (NA+NHW)

State Calculations

Plans:

1) Enactol

2) Demonstrative 1

3) Demonstrative 2



1) Competitive: (Reock, PP, Swartzburg)

2) [Pop, VAP] [NH AI, NHW, Other] [AI, White, Other]

3) County Split

4) Incumbency?

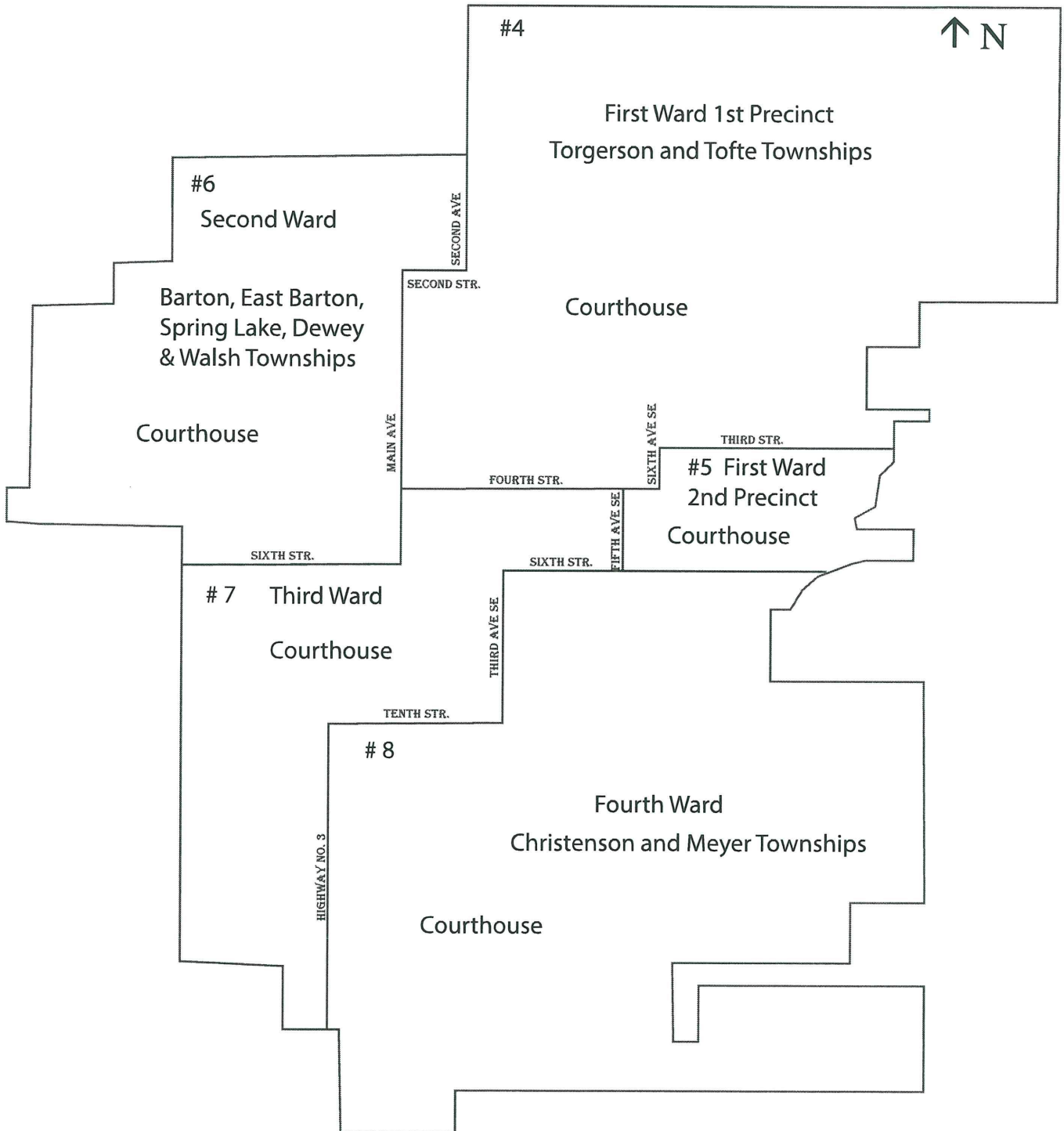
5) Pop. Deviation (Just for Demonstrative Plans)

6) Precincts Split



	District 9	District 9A	9B
NA	5815 (51.67%)	4,055 (76.9%)	1,762 (39.40%)
NW	4,935 (43.85%)	1,002 (19.02%)	3,933 (65.70%)
O	575 (4.49%)	212 (4.02%)	293 (4.89%)
VAP	11,355	5,269	5,988

EXHIBIT 16



VBM (Vote By Mail)

Barton	East Barton	Spring Lake	Juniata	Wolford # 1	Union
Dewey	Walsh	Torgerson	Tofte	Rush Lake	Hurricane Lake

Ness	Christenson	Meyer
Jefferson	Tuscarora # 3	Reno Valley
Sandale	Balta	Elverum
Elling	Girard	Rosedale

Antelope Lake	Hillside # 2	Alexanter
White	Truman	Hagel

Precinct #1

Townships: Juniata, Wolford, Union, Rush Lake, Hurricane Lake and City of Wolford

Courthouse

Precinct #2

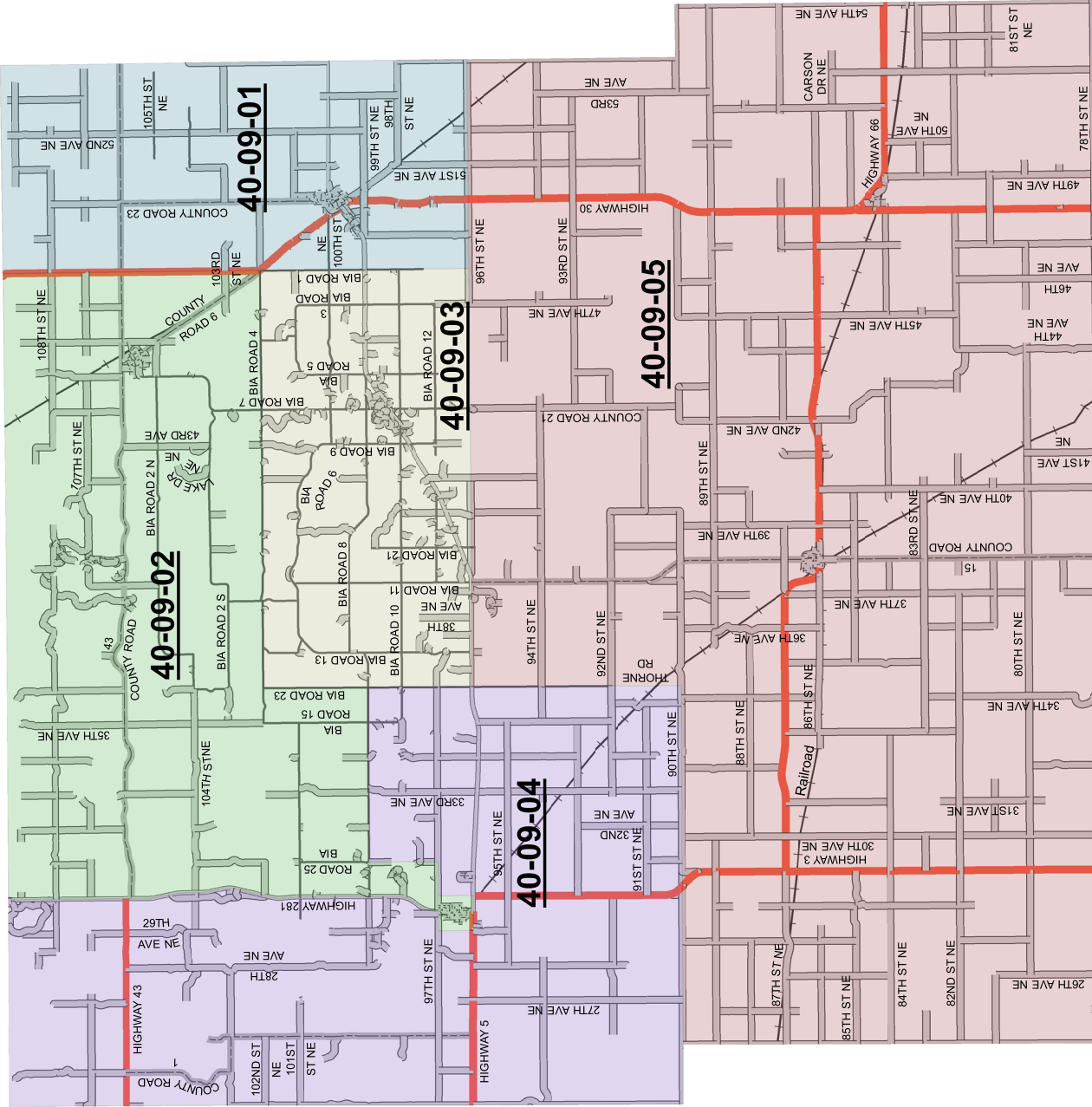
Townships: Hillside, Alexanter, White, Antelope Lake, Truman, Hagel

Courthouse

Precinct #3

Townships: Sandale, Elling, Girard, Rosedale, Ness, Jefferson, Tuscarora, Reno Valley, Balta, Elverum and City of Balta

Courthouse

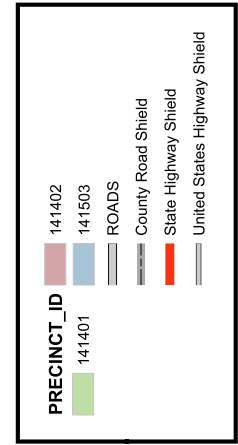
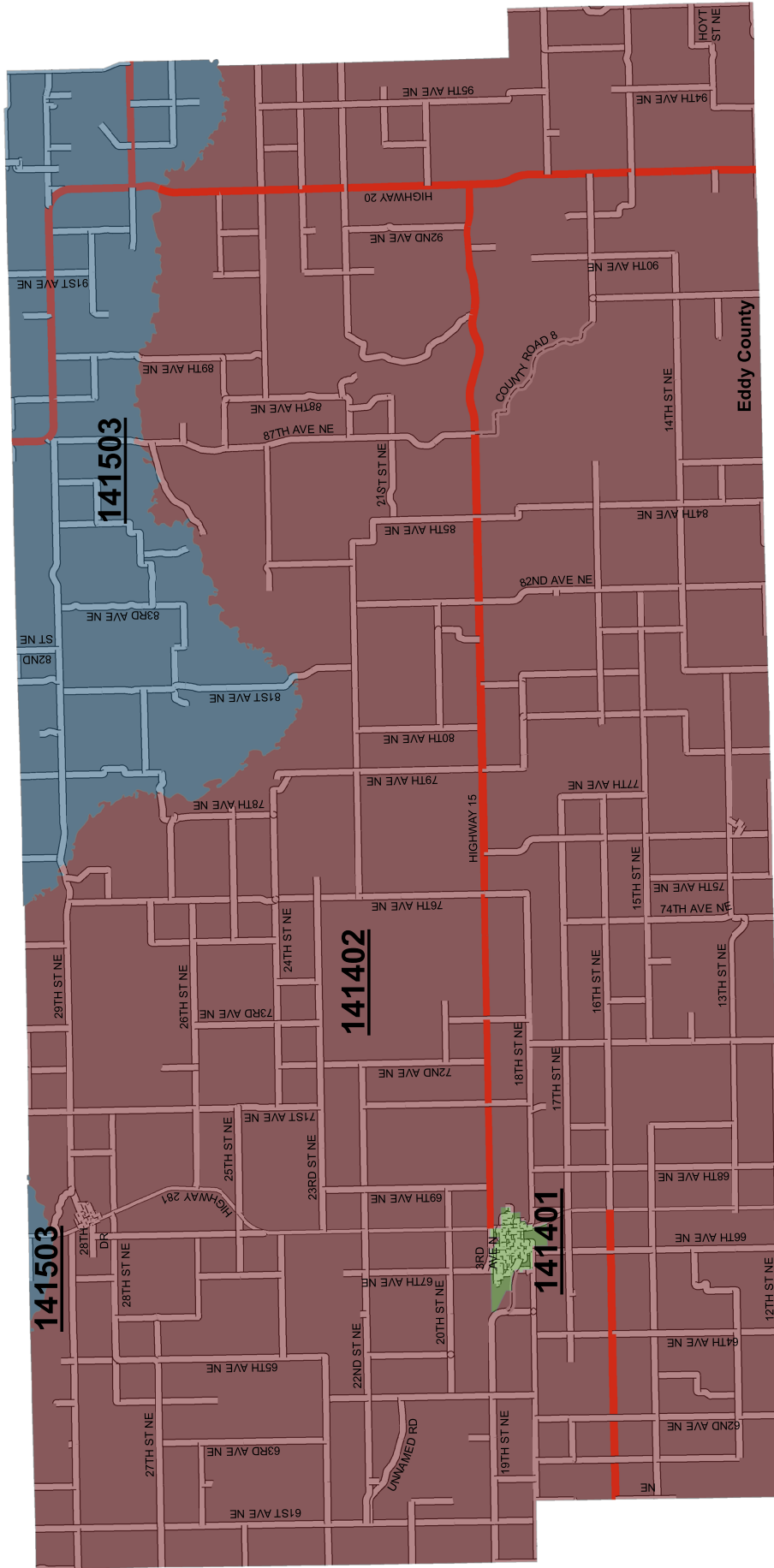


PRECINCT_ID	ROADS	ROAD TYPE
40-09-01	CITY STREETS	County Road
40-09-02	CITY STREETS	State Highway
40-09-03	CITY STREETS	United States Highway
40-09-04	CITY STREETS	
40-09-05	CITY STREETS	

ROLLETTE COUNTY VOTING PRECINCTS MAP

ISSUED FOR REVIEW AND APPROVAL

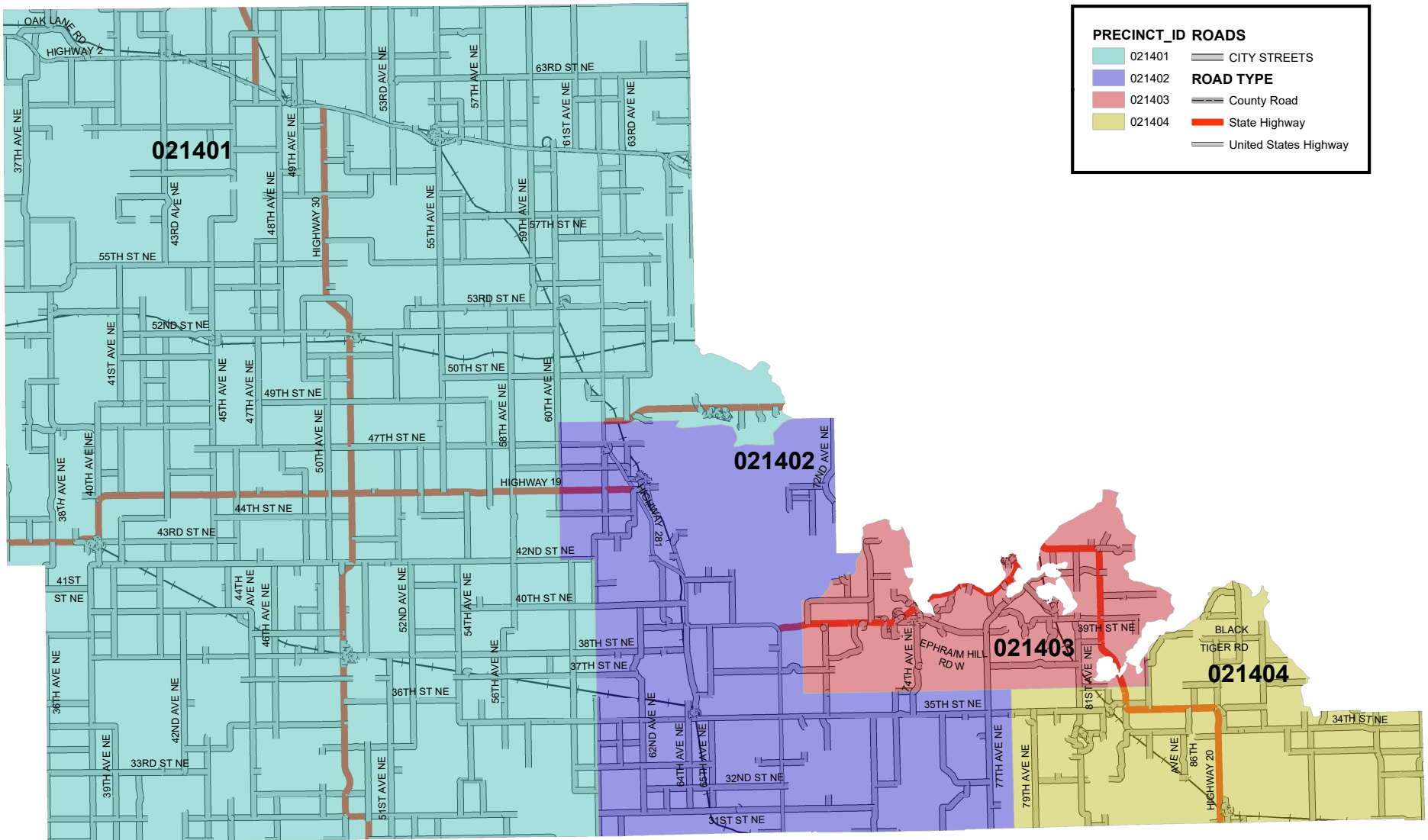
CREATED BY: A HERBISON
 REVIEWED BY:
 APPROVED BY:
 DATE:



CREATED BY: A HERBISON
REVIEWED BY:
APPROVED BY:
DATE:

EDDY COUNTY VOTING PRECINCT MAP

ISSUED FOR REVIEW AND APPROVAL



PRECINCT_ID ROADS	
 021401	CITY STREETS
 021402	ROAD TYPE
 021403	County Road
 021404	State Highway
	United States Highway

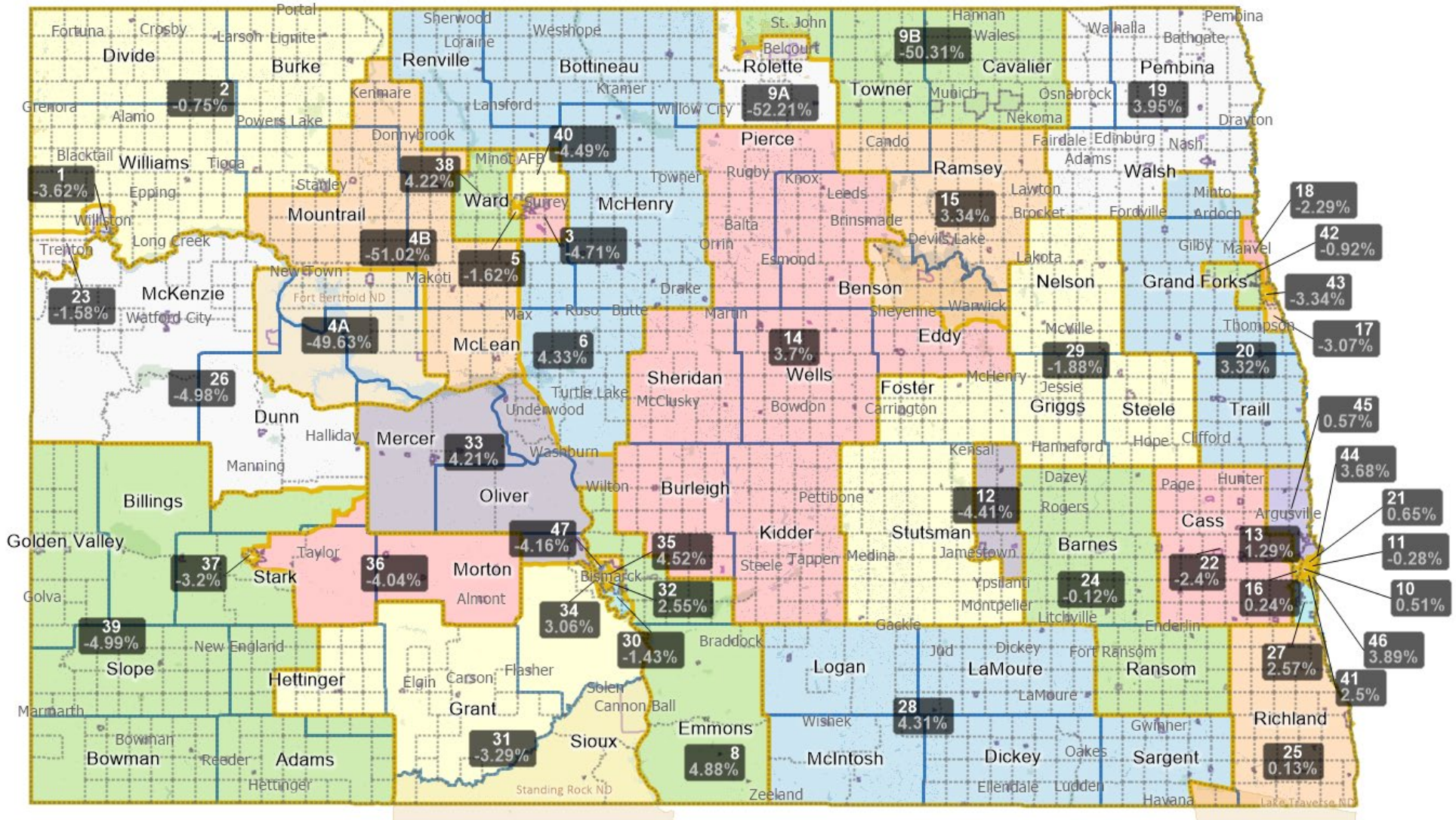
BENSON COUNTY VOTING PRECINCTS MAP

ISSUED FOR REVIEW AND APPROVAL

CREATED BY: A HERBISON
REVIEWED BY:
APPROVED BY:
DATE:

EXHIBIT 17

Proposed Statewide Plan



District: 4A

Field	Value
District	4A
Population	8350
Deviation	-8,226
% Deviation	-49.63%
18+_Pop	5709
AmIndian	5537
% AmIndian	66.31%
18+_Ind	3547
% 18+_Ind	62.13%

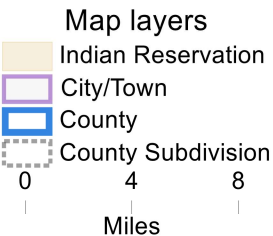
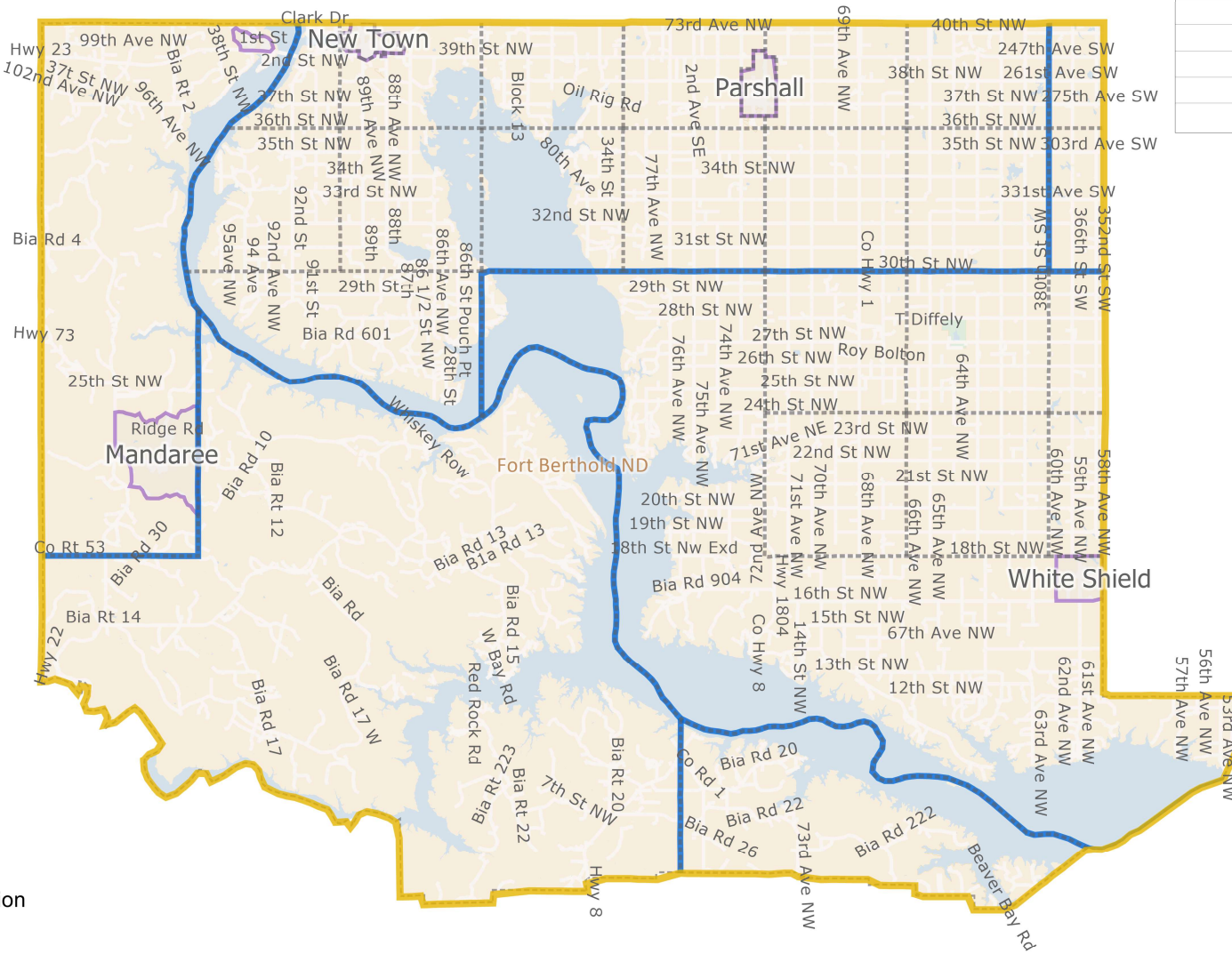
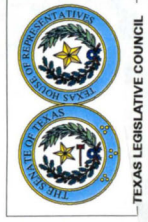


EXHIBIT 18

TEXAS
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

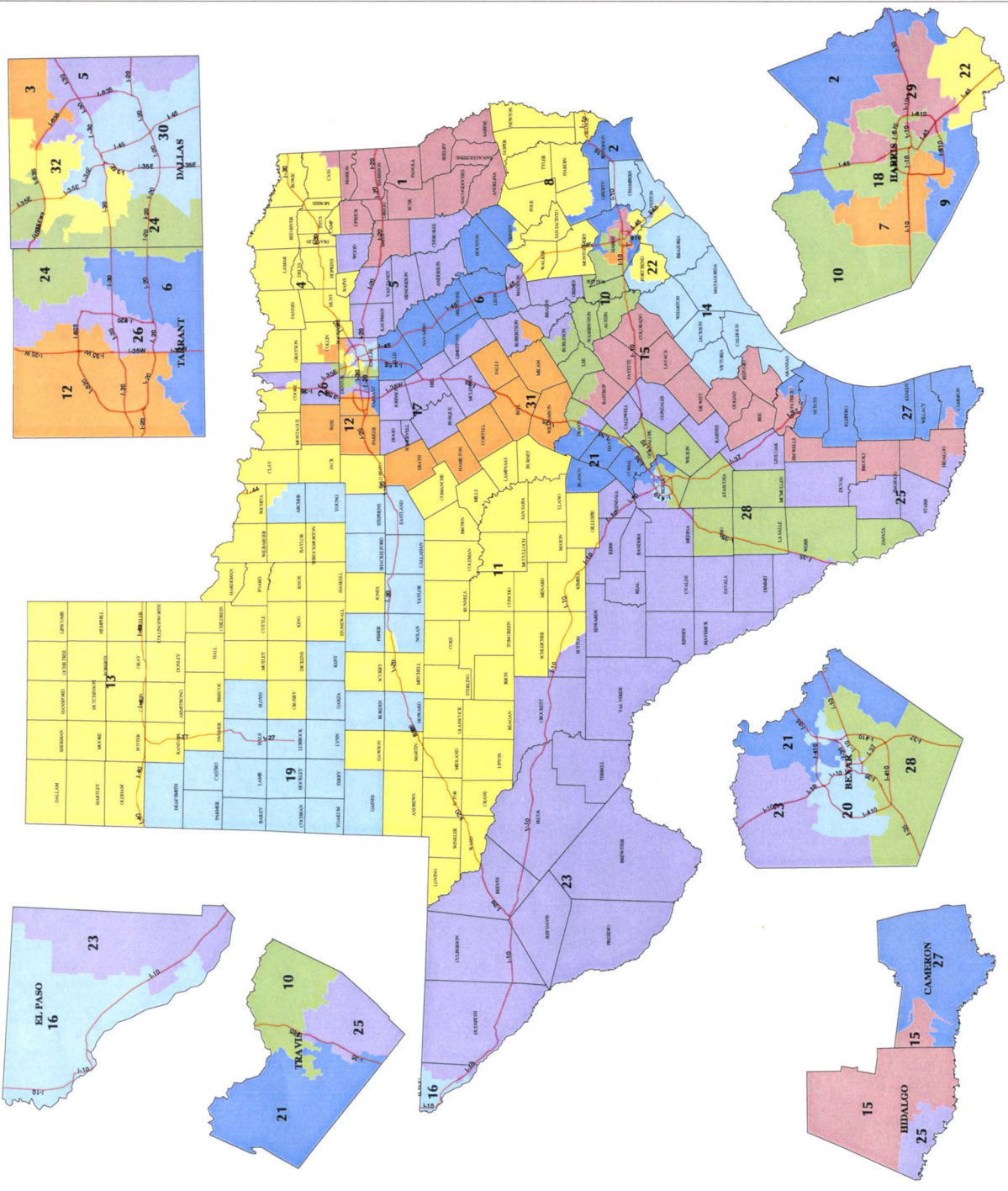


PLAN 01374C
10/9/2003 02:40:32

Scale 1 : 497,5022
MAP SOURCE REQUEST: 19324
1 inch = 78.52 miles
October 09, 2003 6:19 AM

LEGEND

plan 01374C shaded
Counties



TEXAS
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

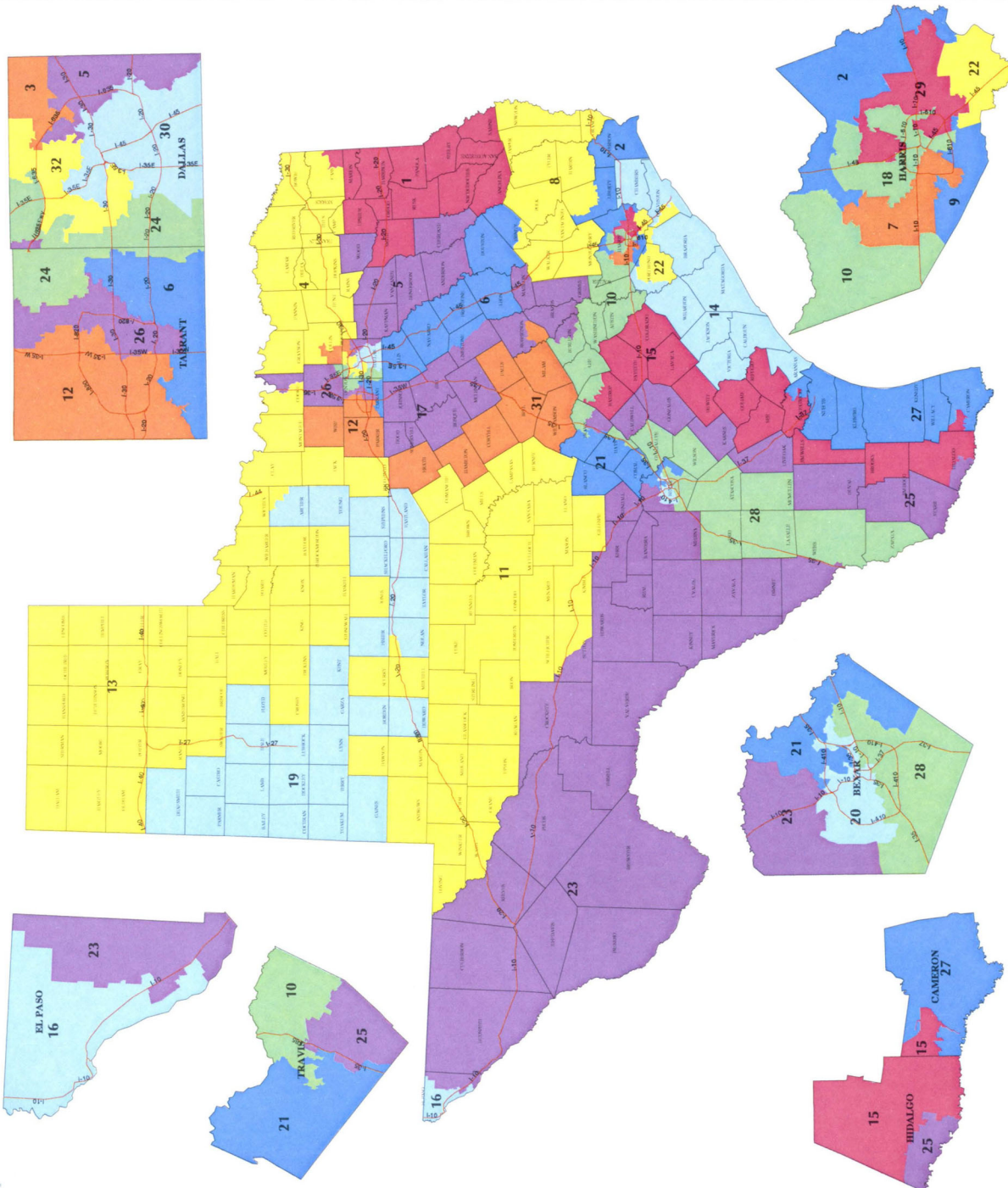


plan 01374C
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1 inch = 78.52 miles
October 09, 2003 3:18 AM

LEGEND

plan 01374C shaded
Counties



ARCHER COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



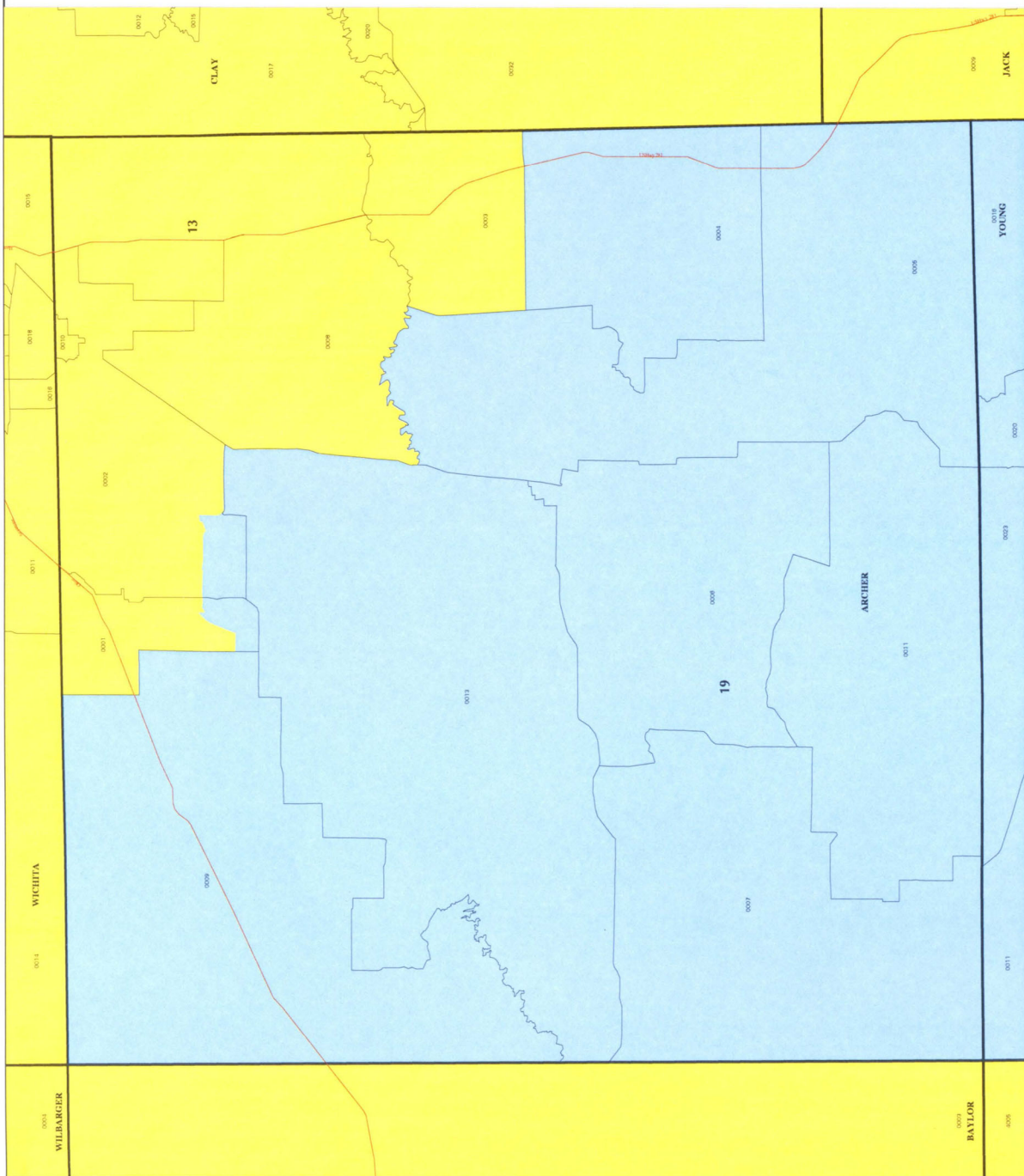
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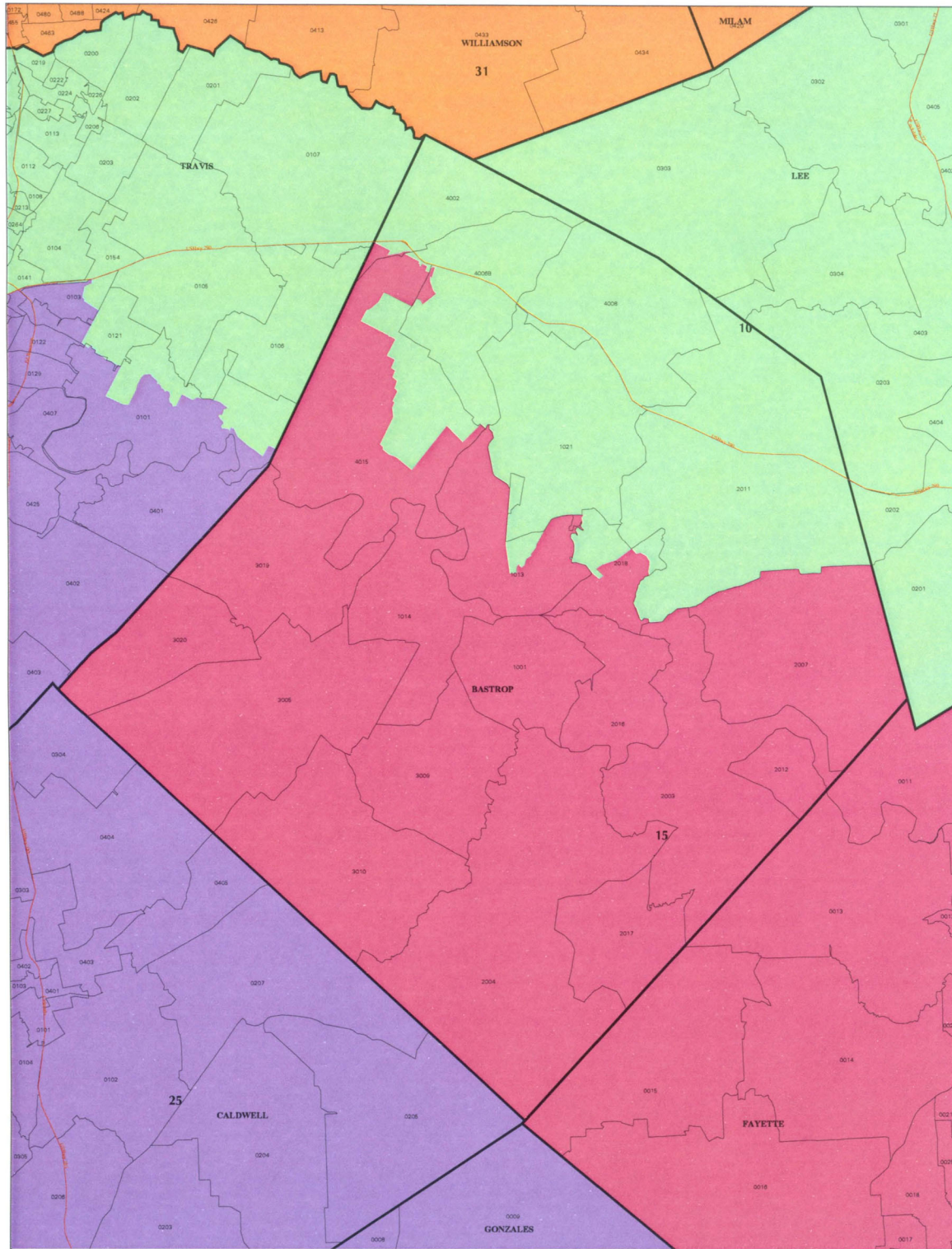
- plan 01374C shaded
- Countries
- 2002C VTDs

plan 01374C
10/9/2003 02:40:32



MAP:5900C REQUEST:19318
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October 09, 2003 3:16 AM





BASTROP COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

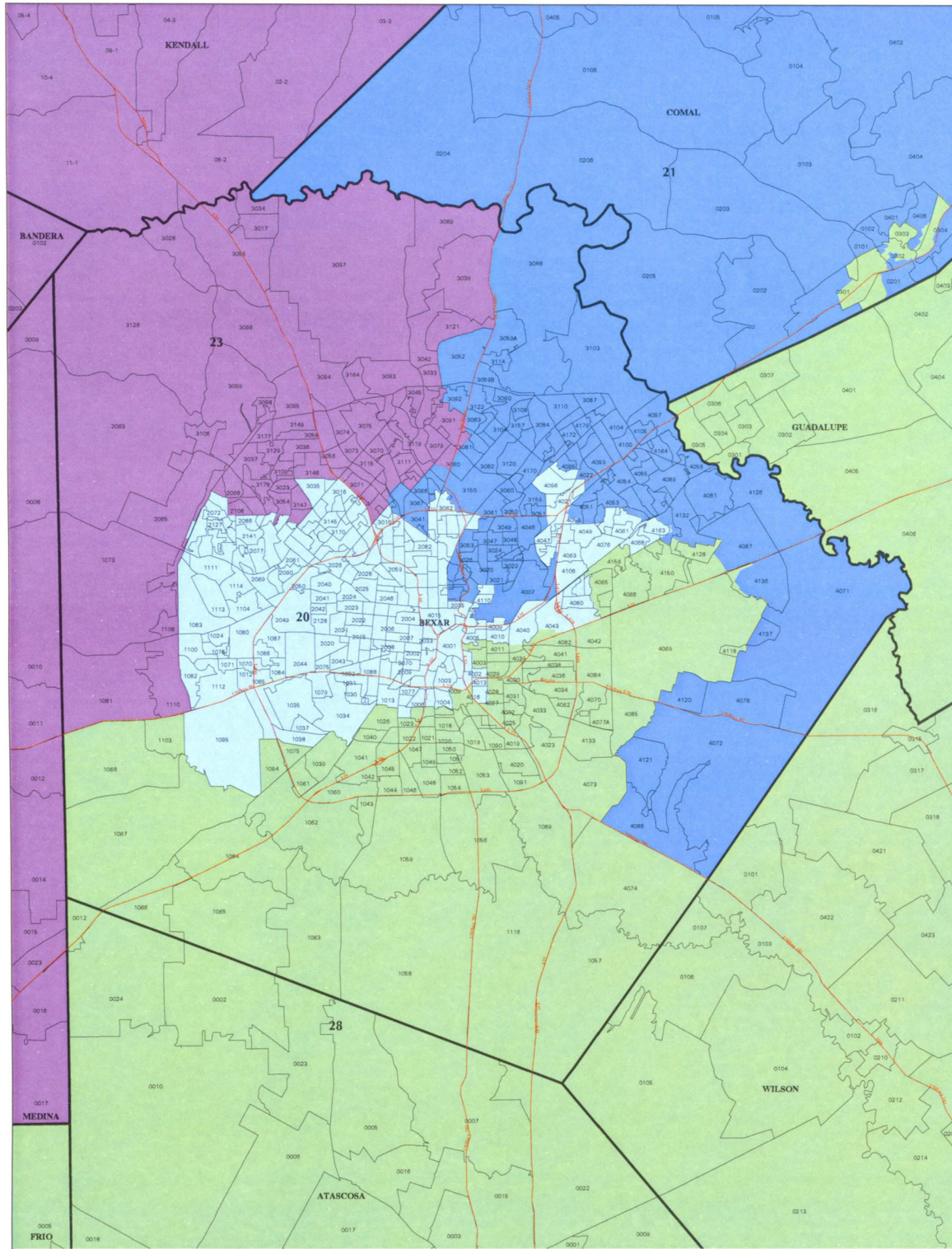
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LEGEND

- plan 01374C shaded
- Counties
- 2002G VTDs

MAP:5900C REQUEST:19318
Scale 1 : 265867
1 inch = 4.2 miles
October 09, 2003 3:18 AM





plan 01374C 10/9/2003 02.40.32

BEXAR COUNTY
 U.S. Congressional Districts
 HB3 - Conference Committee Report 10-9-03
 PLAN 01374C

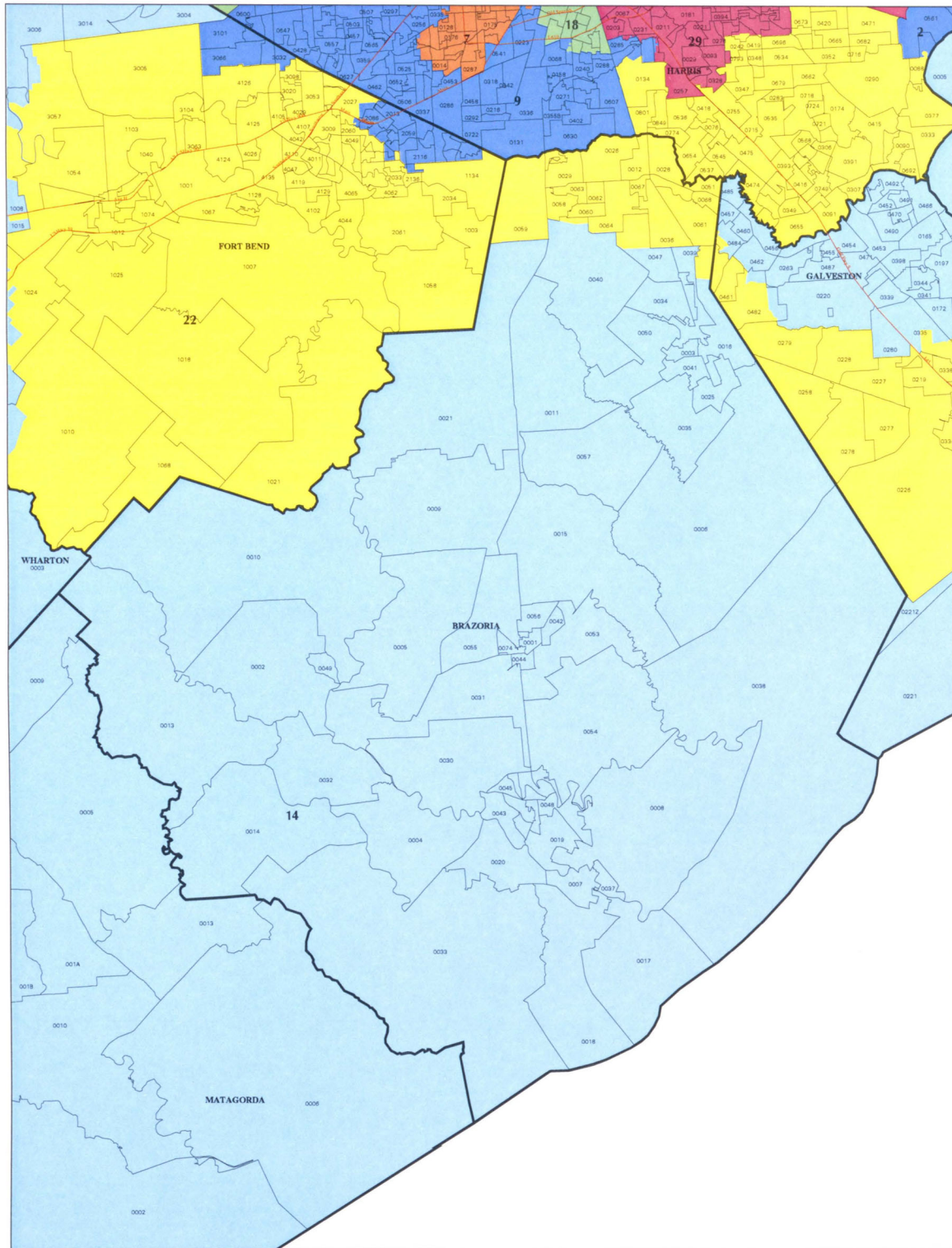
LEGEND

- plan 01374C shaded
- Counties
- 2002C VTDs



MAP:5900C REQUEST:19318
 Scale 1 : 291039
 1 inch = 4.62 miles
 October 09, 2003 3:18 AM





plan 01374C 10/9/2003 02.40.32

BRAZORIA COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

LEGEND

plan 01374C shaded
Counties ———
2002C VTDs ———



MAP:5900C REQUEST:1931B
Scale 1 : 350371
1 inch = 5.33 miles
October 09, 2003 3:18 AM



BURLESON COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



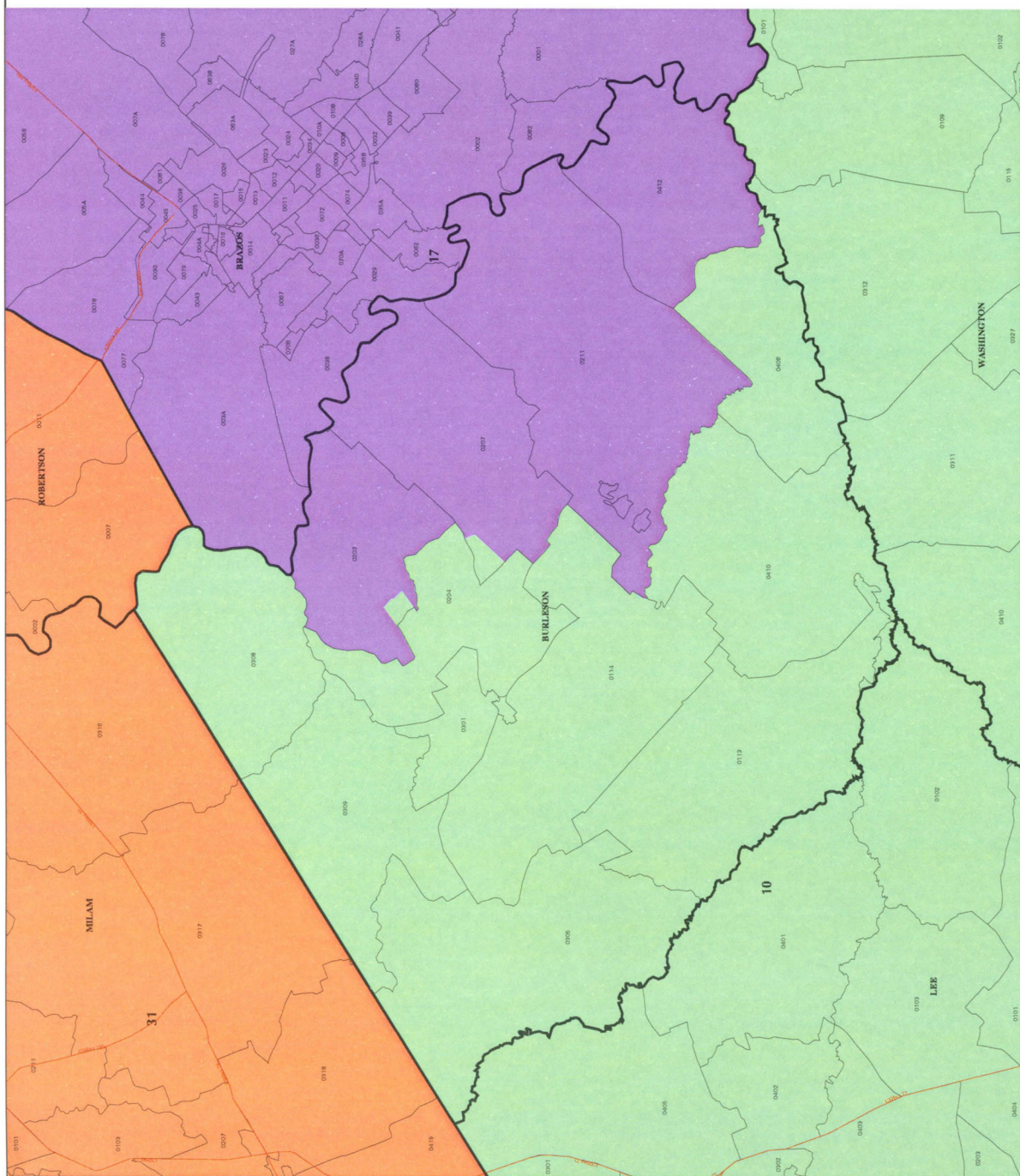
LEGEND

- plan 01374C shaded
- Counties
- 2002CVTDs

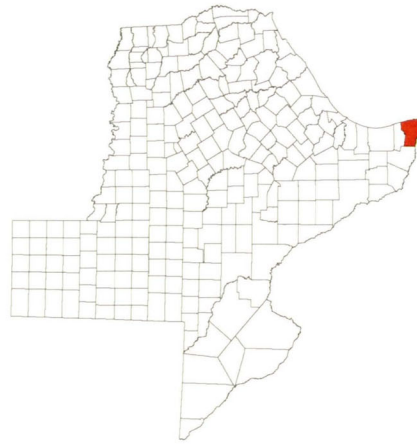
plan 01374C
10/9/2003 02:40:32



MAP SOURCE: REQUEST:19118
Scale: 1:245061
1 inch = 3.07 miles
October 09, 2003 2:19 AM



CAMERON COUNTY
U.S. Congressional Districts
HB33 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

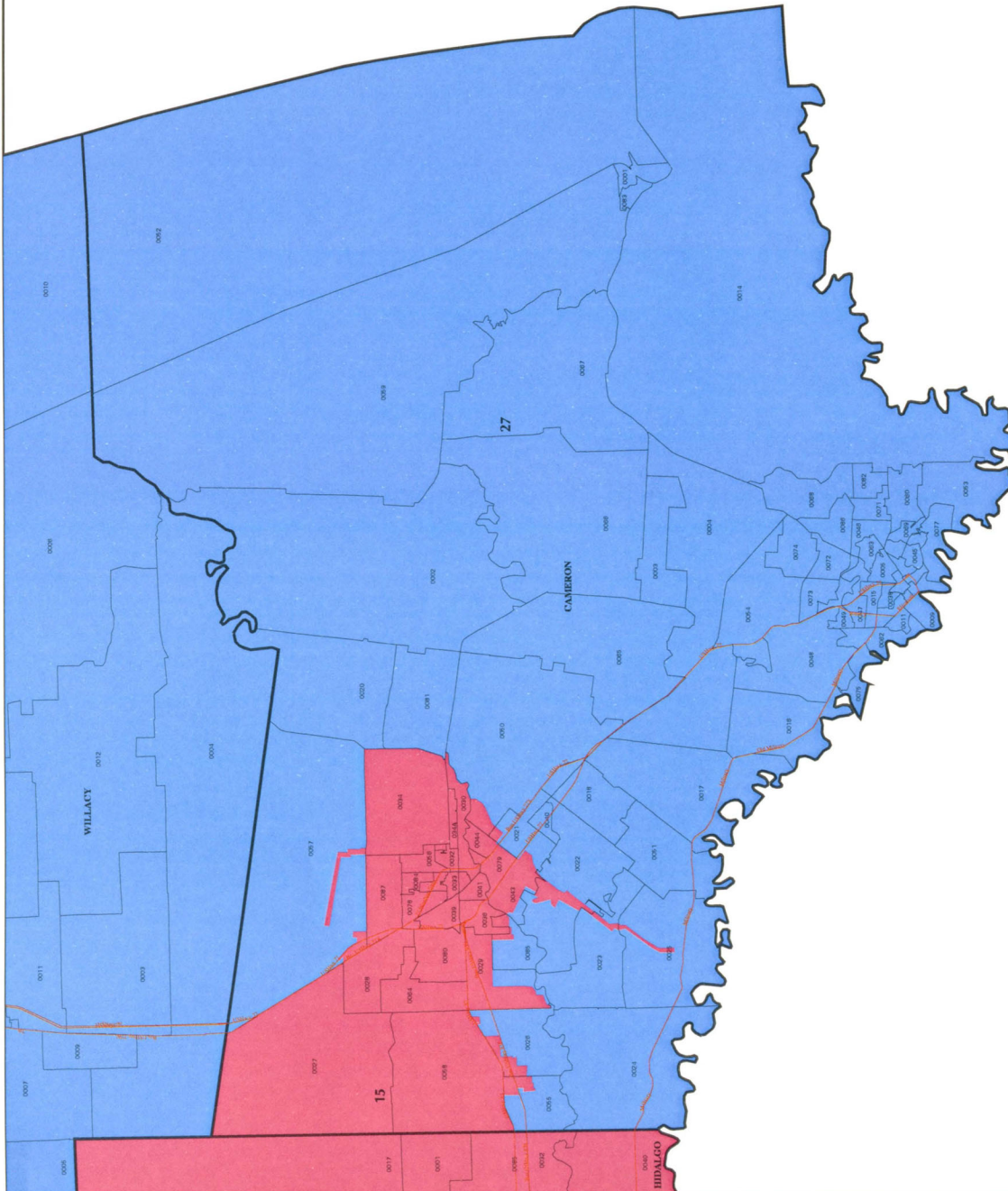
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- Counties
- 2002G VTDs

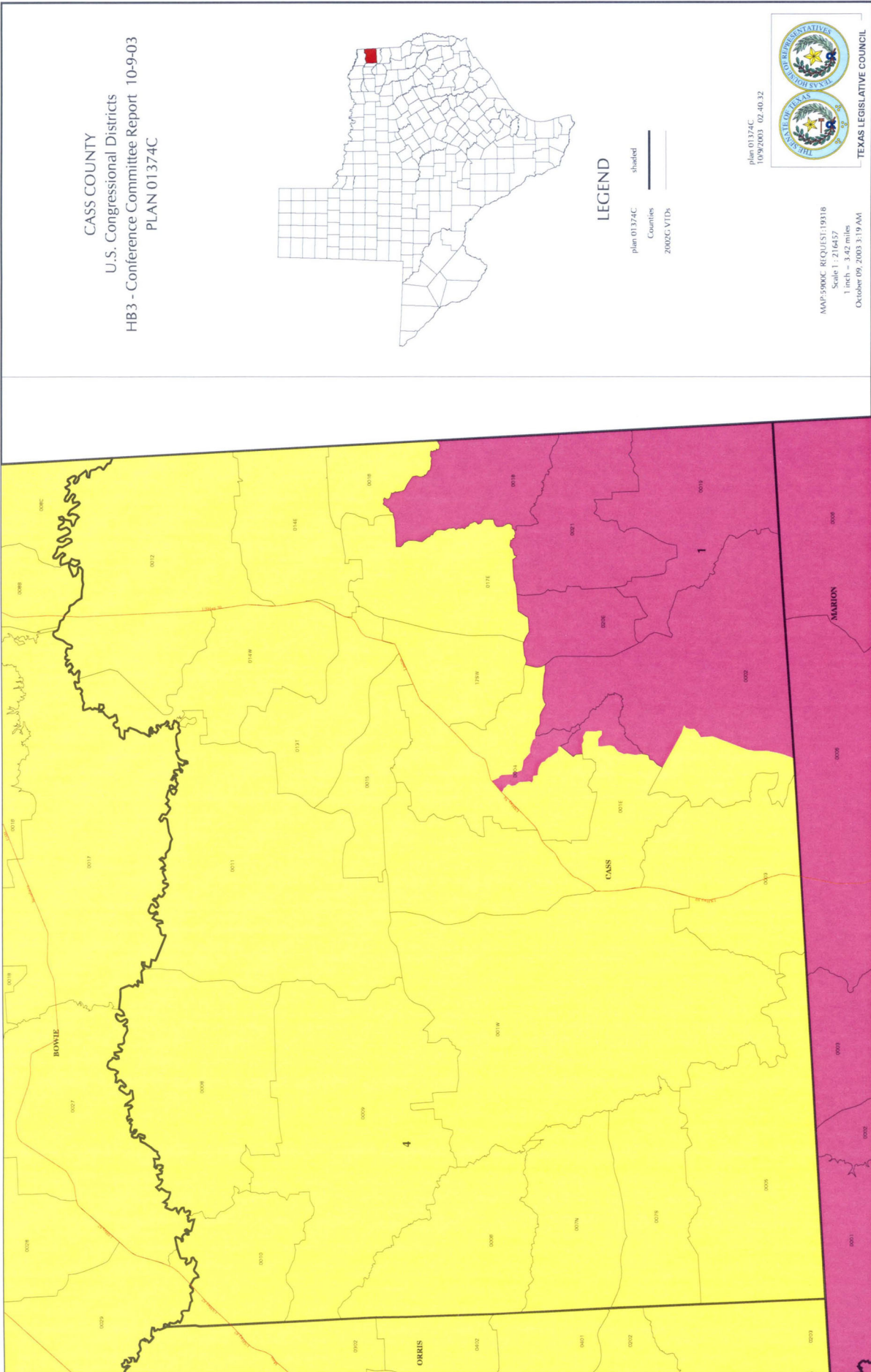
plan 01374C
10/9/2003 02:40:32



TEXAS LEGISLATIVE COUNCIL

MAP:5900C REQUS1:19318
Scale 1 : 286929
1 inch = 4.53 miles
October 09, 2003 3:19 AM





COLLIN COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



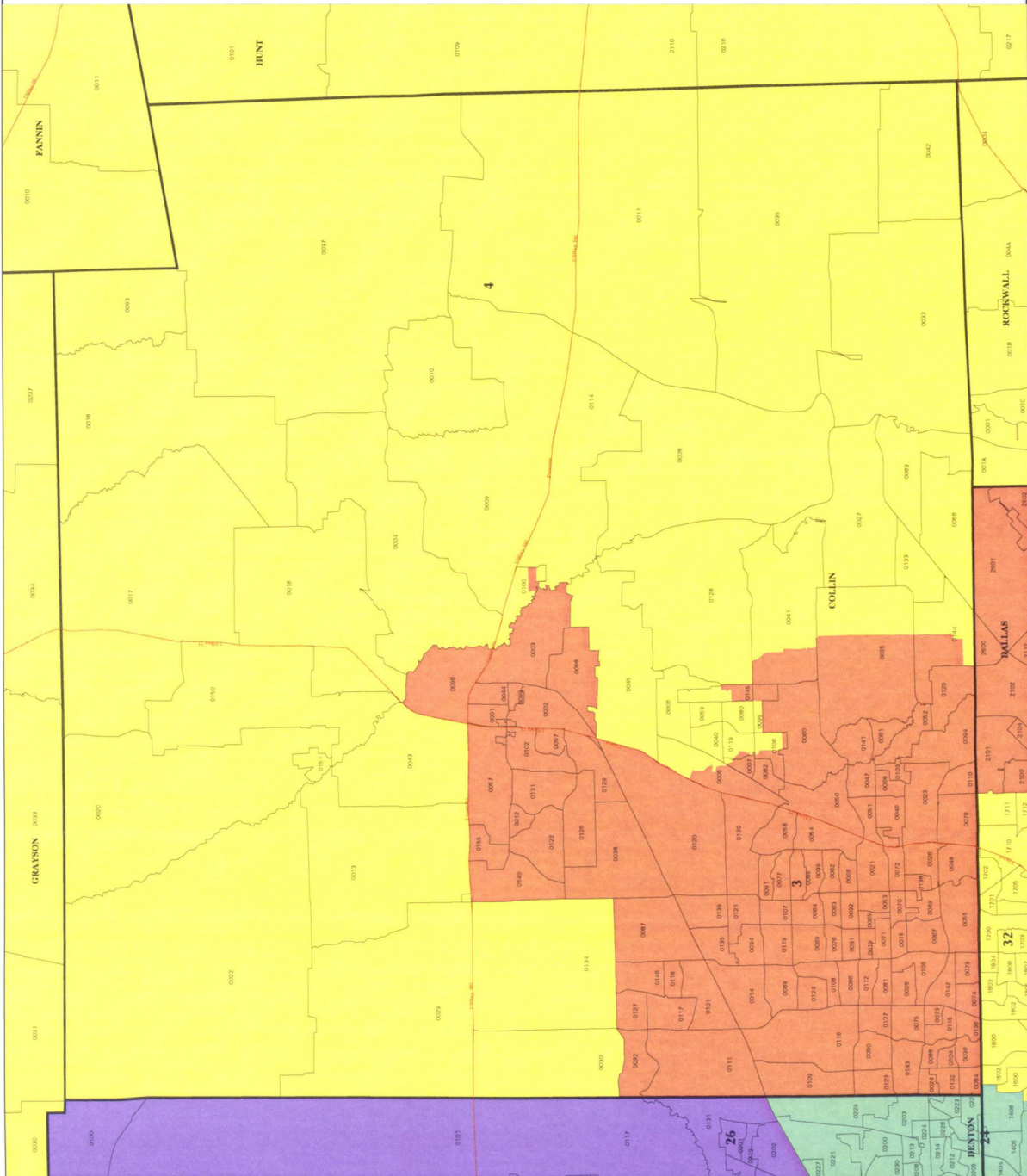
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plan 01374C shaded
Counties
2002C VTDs

plan 01374C
10/9/2003 02:40:32



MAP-5000C REQUISIT:19118
Scale: 1:19247
1 inch = 3.12 miles
October 09, 2003 1:19 AM



COMAL COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

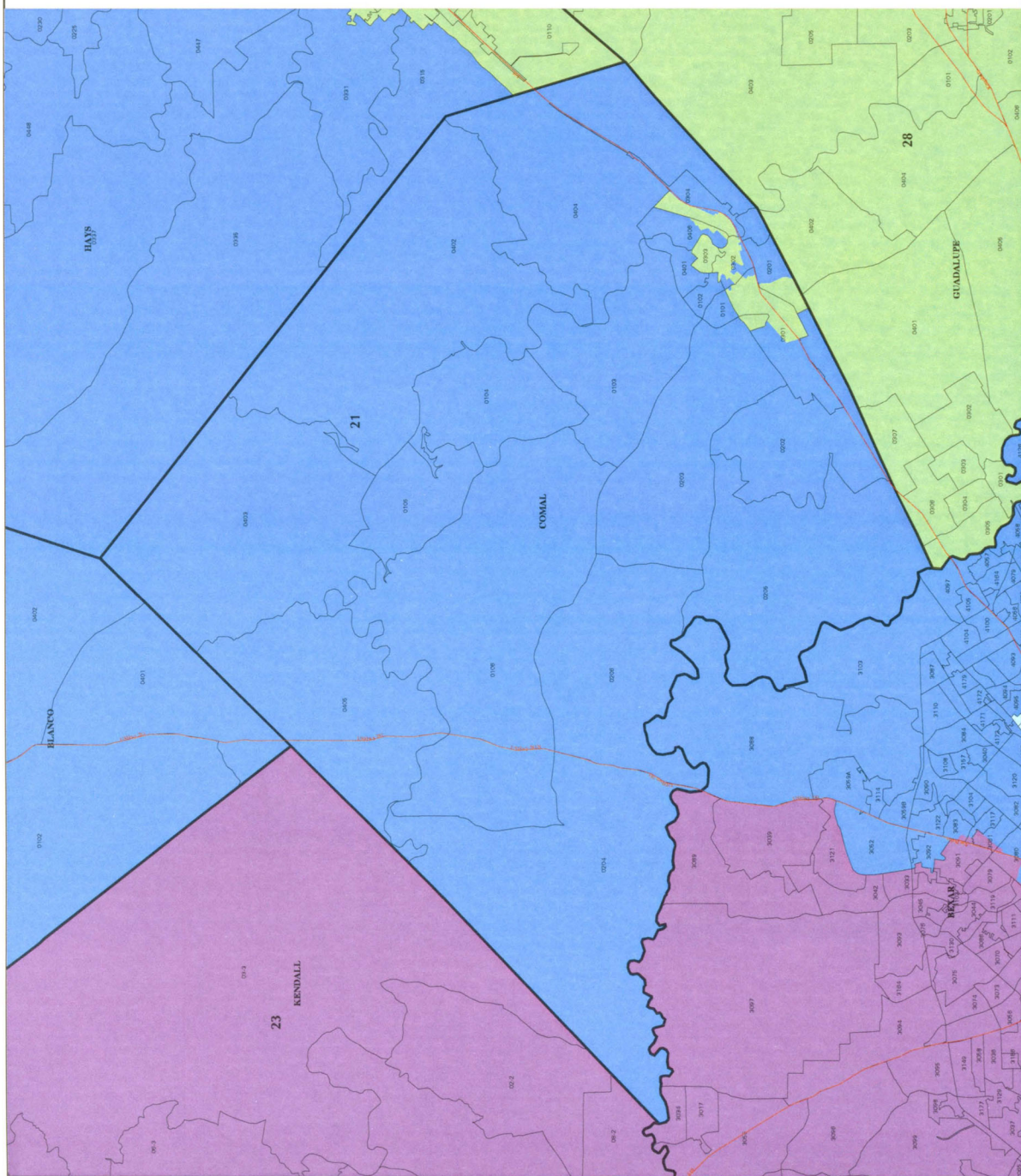
- plan 01374C shaded
- Countries
- Z002C VTDs

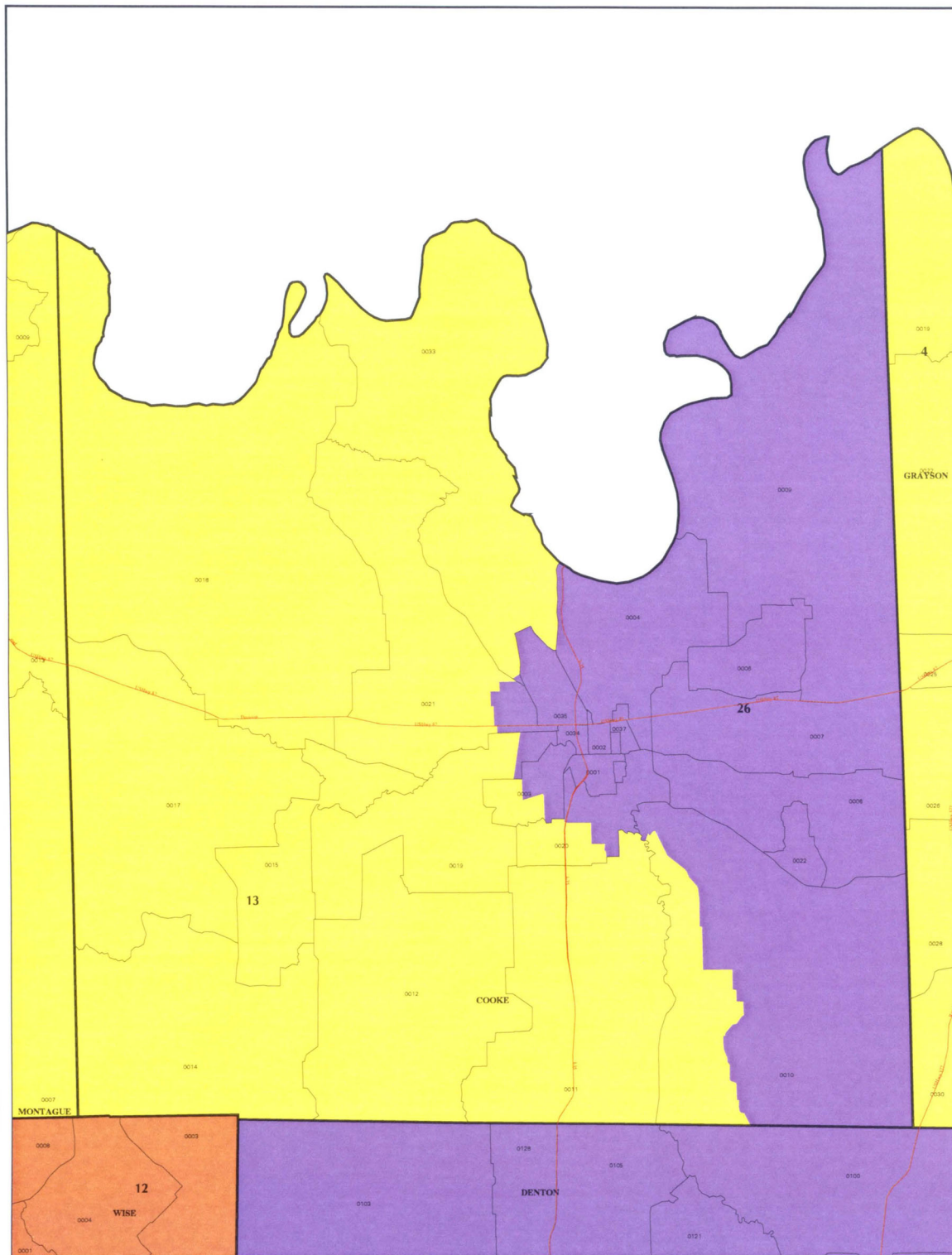
plan 01374C
10/9/2003 02:40:32



TEXAS LEGISLATIVE COUNCIL

MAP:5900C:RQJUS1:19118
Scale: 1:229342
1 inch = 3.62 miles
October 09, 2003 3:19 AM





plan 01374C 10/9/2003 02.40.32

COOKE COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

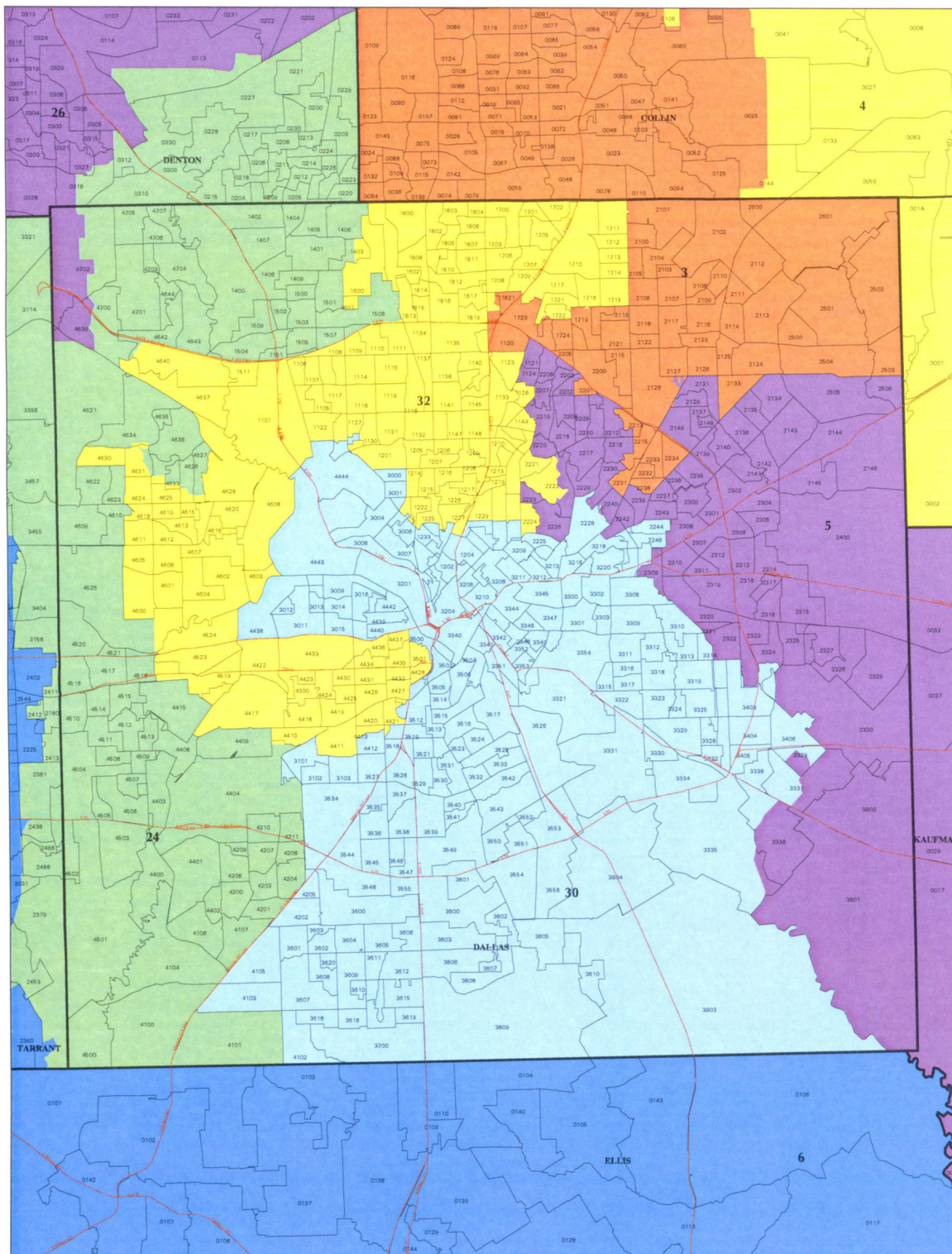
LEGEND

- plan 01374C shaded
- Counties
- 2002G VTDs



MAP:5900C REQUEST:19318
Scale 1 : 226652
1 inch = 3.58 miles
October 09, 2003 3:19 AM





plan 01374C 10/9/2003 02:40:32

DALLAS COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

LEGEND

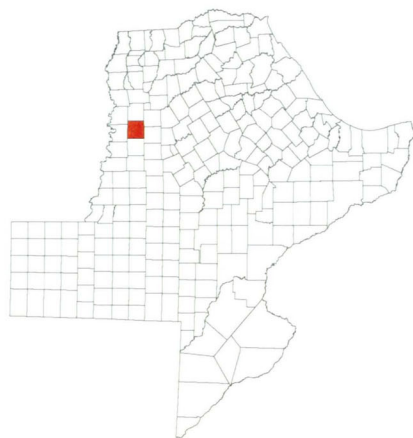
plan 01374C shaded
Counties
2002C: VTDs



MAP:5900C REQUEST:19316
Scale 1 : 213150
1 inch = 3.36 miles
October 09, 2003 3:19 AM



DENTON COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

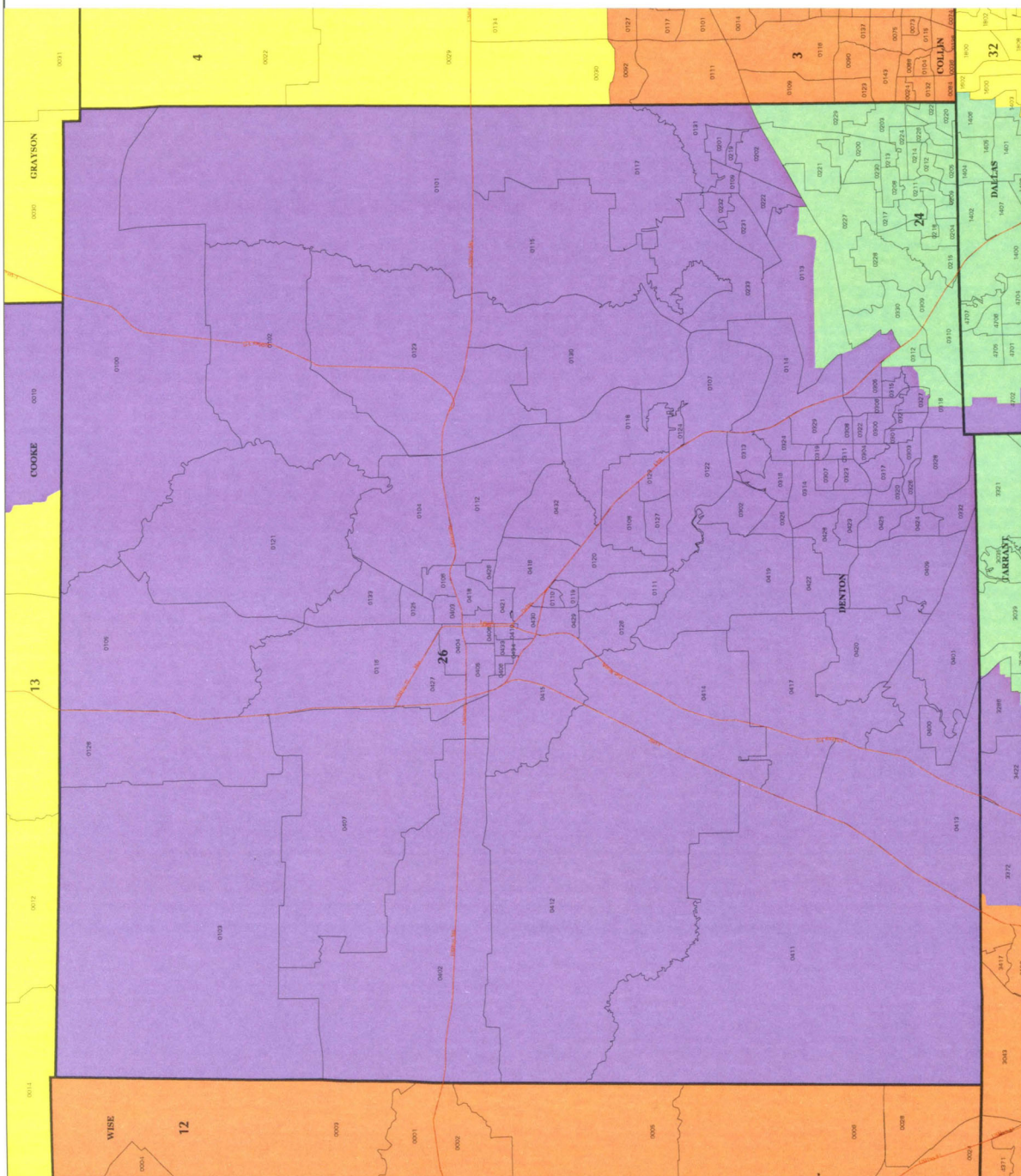
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- Counties
- 2002C VIDs

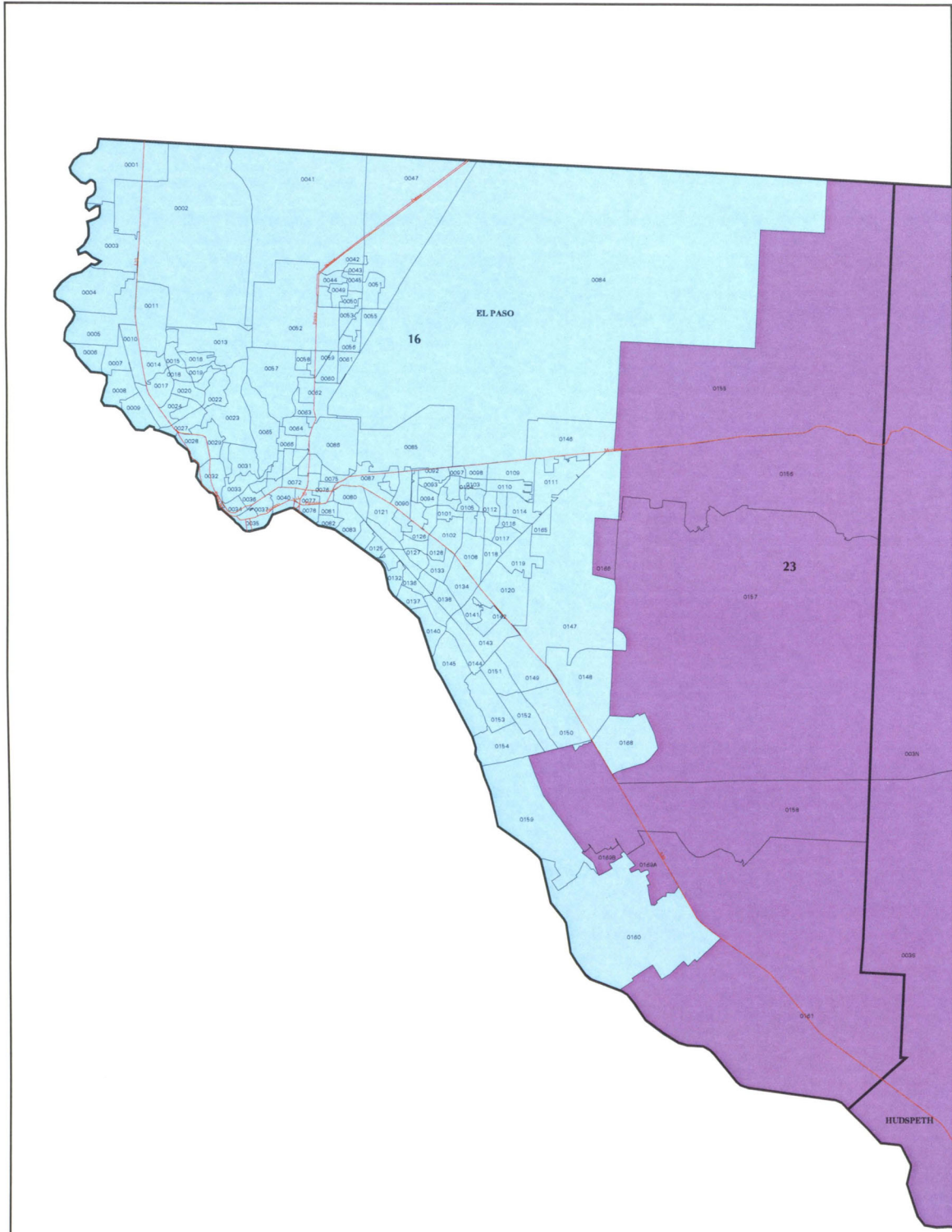
Plan 01374C
10/9/2003 02:40:32



TEXAS LEGISLATIVE COUNCIL

MAP/PMDC REQUEST: 19316
Scale: 1" = 3.24 miles
October 09, 2003 3:19 AM





EL PASO COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

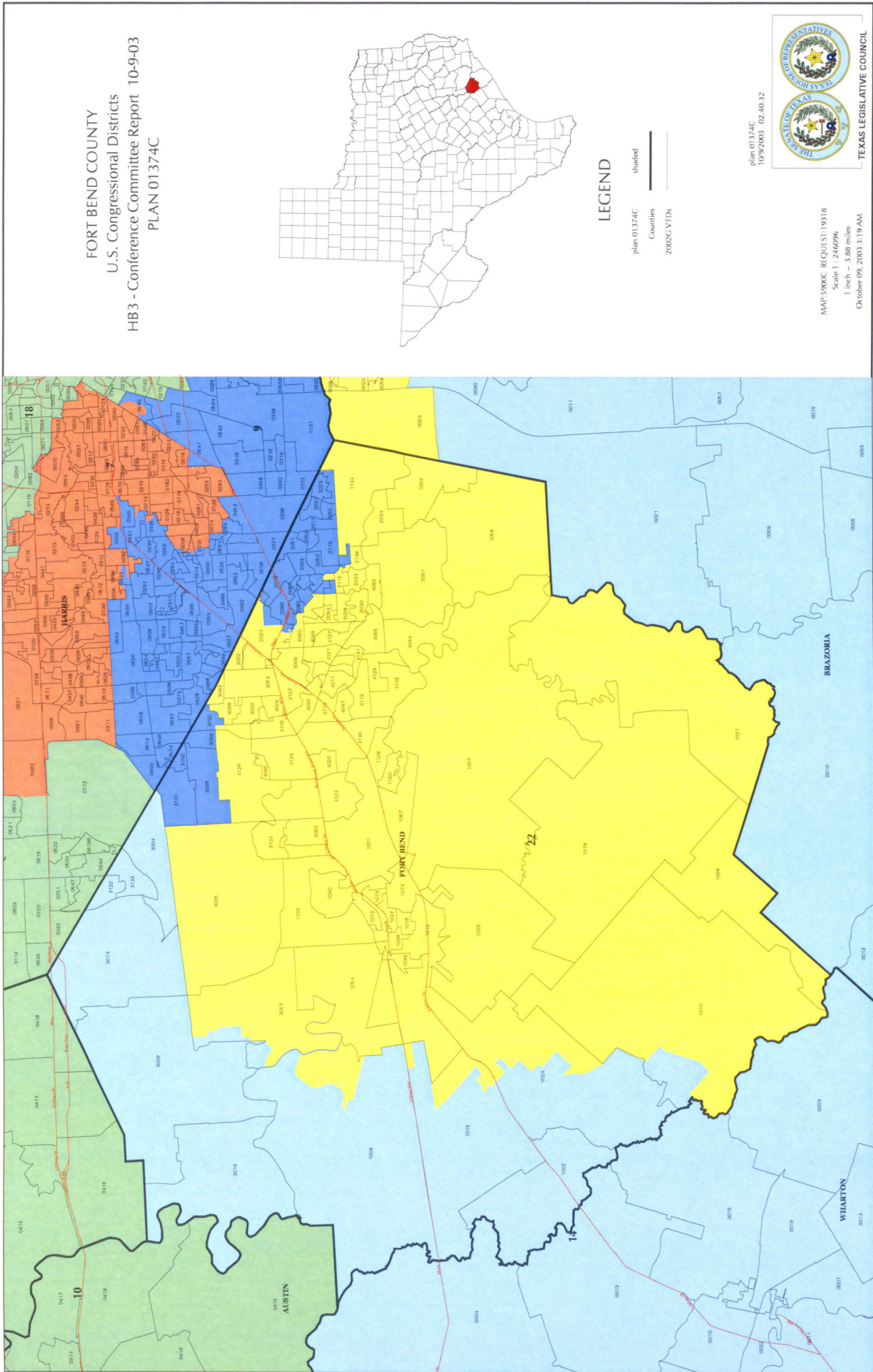
plan 01374C 10/9/2003 02.40.32

LEGEND

- plan 01374C shaded
- Counties
- 2002G VTDs

MAP:5900C REQUEST:19318
Scale 1 : 274280
1 inch = 4.33 miles
October 09, 2003 3:19 AM





GALVESTON COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

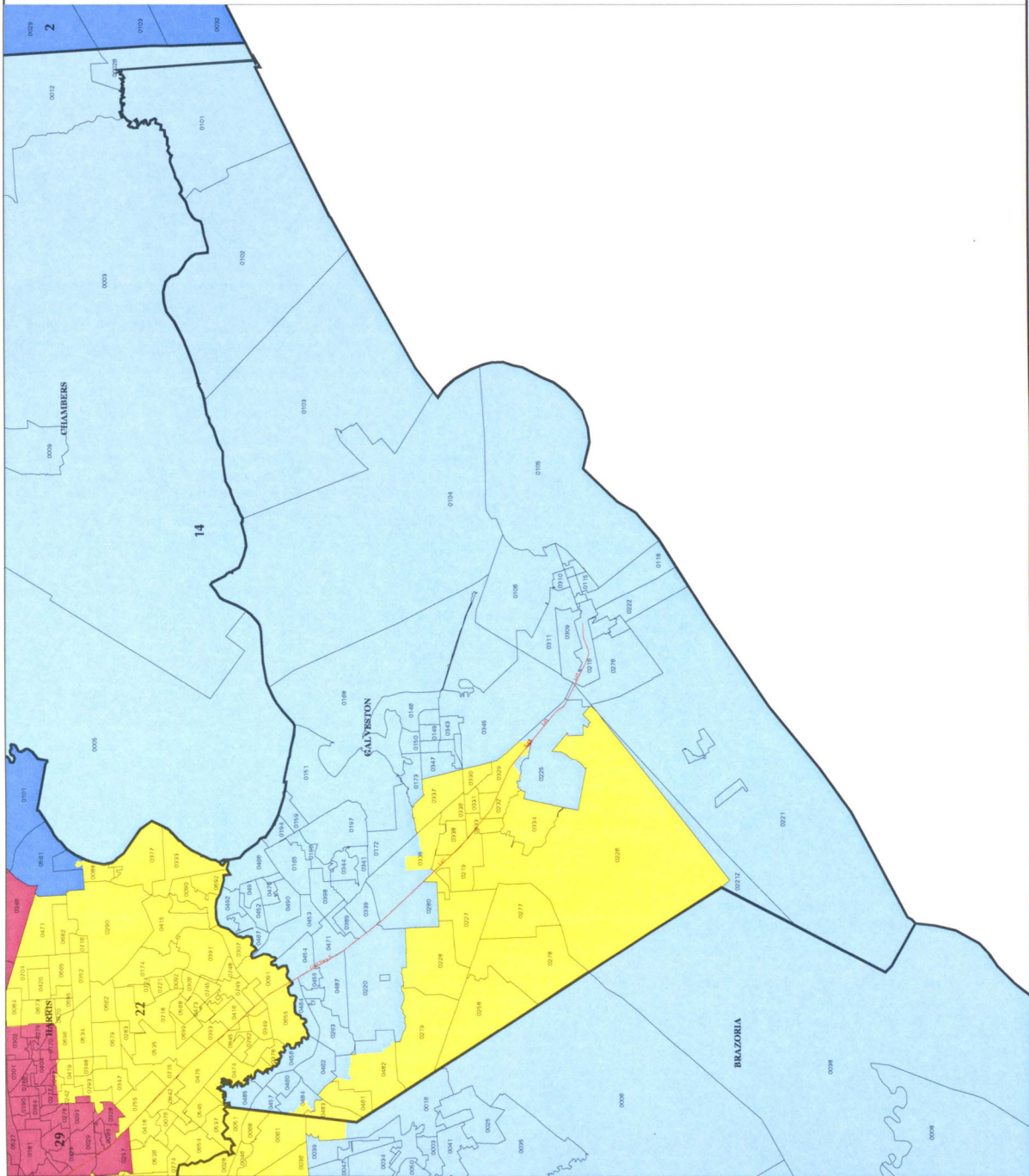
- plan 01374C
- shaded
- Counties
- 2002C VTDs

plan 01374C
10/9/2003 02:40:32



TEXAS LEGISLATIVE COUNCIL

MAP SOURCE REQUEST: 19318
Scale: 1:306885
1 inch = 4.64 miles
October 09, 2003 1:19:04



HARRIS COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



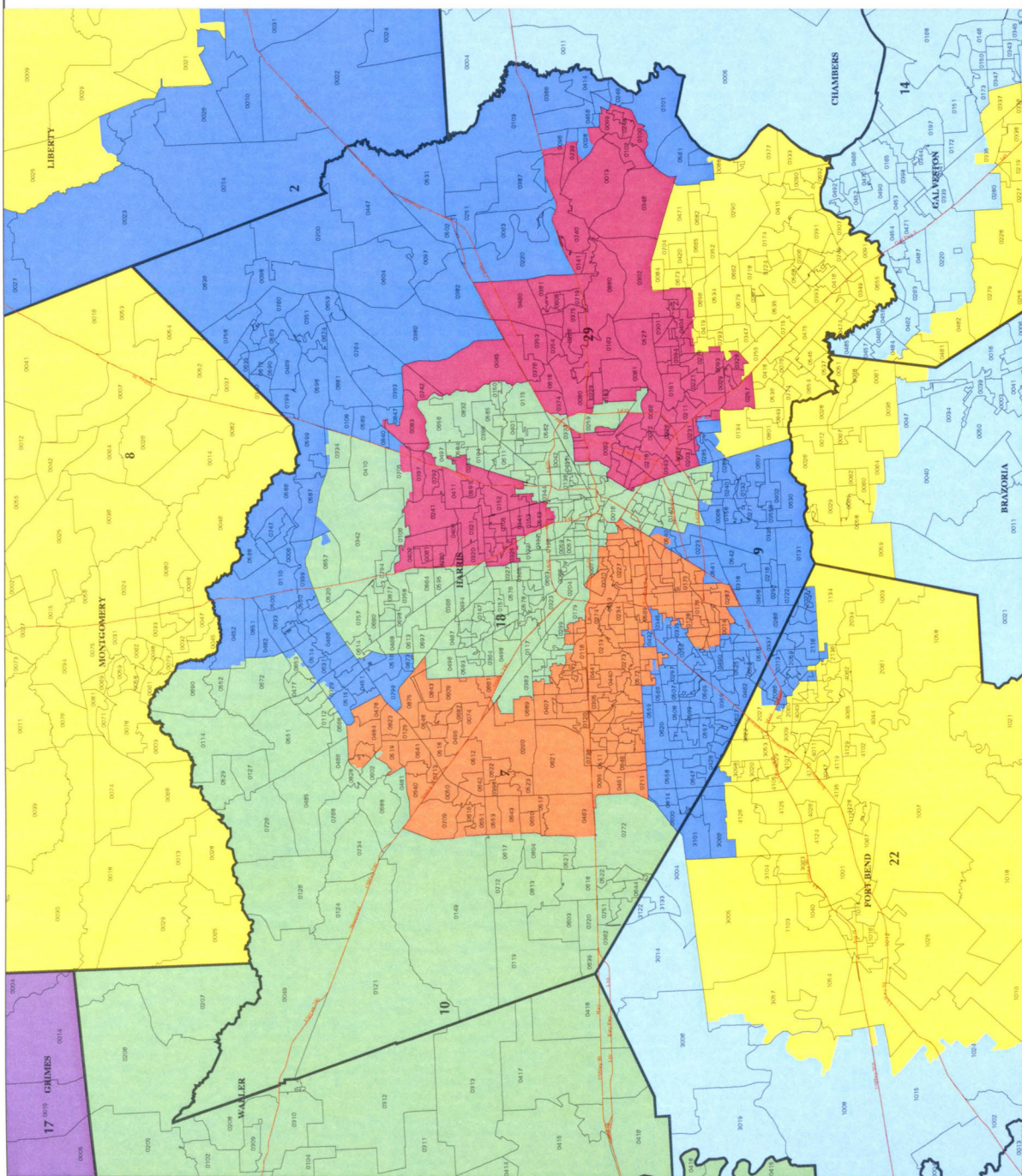
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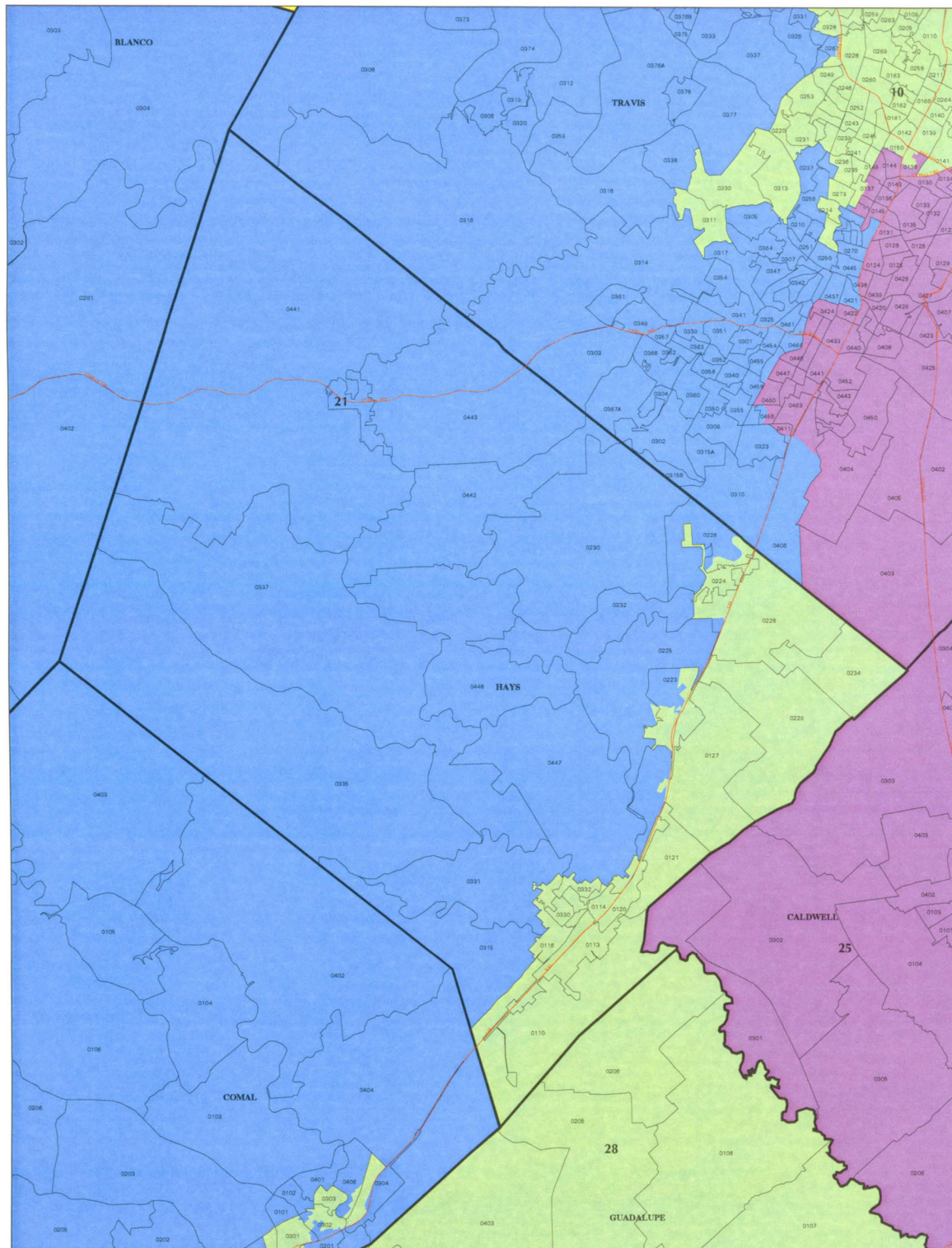
- plan 01374C shaded
- Counties
- 2002C VTDs

plan 01374C
10/9/2003 02:40:32



MAP:5900C REQUEST:19318
Scale 1 : 372881
1 inch = 5.96 miles
October 09, 2003 3:20 AM





HAYS COUNTY
 U.S. Congressional Districts
 HB3 - Conference Committee Report 10-9-03
 PLAN 01374C

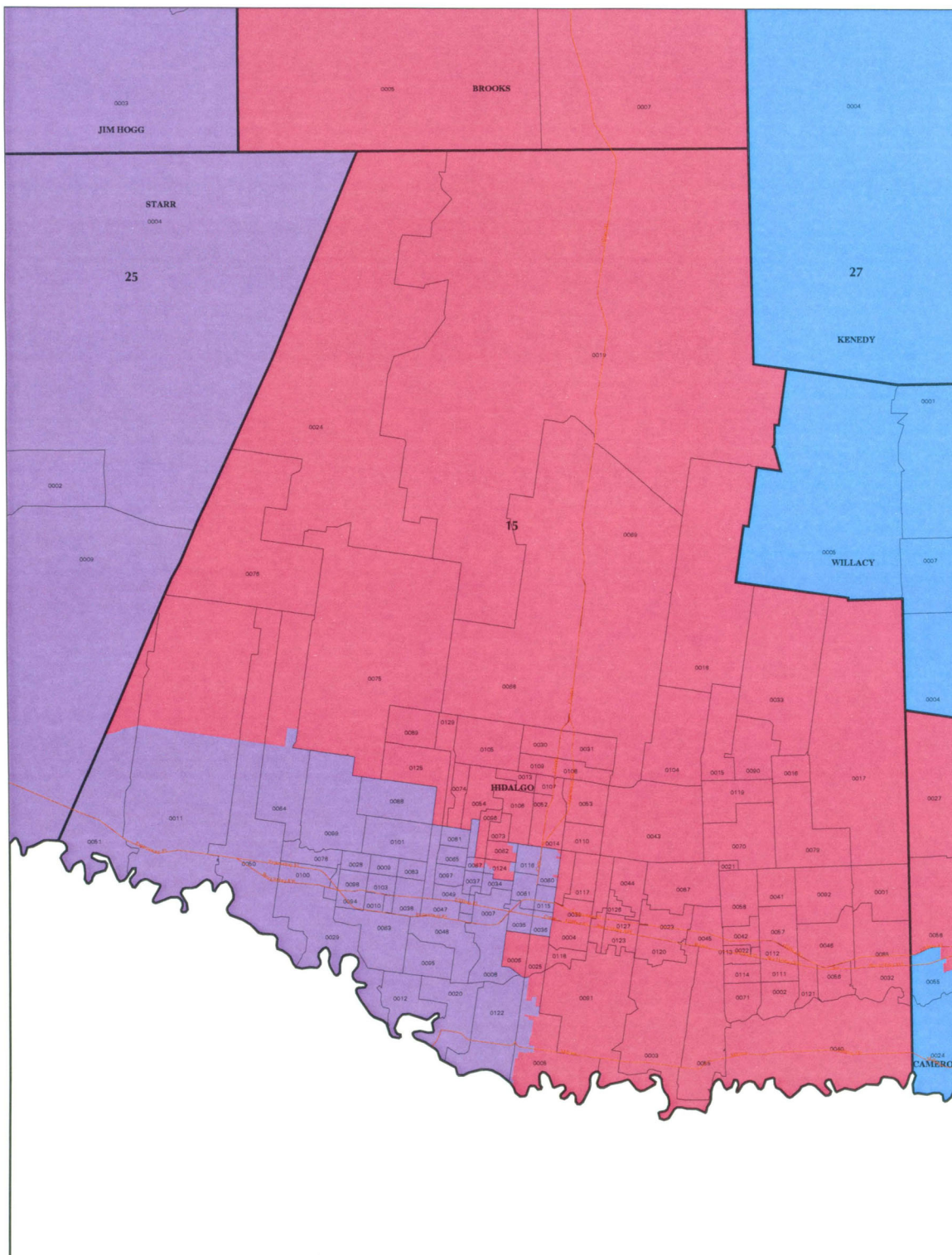
plan 01374C 10/9/2003 02.40.32

LEGEND

- plan 01374C shaded
- Counties ———
- 2002C VTDs ———

MAP:5900C REQUEST:1931B
 Scale 1 : 249690
 1 inch = 3.94 miles
 October 09, 2003 3:20 AM





plan 01374C 10/9/2003 02.40.32



HIDALGO COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

LEGEND

- plan 01374C shaded
- Counties
- 2002G VTDs

MAP:5900C REQUEST:19318
Scale 1 : 320641
1 inch = 5.06 miles
October 09, 2003 3:20 AM



LIBERTY COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



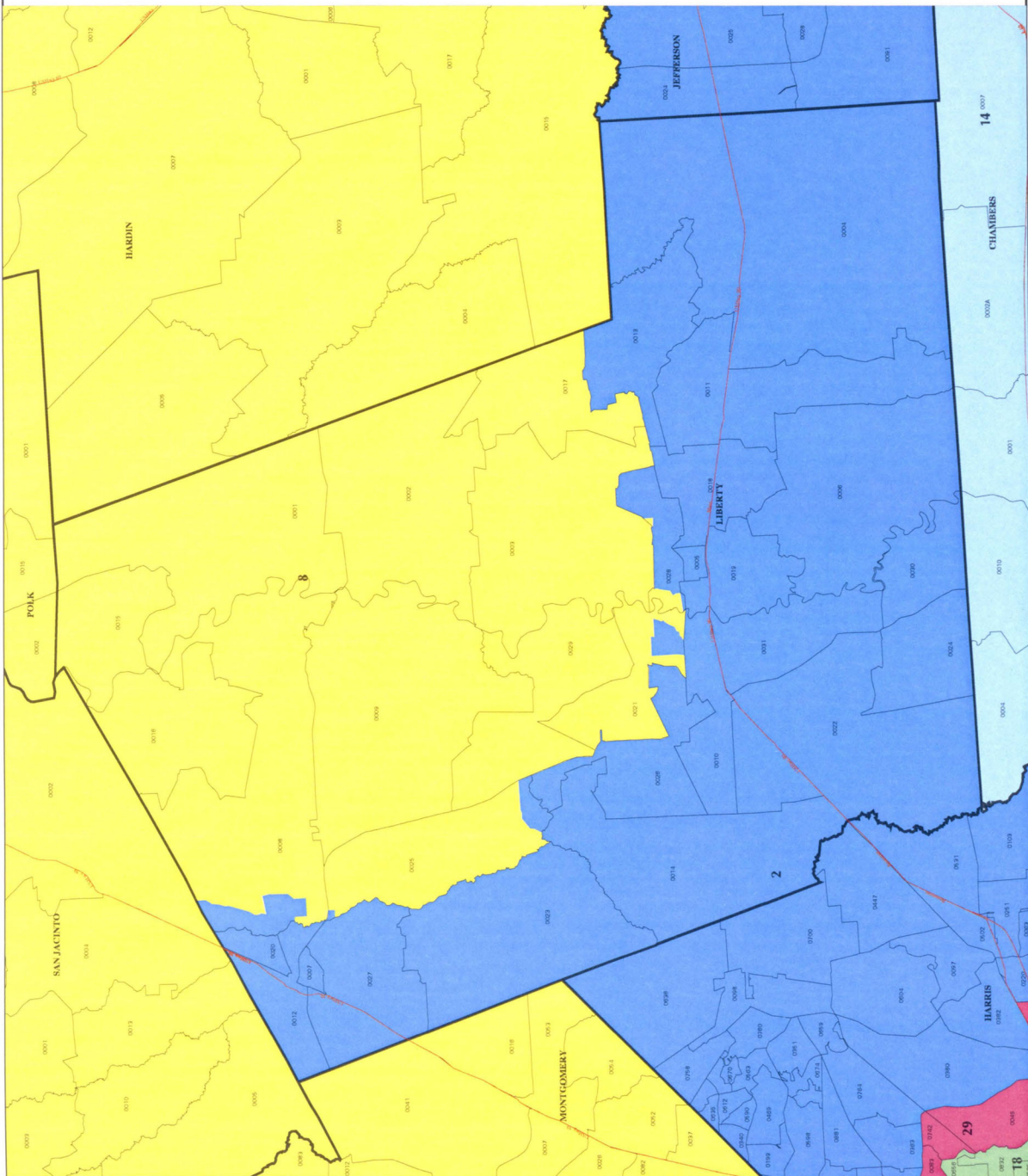
LEGEND

- plan 01374C
- shaded
- Countries
- 2002CVTDs

plan 01374C
10/9/2003 02:40:32



MAP:5906C REQUEST:19118
Scale: 1:266226
1 inch = 4.52 miles
October 09, 2003 2:20 AM



LIMESTONE COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



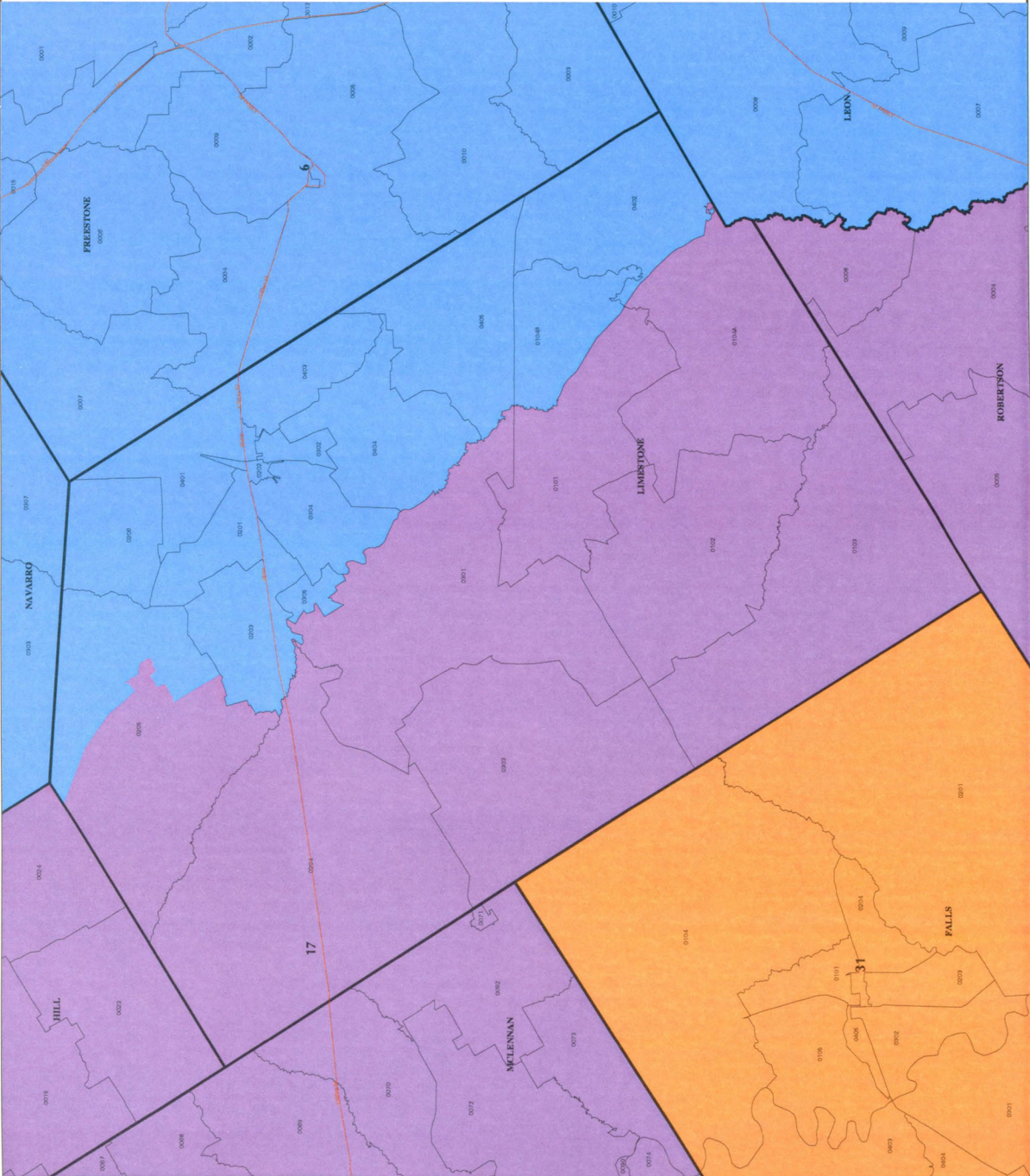
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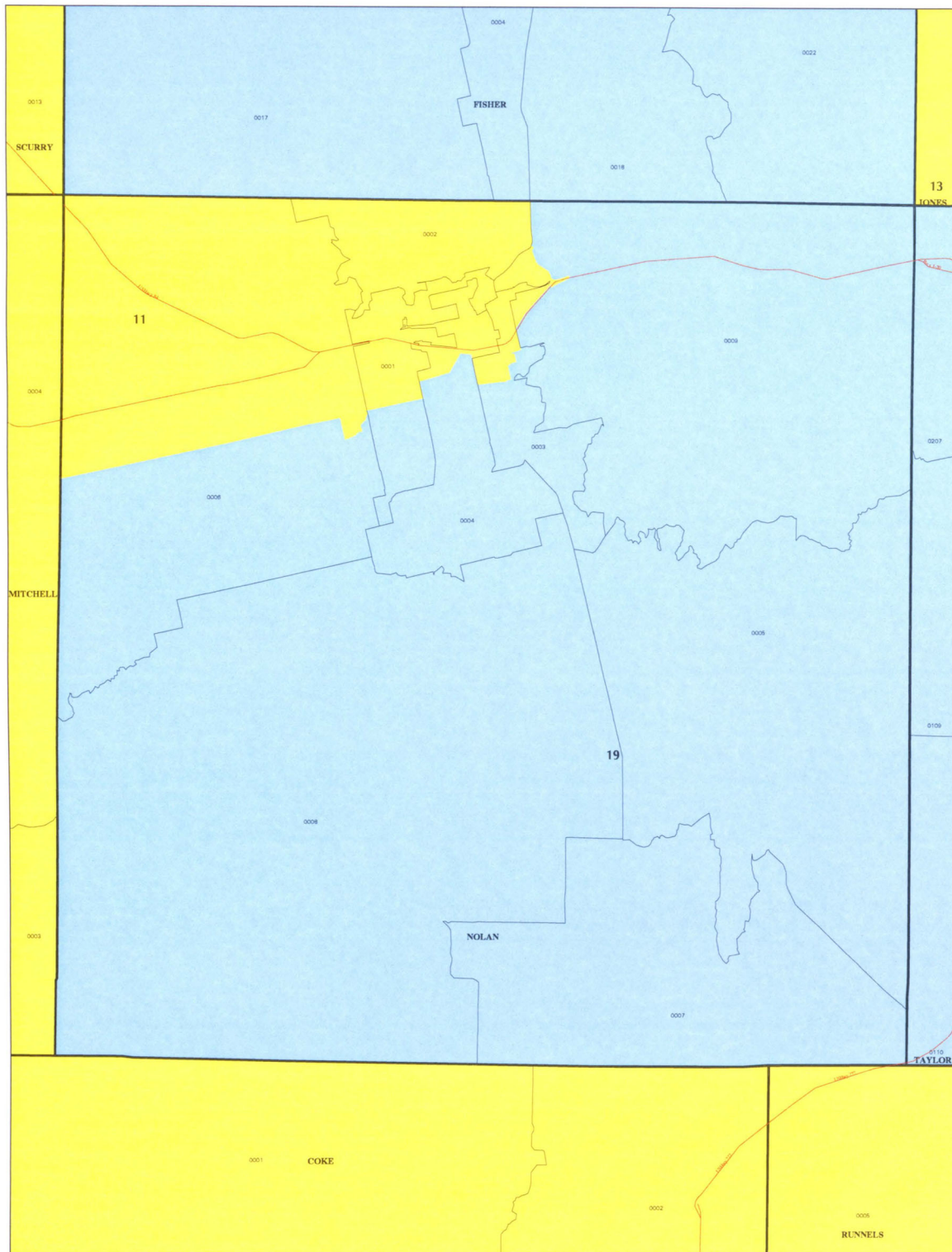
- plan 01374C shaded
- Counties
- 2002C VTDs

plan 01374C
10/9/2003 02:40:32



MAP:5908C - REQUEST:19316
Scale 1 : 274235
1 inch = 4.33 miles
October 09, 2003 3:20 AM





NOLAN COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

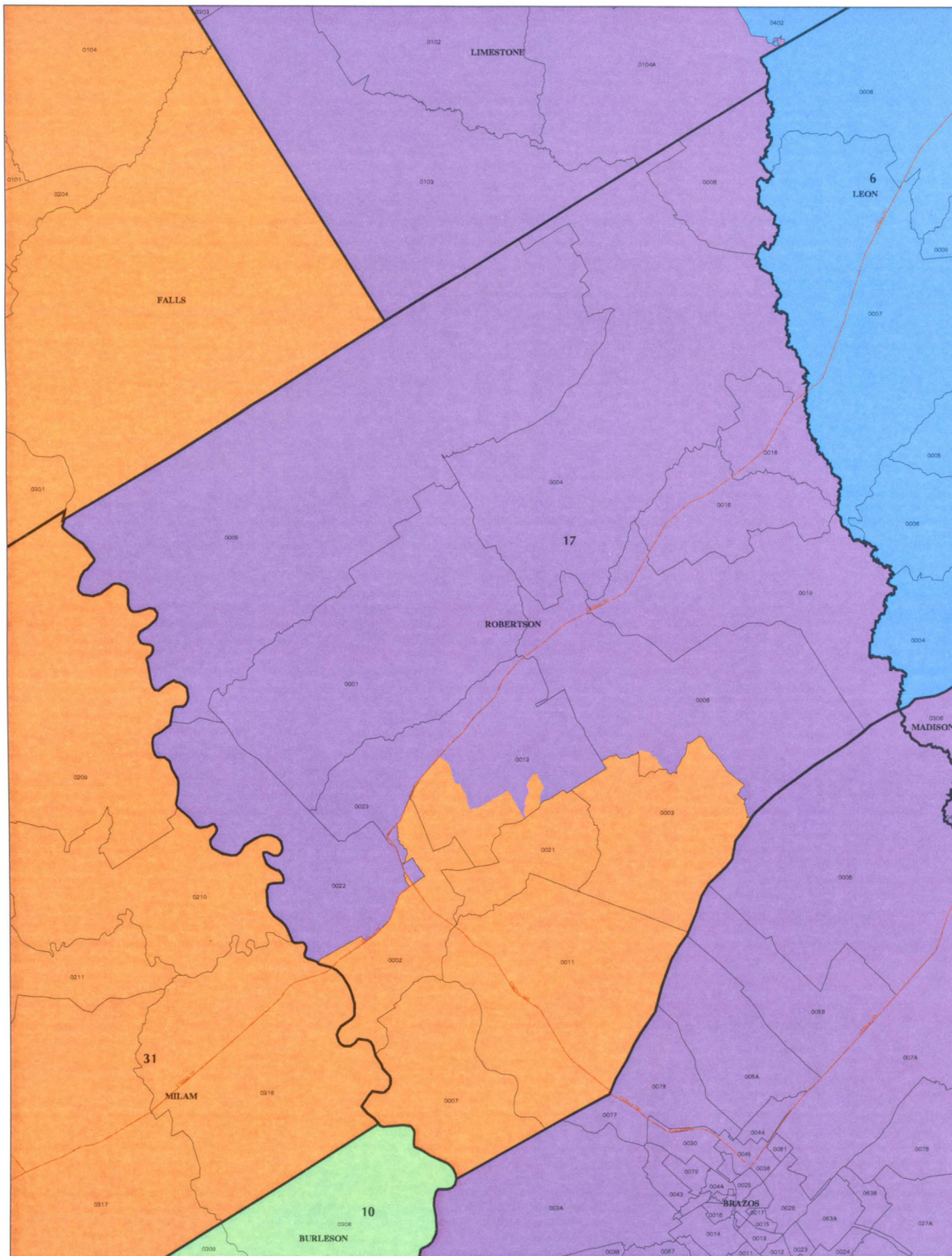
plan 01374C 10/9/2003 02.40.32

LEGEND

plan 01374C shaded
Counties ———
2002G VTDs ———

MAP:5900C REQUEST:1931B
Scale 1 : 212734
1 inch = 3.36 miles
October 09, 2003 3:20 AM





ROBERTSON COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

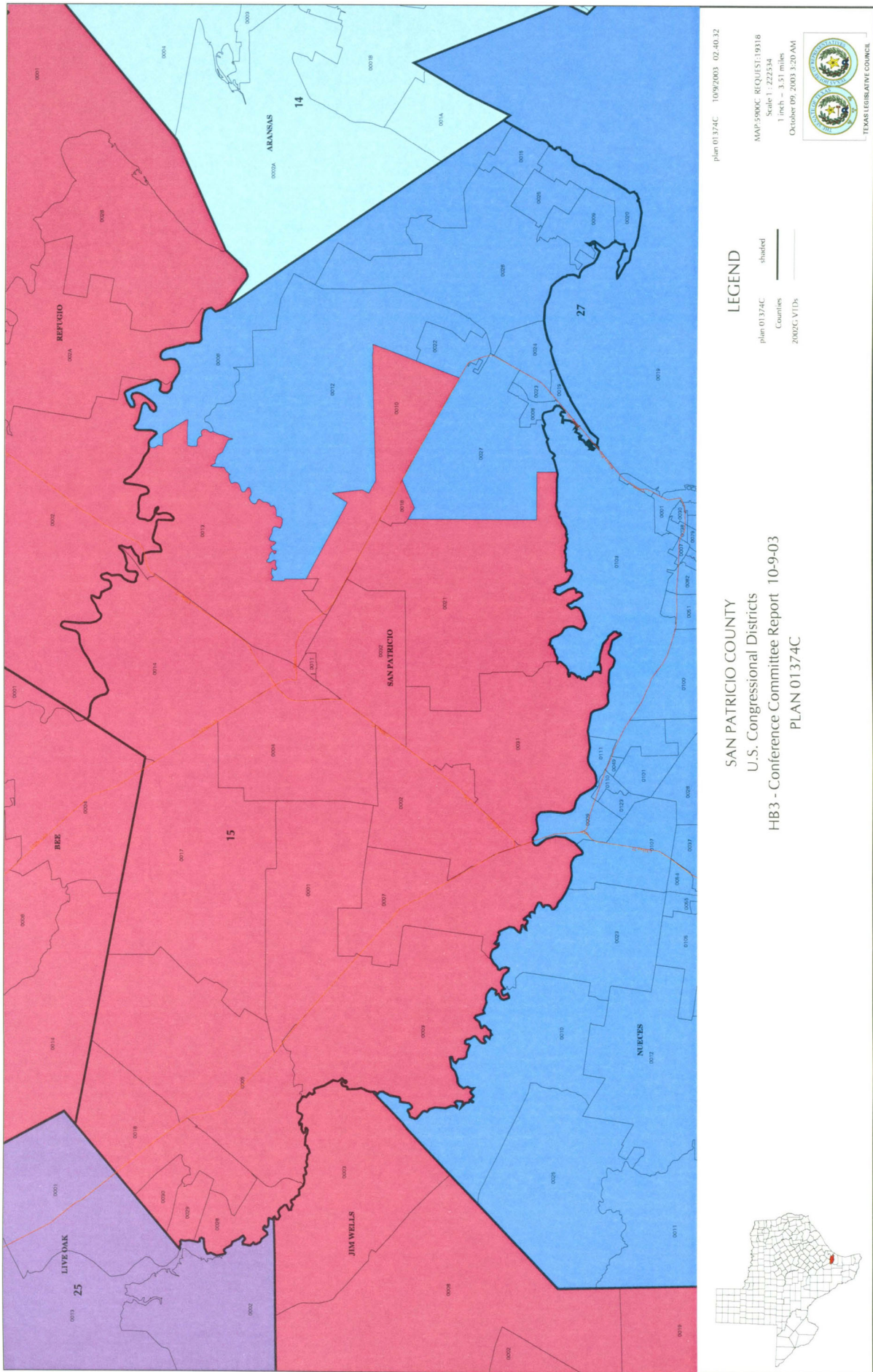
plan 01374C 10/9/2003 02:40:32

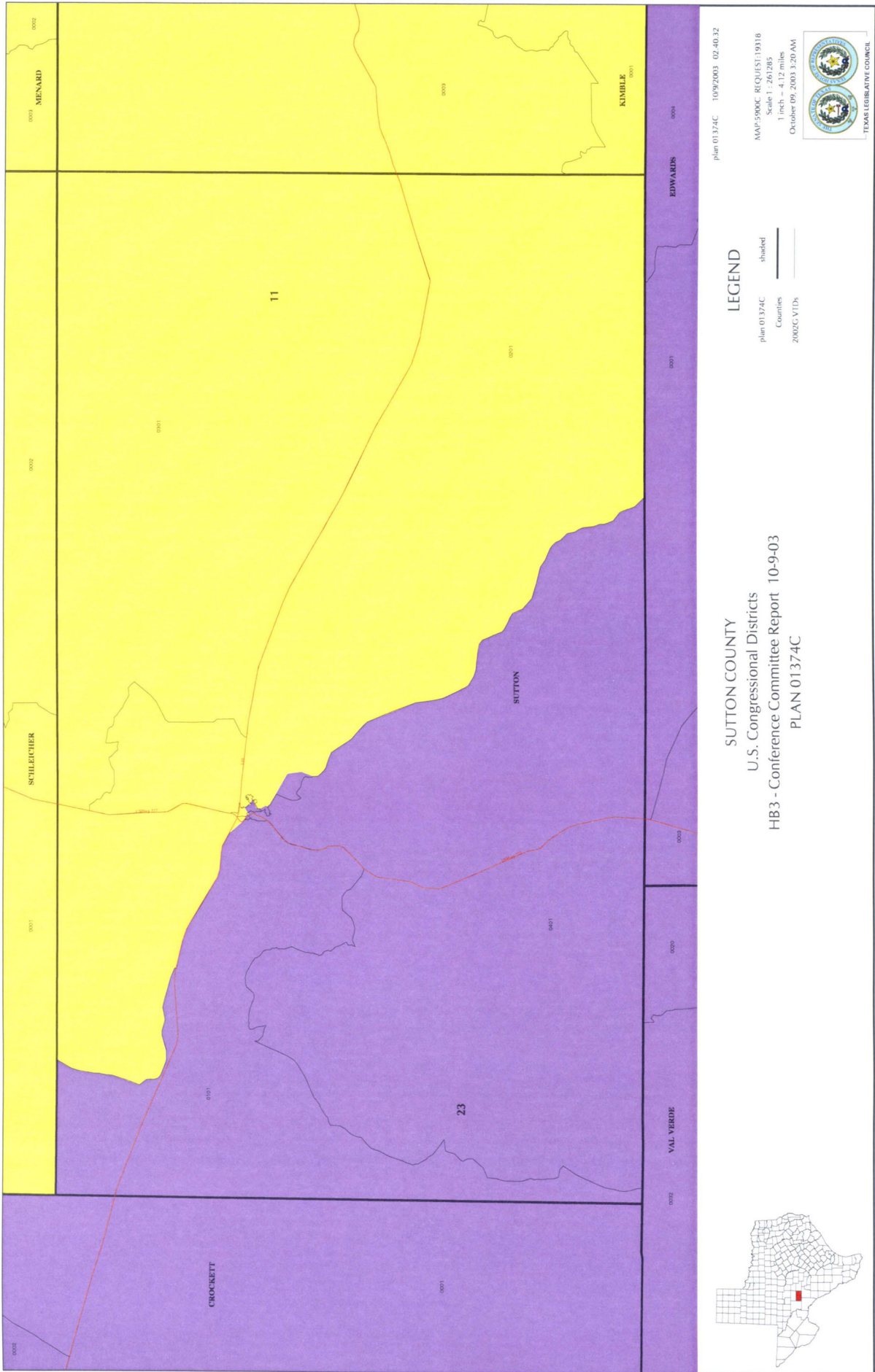
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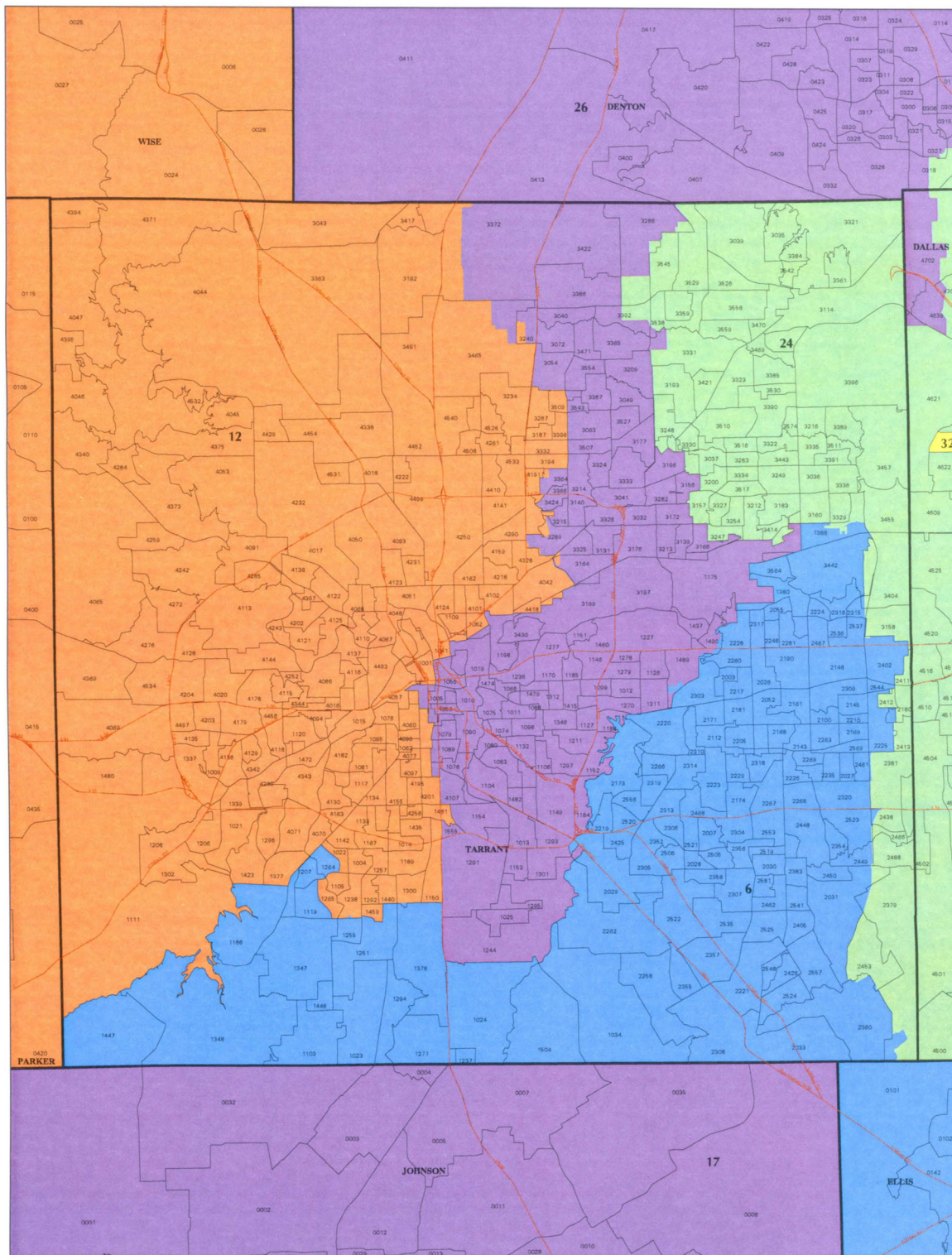
- plan 01374C shaded
- Counties
- 2002G VTDs

MAP:5909C REQUEST:19318
Scale 1 : 254688
1 inch = 4.02 miles
October 09, 2003 3:20 AM









TARRANT COUNTY
 U.S. Congressional Districts
 HB3 - Conference Committee Report 10-9-03
 PLAN 01374C

plan 01374C 10/9/2003 02.40.32

LEGEND

plan 01374C shaded
 Counties
 2002C VTDs

MAP:5900C REQUEST:19318
 Scale 1 : 210747
 1 inch = 3.33 miles
 October 09, 2003 3:20 AM



TRAVIS COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

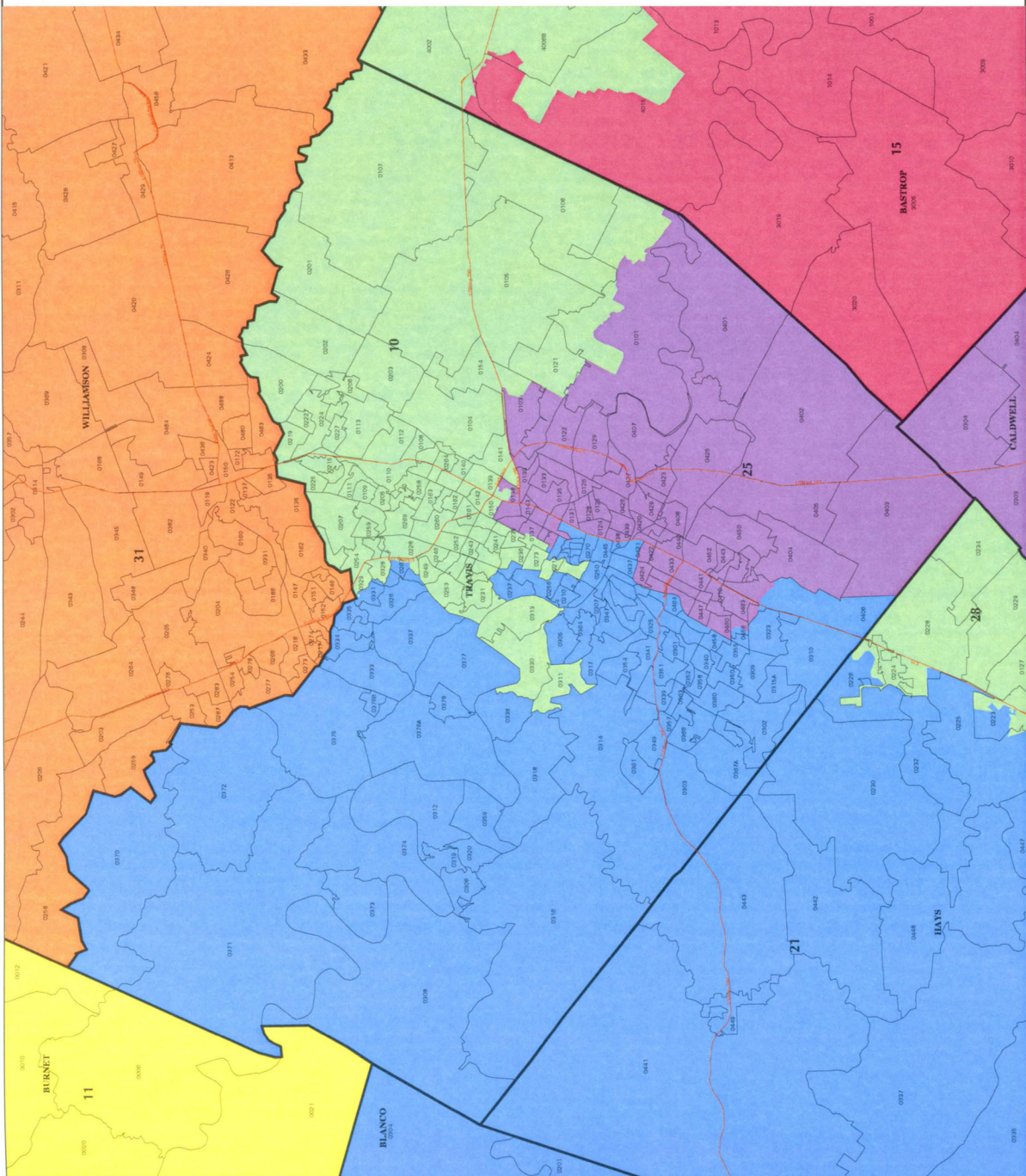
plan 01374C
shaded
Counties
2002CVTDs

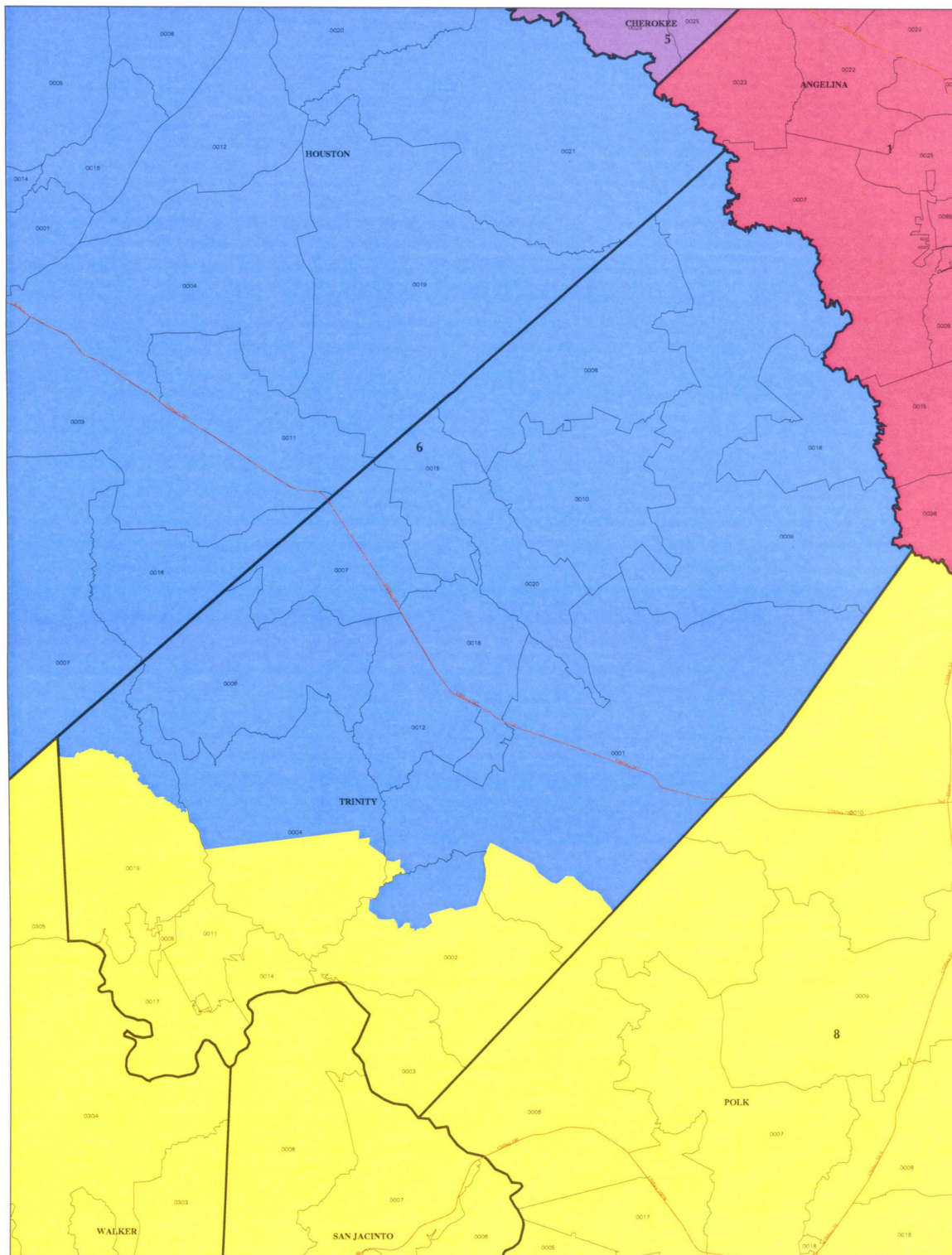
plan 01374C
10/9/2003 02:40:32



TEXAS LEGISLATIVE COUNCIL

MAP 5900C (RC/JST/19)18
Scale 1:262483
1 inch = 4.46 miles
October 09, 2003 3:20 AM





plan 01374C 10/9/2003 02:40:32



TRINITY COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C

LEGEND

- plan 01374C shaded
- Counties
- 2002G VTDs

MAP:5900C REQUEST:19316
Scale 1 : 245575
1 inch = 3.88 miles
October 09, 2003 3:20 AM



TEXAS LEGISLATIVE COUNCIL

WEBB COUNTY
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



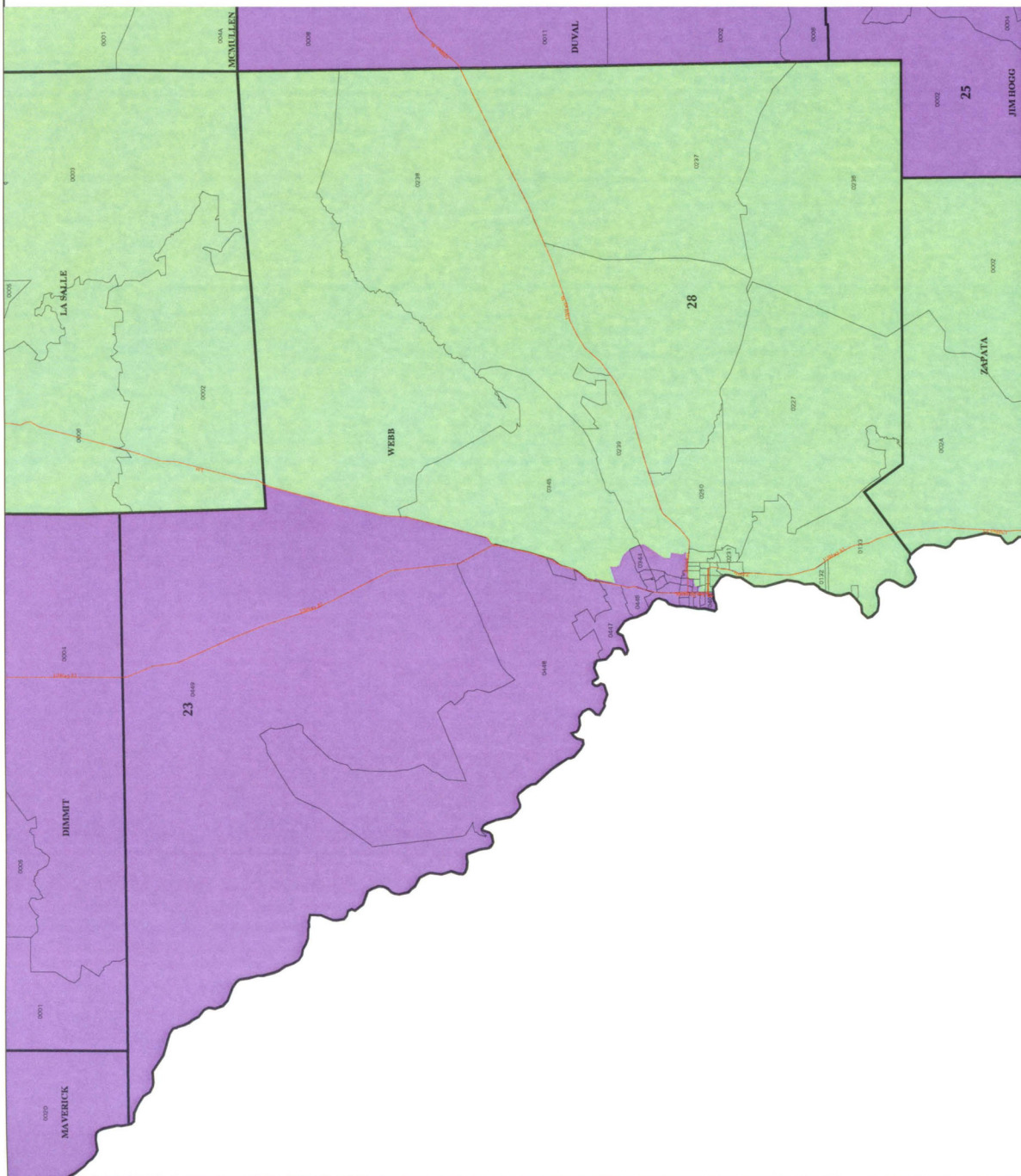
LEGEND

- plan 01374C shaded
- Countries
- 2002CVTDs

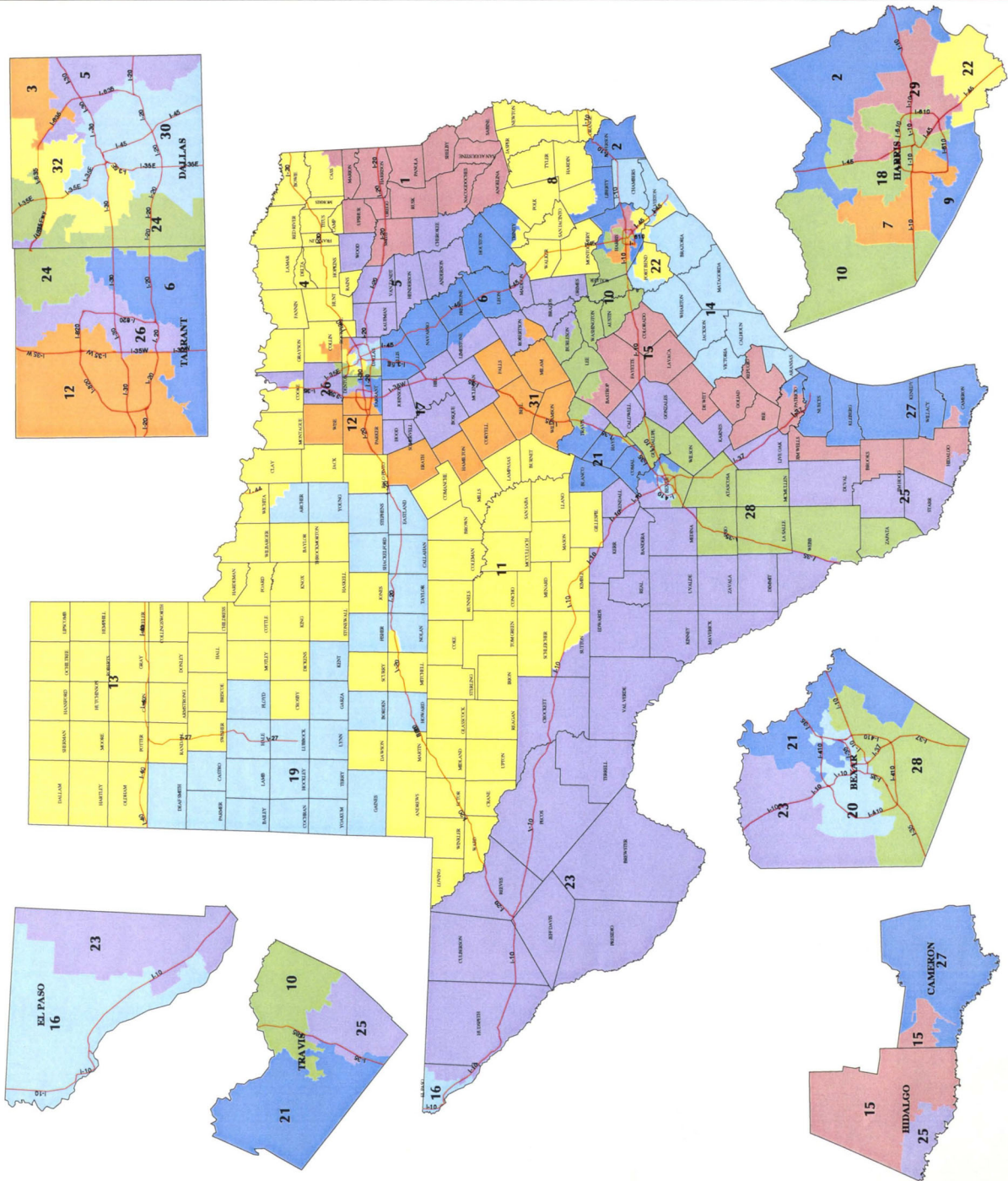
plan 01374C
10/9/2003 02:40:32



MAP 5900C REQUEST 19918
Scale 1 : 513684
1 inch = 8.11 miles
October 09, 2003 3:27 AM



TEXAS
U.S. Congressional Districts
HB3 - Conference Committee Report 10-9-03
PLAN 01374C



LEGEND

plan 01374C shaded
Counties



10/9/2003 02:40:32

Scale 1 : 497,5022
MAP:5000C REQUEST:19323
1 inch = 78.52 miles
October 09, 2003 3:39 AM

EXHIBIT 19

**NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021**

1 NORTH DAKOTA LEGISLATIVE ASSEMBLY
2 REDISTRICTING COMMITTEE MEETING
3 DATE OF RECORDING: November 9, 2021
4

5 PERSONS RECORDED:

- 6 Rep. Bill Devlin, Chairman
- 7 Unknown Female
- 8 Sen. Ray Holmberg, Vice Chairman
- 9 Rep. Larry Bellew
- 10 Rep. Joshua Boschee
- 11 Rep. Craig Headland
- 12 Rep. Mike Lefor
- 13 Rep. David Monson
- 14 Rep. Mike Nathe
- 15 Rep. Austen Schauer
- 16 Sen. Brad Bekkedahl
- 17 Sen. Randy Burckhard
- 18 Sen. Robert Erbele
- 19 Sen. Jerry Klein
- 20 Sen. Erin Oban
- 21 Sen. Nicole Poolman
- 22 Sen. Ronald Sorvaag
- 23 Emily Thompson, Legal Division Director
- 24
- 25

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 2

1 REP. DEVLIN: (bangs gavel) We'll call the
2 Redistricting Committee back to order.

3 I see Representative Monson isn't here yet, but we
4 -- I know he'll be here soon, so.

5 I suppose you better take the roll.

6 UNKNOWN FEMALE: Okay.

7 REP. DEVLIN: Oh, there he is.

8 UNKNOWN FEMALE: Chairman Devlin?

9 REP. DEVLIN: Here.

10 UNKNOWN FEMALE: Vice Chairman Holmberg?

11 SEN. HOLMBERG: Here.

12 UNKNOWN FEMALE: Representative Bellew?

13 REP. BELLEW: Here.

14 UNKNOWN FEMALE: Representative Boschee?

15 REP. BOSCHEE: Here.

16 UNKNOWN FEMALE: Representative Headland?

17 REP. HEADLAND: Here.

18 UNKNOWN FEMALE: Representative Lefor?

19 REP. LEFOR: Here.

20 UNKNOWN FEMALE: Representative Monson?

21 REP. MONSON: Here.

22 UNKNOWN FEMALE: Representative Nathe?

23 REP. NATHE: Here.

24 UNKNOWN FEMALE: Representative Schauer?

25 REP. SCHAUER: Here.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 3**

1 UNKNOWN FEMALE: Senator Bekkedahl?

2 SEN. BEKKEDAHL: Here.

3 UNKNOWN FEMALE: Senator Burckhard?

4 SEN. BURCKHARD: Here.

5 UNKNOWN FEMALE: Senator Erbele?

6 SEN. ERBELE: Here.

7 UNKNOWN FEMALE: Senator Klein?

8 SEN. KLEIN: Here.

9 UNKNOWN FEMALE: Senator Oban?

10 SEN. OBAN: Here.

11 UNKNOWN FEMALE: Senator Poolman?

12 SEN. POOLMAN: Here.

13 UNKNOWN FEMALE: Senator Sorvaag?

14 SEN. SORVAAG: Here.

15 REP. DEVLIN: Thank you.

16 WE have -- Emily, we have a map one that we have to
17 look at first that we held over from yesterday. Is that
18 correct?

19 MS. THOMPSON: Yes, Mr. Chairman, members of the
20 Committee, we have the metes and bounds language for that
21 Judson amendment that we made some small tweaks to whenever
22 you would like me to (inaudible) --

23 REP. DEVLIN: Yes.

24 (background)

25 REP. DEVLIN: So, this -- this doesn't look right.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 4**

1 (background)

2 (laughter)

3 REP. DEVLIN: I'll make sure that's recorded.

4 (background)

5 (laughter)

6 REP. DEVLIN: Emily, you may proceed.

7 MS. THOMPSON: So, the amendment that you all
8 received, numbered 21.113.02009, this is the amendment from
9 Representative Kreidt from yesterday regarding the Judson
10 change. That small city of Judson that was split between
11 two districts.

12 Senator Bekkedahl had mentioned possibly extending
13 that up to the southern border of District 33 so that change
14 was made. What you have on the amendment now is the formal
15 metes and bounds language.

16 Again, yesterday I mentioned that there are some
17 kind of odd shape census blocks in that area, so you can see
18 that red highlighting, that kind of squiggly shaped pattern
19 in the middle of your second page, that image you're looking
20 at. The only part that is described by metes and bounds is
21 the highlighted area.

22 So, when we call Census to have that census block
23 adjusted, since that follows more of roads and rivers and
24 identifiable boundaries, that is what the red shaded area of
25 District 36 will encompass.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 5

1 REP. DEVLIN: Senator Bekkedahl.

2 SEN. BEKKEDAHL: Mr. Chairman, I would move
3 Committee approval of the amendment as presented by Staff.

4 REP. DEVLIN: So second?

5 REP. NATHE: Second.

6 REP. DEVLIN: Seconded by Representative Nathe.

7 Any discussion? Questions?

8 Seeing none, all those in favor, signify by saying
9 "aye."

10 ALL IN UNISON: Aye.

11 REP. DEVLIN: Oppose, "nay." Motion carried.

12 Representative Bellew has another correction that
13 he would like us to make. It's just a street name, so we
14 can do it as an amendment and that way we will -- Staff will
15 do it and it will go forward in the bill as presented.

16 So, Representative Bellew, do you want to explain
17 what it is?

18 REP. BELLEW: I will try, Mr. Chairman. Thank you.

19 This concerns District 40. It's on page 26 of the
20 bill. It starts on line 24. The way the bill reads now, it
21 says, "until its intersection with the centerline of Fourth
22 Avenue Northwest." That should be "Third Avenue Northwest."

23 And the next statement says, "also identified as
24 Third Avenue Northwest" -- that can be eliminated -- "then
25 west on Third Avenue Northwest until its intersection with

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 6

1 the centerline of Fourth Avenue Northwest," and "then west
2 on Fourth Avenue Northwest until its intersection with the
3 centerline on Sixteenth Street Northwest."

4 We had that problem yesterday in District 5 where
5 if you go to the west end of that district, it said it was
6 Third Avenue Northwest, but it was actually Fourth Avenue
7 Northwest. Now, if you go to the east end of the district,
8 it's Third Avenue Northwest and not Fourth Avenue Northwest.
9 So, I did give it to Council and they said they would write
10 it up. The map does not change. It's just the language in
11 the bill.

12 And that's my proposal.

13 REP. DEVLIN: Is there any questions?

14 Representative Bellew, do you want to make that in
15 the form of a motion?

16 REP. BELLEW: I would move that, Mr. Chairman.

17 REP. DEVLIN: Move that change.

18 SEN. BURCKHARD: Second.

19 REP. DEVLIN: Second Senator Burckhard.

20 Any questions? Discussion?

21 Senator Klein?

22 SEN. KLEIN: Mr. Chairman, and that's something
23 Staff is working out. That's -- you know, it's not a big
24 deal. They've looked at it. Everything is -- it's just a
25 language change.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 7**

1 MS. THOMPSON: Yes. Mr. Chairman, Senator Klein,
2 that is, again, another kind of a technical correction just
3 with how some of those roads appeared on our software. So,
4 we can go ahead and include that as simply a technical
5 change, as well.

6 We'll incorporate both of those technical changes
7 into the amendment you just passed this morning, as well as
8 the amendments to Washburn that you passed yesterday. So,
9 that will be the sum total of the merged Committee's
10 amendment that you will see applied to the final bill.

11 REP. DEVLIN: Good. Any further questions?

12 All those in favor, signify by saying "aye."

13 ALL IN UNISON: Aye.

14 REP. DEVLIN: Oppose, "nay." Motion carried.

15 The Assistant Deputy Secretary of State raised a
16 couple questions yesterday. We had reviewed it earlier and
17 it was just a question of whether they had the authority to
18 do a certain thing.

19 Emily, do you want to touch briefly on that? And
20 we saw no problem with it after discussing it, so.

21 MS. THOMPSON: Yes. The Secretary of State reached
22 out just for a few clarifications.

23 They just wanted to clarify the intent of the
24 legislature regarding how House members of subdistricts
25 would be elected. It seems, you know, fairly apparent to

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 8**

1 Staff and several members of the Committee that, you know,
2 the intent is to run by subdistrict and be elected by
3 subdistrict.

4 The Secretary of State was wondering if that needed
5 to be specified explicitly in the bill, but it seems fairly
6 apparent. If the Committee is comfortable expressing it's
7 intent on the record so the Secretary of State has that
8 information, I don't know that an actual language amendment
9 would necessarily be needed.

10 REP. DEVLIN: Yeah, it's fully workable in the
11 language we have now, so we don't see that we have to make
12 any change.

13 So, if there isn't any other questions, we're just
14 going to move on.

15 MS. THOMPSON: There's one other item --

16 REP. DEVLIN: Okay.

17 MS. THOMPSON: -- that the Secretary of State
18 mentioned as far as townships.

19 Right now, it says, "Any number of townships or
20 parts of townships may be joined into a single precinct
21 provided that no precinct encompasses more than one
22 legislative district." This is in a separate section of
23 Code that's not in the bill.

24 Again, it seems fairly apparent that it would not
25 encompass more than one subdistrict, either, also in the

1 district. But that was another item that the Committee
2 might want to express it's intent just so that's on the
3 record to clarify.

4 REP. DEVLIN: So, do you want the Committee to say
5 that after careful review, we see no changes that have to be
6 made after reviewing --

7 MS. THOMPSON: If that's the Committee's wishes
8 that the intent is for township precincts not to encompass
9 more than one subdistrict.

10 REP. DEVLIN: Any problems? That is certainly the
11 intent of the Committee.

12 So, are we done with the changes now?

13 MS. THOMPSON: I believe so.

14 REP. DEVLIN: Any other Committee members have any
15 changes?

16 Seeing none -- sorry, Representative Boschee, when
17 you started reaching for your notepad and pen, I got a
18 little nervous there. I'm sorry.

19 I think we're at the point to move this bill
20 forward to the legislature. Somebody want to make --

21 SEN. HOLMBERG: I move that we approve the bill as
22 drafted and forward to the House for their consideration.

23 SEN. BURCKHARD: Second.

24 REP. DEVLIN: Second by Senator Burckhard.

25 Any discussion?

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 10

1 Representative Monson.

2 REP. MONSON: The motion is for it as drafted. Are
3 you referring to it as amended now, right?

4 SEN. HOLMBERG: It's what we have.

5 REP. DEVLIN: Yeah, as amended. Yeah.

6 REP. MONSON: Yeah.

7 REP. DEVLIN: Seeing no one else, I think we better
8 poll the Committee on this one.

9 UNKNOWN FEMALE: Chairman Devlin?

10 REP. DEVLIN: Yes.

11 UNKNOWN FEMALE: Vice Chairman Holmberg?

12 SEN. HOLMBERG: Yes.

13 UNKNOWN FEMALE: Representative Bellew?

14 REP. BELLEW: Yes.

15 UNKNOWN FEMALE: Representative Boschee?

16 REP. BOSCHEE: Yes.

17 UNKNOWN FEMALE: Representative Headland?

18 REP. HEADLAND: Yes.

19 UNKNOWN FEMALE: Representative Lefor?

20 REP. LEFOR: Yes.

21 UNKNOWN FEMALE: Representative Monson?

22 REP. MONSON: Yes.

23 UNKNOWN FEMALE: Representative Nathe?

24 REP. NATHE: Yes.

25 UNKNOWN FEMALE: Representative Schauer?

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 11

1 REP. SCHAUER: Yes.

2 UNKNOWN FEMALE: Senator Bekkedahl?

3 SEN. BEKKEDAHL: Aye.

4 UNKNOWN FEMALE: Senator Burckhard?

5 SEN. BURCKHARD: Aye.

6 UNKNOWN FEMALE: Senator Erbele?

7 SEN. ERBELE: Aye.

8 UNKNOWN FEMALE: Senator Klein?

9 SEN. KLEIN: Aye.

10 UNKNOWN FEMALE: Senator Oban?

11 SEN. OBAN: Yes.

12 UNKNOWN FEMALE: Senator Poolman?

13 SEN. POOLMAN: Yes.

14 UNKNOWN FEMALE: Senator Sorvaag?

15 SEN. SORVAAG: Aye.

16 UNKNOWN FEMALE: (whispers) Sixteen zero.

17 REP. DEVLIN: Sixteen zero. All right, thank you
18 very much.

19 We got one other bill before us, but before I do
20 that, I want to thank all of you for all your hard work on
21 the Redistricting Committee. You know, like I've said
22 before, we normally would start in March, early April doing
23 all this, and when you don't get the numbers until August,
24 it took a lot of hard work by everyone of you, and
25 particularly the Legislative Council Staff. I mean, I

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 12**

1 cannot believe what they went through. I sent one of them -
2 - I won't mention which one because they would've all done
3 it immediately -- a notice at 10:00 Sunday evening because I
4 thought the next morning I'd like them to look at it. By
5 11:00 Sunday evening, I had a complete answer. So, I don't
6 know if they ever slept during this whole process. And,
7 again, I want to thank all of you.

8 We were assigned one other bill. Representative
9 Lefor will explain 1513.

10 REP. LEFOR: Yes, thank you, Mr. Chairman.

11 If you recall earlier, when we -- one of our last
12 meetings we talked about some of the things that aren't
13 specifically addressed in Code. And, so, if you look at
14 House Bill 1513, starting line 8 through 13, that section
15 allows the state party chair to appoint a temporary district
16 party chair to organize a new district.

17 As you know, we have three new districts that have
18 absolutely no district committees, so -- and Code is silent
19 in that area. So, that's what this does. It allows the
20 state party chair to appoint someone to get the ball
21 rolling, so to speak, in the new district.

22 And then if you go to lines 22 and 23, it also
23 refers to, quote, "A district that does not share any
24 geographical area with the pre-redistricting district having
25 the same number," end quote. Again, addressing the same new

1 committee.

2 And then you'll notice that the version that I
3 handed out is Version 1001. So, if you look at the
4 Christmas tree that I'm asking for the amended bill to be
5 acted upon.

6 So, if you look at the second page, you'll see
7 that, quote, "A new geographic area has a 2020 population
8 which is more than 25 percent of the district's population
9 as determined by the 2020 Census." So, the idea behind this
10 is to reduce the number of district reorganizations that
11 need to take place.

12 As I looked into this, that would take the
13 reorganizations down from 47 reorganizations down to
14 approximately 14. And, so, less than 25 percent is the
15 threshold that we used in the other provisions that we had
16 in our bill so that's why I took the 25 percent and kept it
17 here.

18 In figuring that less than 25 percent, you have a
19 pretty large population that stayed the same. Therefore,
20 since these district chairs and committees were just elected
21 a few months ago, that we would keep that going forward
22 until their term is up in 2023, I believe.

23 So, that's basically what this bill does. It
24 allows the state party chair to appoint temporary chairs and
25 also lowers the amount of reorganizations that need to take

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 14

1 place.

2 And with that, I would submit House Bill 1513,

3 Version 1001, Mr. Chairman.

4 REP. DEVLIN: Questions? Senator Poolman.

5 SEN. POOLMAN: Move it to pass.

6 REP. DEVLIN: Is there a second?

7 SEN. POOLMAN: Are we doing that?

8 REP. DEVLIN: We can take it up for discussion.

9 Somebody want to second? Senator Bekkedahl.

10 Questions? Representative Nathe.

11 REP. NATHE: Thank you, Mr. Chairman.

12 So, on page 2, line 3, you know, we have, "as
13 determined in 2020." So, 10 years from now when a committee
14 like this meets again, will they have to revisit this Code.

15 REP. DEVLIN: Yes.

16 REP. NATHE: Okay. And that would be by design
17 rather than just putting it in there so they wouldn't have
18 to?

19 REP. LEFOR: Correct.

20 REP. NATHE: Okay. All right.

21 REP. DEVLIN: Further questions?

22 SEN. ERBELE: I do.

23 REP. DEVLIN: Senator Erbele.

24 SEN. ERBELE: Thank you, Chairman.

25 I can read the words, but I don't always understand

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 15**

1 them. So, in a case of a district growing by more than 25
2 percent, mine grew by almost 60. Does the same rule apply,
3 then, that the state chair appoints a temporary district for
4 that? Because in my case, most of the Executive Committee
5 is no longer in the District 28.

6 REP. LEFOR: Mr. Chairman, Senator Erbele, I don't
7 believe this bill addresses that provision. It just
8 addresses the new districts, as far as the state party
9 chairs involvement.

10 SEN. ERBELE: So, then, in my case, how do we
11 reorganize our district when our district committee is
12 largely not in my district anymore? We only have the
13 secretary remaining and a couple at-large members, but we
14 have no president, vice president, treasurer, all of that.

15 REP. LEFOR: Mr. Chairman, Senator Erbele, again,
16 this bill doesn't address that. If we wanted to make some
17 changes for that, we can certainly take a look at that. But
18 if we want to expand it to giving a state party chair more
19 authority --

20 SEN. ERBELE: I think in my case I need it because
21 I don't know how else we'd organize our district.

22 REP. DEVLIN: Representative --

23 (background)

24 REP. DEVLIN: Is there any other provisions in that
25 chapter that would address Senator Erbele's issue?

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 16

1 MS. THOMPSON: Mr. Chair, members of the Committee,
2 I'm just looking now.

3 (background)

4 SEN. ERBELE: And, Mr. Chairman, it may affect some
5 of the other districts, too, that grew by more than 25
6 percent, if they've lost -- if their Executive Committee is
7 no longer living within the district that was drawn.

8 REP. DEVLIN: Representative Boschee.

9 REP. BOSCHEE: Mr. Chairman, I guess I go back and
10 forth on this. These are private, non-profit organizations
11 and we, as the State, are telling them how to operate. And,
12 so, I'd rather we spend less time figuring out what we put
13 in statute and tell an organization how they run themselves.

14 I can understand the concern about a completely new
15 district, where you're shifting an existing District 23 to a
16 new part of the state and the identities change and we're
17 setting up some precedent there, but in terms of -- you
18 know, I'm in the same situation where our district will have
19 to reorganize. It's growing by 40 percent. But that's the
20 work of the political parties and the local activists and
21 folks to figure that out and to find people who live within
22 those new boundaries for these positions. I don't think it
23 should be the role of the legislature or state government
24 telling these private organizations what -- how to do their
25 business.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 17

1 REP. LEFOR: Mr. Chairman?

2 REP. DEVLIN: Who went first?

3 (background)

4 REP. LEFOR: Thank you.

5 REP. DEVLIN: Go ahead.

6 REP. LEFOR: Mr. Chairman, Representative Boschee,
7 the only thing that I would say to that is that when I did
8 research on the Code, it gives a lot of power -- or, excuse
9 me, a lot of responsibility to the district, and so it
10 doesn't give the state committee the authority to do much of
11 anything when it comes to districts. So, that's why it says
12 the state party chair "may," and as far as that's concerned,
13 otherwise I just think we leave it the way it is, but that's
14 just me.

15 REP. DEVLIN: Senator Bekkedahl first and then
16 Representative Monson.

17 SEN. BEKKEDAHL: Thank you, Mr. Chairman.

18 So, I understand Senator Erbele's concern with this
19 as I read it. The issue is the words "newly established
20 district that lacks a district committee." He has a newly
21 revised district that lacks a district committee, so I
22 understand what he's trying to do here. He has a great
23 concern that makes sense to me, so I hope we can address it
24 somehow.

25 REP. DEVLIN: Okay, Representative Monson first and

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 18

1 then Senator Poolman.

2 REP. MONSON: Thank you, Mr. Chairman.

3 My district number has changed and the District 10
4 is now someplace else, so District 19 is the new district
5 which is encompassing an area that 7,000 people were in 19,
6 but, as far as I know, none of the Executive Committee from
7 19 was there. And, so, is the District 19, where I now
8 reside, considered a new district or one that would fall
9 into this category? Because District 10 is, what, Fargo or
10 Willis in there? Fargo?

11 (background)

12 REP. DEVLIN: Senator Poolman first and then we'll
13 get back to this.

14 SEN. POOLMAN: Mr. Chairman, I just have a
15 recommendation.

16 I appreciate very much the May (phonetic) point
17 because I also agree with Representative Boschee and his
18 concerns about telling state parties what to do, but I'd
19 like the May to provide some direction.

20 In terms of an amendment to address the Erbele
21 concern, you could simply say that "the district party
22 organization chair in any newly established district or
23 one"

24 -- if you added the words "or one" -- "that lacks a
25 district committee able to carry," you would address his
concern, you would keep the intent pretty much the same, but

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 19**

1 it does address any concerns whether it's a new district or
2 it's one where the entire Executive Committee has been wiped
3 out that in either one of those cases that the state party
4 chair could appoint a temporary person.

5 REP. LEFOR: Mr. Chairman?

6 REP. DEVLIN: Representative Lefor.

7 REP. LEFOR: Senator Poolman, could you tell -- say
8 again what your change would be?

9 SEN. POOLMAN: I would just -- line 10, I would
10 simply -- I'm looking at the 1001 version. On line 10, I
11 would just add the words, after "district," I would say, "or
12 one that lacks a district committee." So, it would read,
13 "After redistricting of the legislative assembly becomes
14 effective, the state party chair may appoint a temporary
15 district party organization chair in any newly established
16 district or one that lacks a district committee able to
17 carry out the responsibilities."

18 REP. LEFOR: Mr. Chairman --

19 REP. DEVLIN: Good catch.

20 REP. LEFOR: -- I like that. The other idea that I
21 had, but I'd kind of leave it to Council what wording is
22 best, but on line 9, after "in any new established or
23 revised district," but when I think about it, I like Senator
24 Poolman's verbiage better. But what makes more sense to
25 you, Emily?

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 20

1 MS. THOMPSON: Mr. Chairman, members of the
2 Committee, I would agree with the language proposed by
3 Representative -- or, excuse me, Senator Poolman. Possibly
4 just a small revision, instead of "or one," "or a district,"
5 just to be more specific.

6 So, it would read in the new subsection 5, "After
7 redistricting of the legislative assembly becomes effective,
8 the state party chair may appoint a temporary district party
9 organization chair in any newly established district or a
10 district that lacks a district committee able to carry out
11 the responsibilities of this chapter."

12 REP. LEFOR: I'll second Senator Poolman's motion.

13 (background)

14 SEN. POOLMAN: I was just about to move that
15 language, Mr. Chairman.

16 REP. DEVLIN: Discussions or questions?

17 REP. SCHAUER: Yes. Representative Lefor, on line
18 9, when you talk about "may" appoint a temporary district
19 party organization chair, had you considered "will" appoint?
20 I'm concerned that "may" may be, yeah, well, stay out of our
21 business, as opposed to, you know, at least get the ball
22 going and then it's up to that chair to move it forward.
23 Had you thought about that at all?

24 REP. LEFOR: Mr. Chairman, Representative Schauer,
25 I had. And I go back to what Representative Boschee said is

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 21

1 it's a fine line between giving them the opportunity and
2 then telling them what to do, so I kept it at giving the
3 state party chair the opportunity if that's what they decide
4 to do.

5 (background)

6 SEN. OBAN: Mr. Chairman?

7 (background)

8 REP. LEFOR: It's "or one."

9 REP. DEVLIN: Senator Oban, I'm sorry.

10 SEN. OBAN: Mr. Chairman, I am wondering if section
11 1 conflicts with -- I'm sorry -- yes, the creation of
12 subsection 5 of section 1 conflicts with any of the language
13 in subsections 3 and 4 of the existing section. Where it
14 says, "If the office of chairman becomes vacant, the vacancy
15 may be filled as provided by the district party bylaws."
16 That tells me there's two, sort of, different rules here.

17 REP. HEADLAND: Mr. Chair, just for clarification -
18 -

19 REP. DEVLIN: Representative Nathe.

20 REP. HEADLAND: Thank you, Mr. Chairman.

21 REP. DEVLIN: Representative Headland. I apologize
22 again.

23 REP. HEADLAND: Thank you, Mr. Chairman.

24 In the case of District 28, you know, I believe
25 legislators that are elected within those districts are

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 22**

1 already part of an Executive Committee. I think they
2 already have the ability to move forward. Now, I'm not sure
3 why they're unwilling to do that.

4 I don't think we need to make this move and this
5 change. I think, you know, Senator Oban just eluded to it.
6 You know, there's language that allows a district that's
7 existing to move forward. They've got Executive Committee
8 members there. I think this muddies up this bill.

9 SEN. OBAN: Well, Mr. Chairman, I also don't
10 understand why we would put language about redistricting in
11 Section 16.1-03-07, when that's just about organization of
12 districts, when there is a specific section dedicated to
13 what happens after redistricting. So, one would think that
14 language in section 1 would be placed in that section.

15 Can of worms. Sorry.

16 REP. DEVLIN: The motion was to adopt Senator
17 Poolman's amendment, but can you answer Senator Oban's
18 question.

19 MS. THOMPSON: Mr. Chairman, Senator Oban, could
20 you repeat that, please?

21 SEN. OBAN: It's okay, Emily, you were busy with
22 something else.

23 So, I'm wondering if section 1 of the bill, the
24 creation of new language in subsection 5 conflicts with
25 anything in subsections 3 and 4 of that section, and why

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 23

1 language about redistricting would be placed in that
2 section, when there is a separate section dedicated to
3 reorganization after redistricting.

4 MS. THOMPSON: Mr. Chairman and members of the
5 Committee, I'm just going to have Mary pull up that relevant
6 statute so we can all kind of see what those other
7 subdivisions are here.

8 So, Senator Oban, you're wondering if 1, 2, 3, or 4
9 conflict with 5.

10 SEN. OBAN: (in background) Mostly 3 and 4. But,
11 sure --

12 MS. THOMPSON: 3 and 4?

13 SEN. OBAN: -- (inaudible)

14 MS. THOMPSON: Mr. Chairman, I don't see that
15 there's any direct conflict with the language.

16 SEN. OBAN: Okay. And, Emily, my second question
17 was why would we put language about redistricting in that
18 section, when there is a different -- let's see, it's on
19 16.1-03-17, specifically, about redistricting.

20 MS. THOMPSON: Mr. Chairman --

21 SEN. OBAN: (inaudible) I'm sorry. Go ahead.

22 MS. THOMPSON: Pardon me. Mr. Chairman, Senator
23 Oban, I think that was drafted to keep the organization
24 provisions together, but that could be moved to the other
25 section if the Committee so desires.

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Page 24**

1 REP. DEVLIN: I'm sorry. Representative Monson.

2 REP. MONSON: Thank you, Mr. Chairman.

3 When I look at the section -- subsection 3 up here,
4 I see that there could be another issue, and that is that if
5 you have, in my case, District 10 had bylaws. District 19,
6 which has now added, I mean, 7,000 of those people from 19
7 are now in -- actually, 19 is the existing number. Whose
8 bylaws do you go by? And are there any bylaws -- they're
9 going to have to be reassessed by a new committee. So, I
10 mean, we've got an issue with are there bylaws even in
11 effect?

12 REP. DEVLIN: Senator Bekkedahl.

13 SEN. BEKKEDAHL: Thank you, Mr. Chairman.

14 Well, it's been my take that this offers the
15 opportunity if a district needs the assistance to
16 reorganize, they can use this bill to do that. I don't
17 think it forces anybody to do anything. If there's a way to
18 do it within your district, I think we all prefer that.

19 I agree with Representative Boschee that we stay
20 out of the business of the parties and statute as much as we
21 can. This is just another tool that could facilitate,
22 especially when we look at organization, new districts, I
23 think this is more helpful than hurtful.

24 REP. DEVLIN: I know the Senate Appropriations
25 people started meeting three minutes ago, so what is the

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 25

1 Committee's wishes?

2 (background)

3 REP. DEVLIN: Okay, so we've got the motion from
4 Senator Poolman.

5 All those in favor, signify by saying "aye."

6 ALL IN UNISON: Aye.

7 REP. DEVLIN: All right. Opposed, "nay."

8 Okay, so that went fast. Now, we need a motion to
9 pass the amended bill.

10 SEN. BEKKEDAHL: So moved, Mr. Chairman.

11 REP. NATHE: Second.

12 REP. DEVLIN: Any discussion? All those in -- oh,
13 no, I suppose you'd like us to poll the Committee, wouldn't
14 you? That's fine. Then we poll the Committee.

15 UNKNOWN FEMALE: Chairman Devlin?

16 REP. DEVLIN: Yes.

17 UNKNOWN FEMALE: Vice Chairman Holmberg?

18 SEN. HOLMBERG: Yes.

19 UNKNOWN FEMALE: Representative Bellew?

20 REP. BELLEW: No.

21 UNKNOWN FEMALE: Representative Boschee?

22 REP. BOSCHEE: Yes.

23 UNKNOWN FEMALE: Representative Headland?

24 REP. HEADLAND: Yes.

25 UNKNOWN FEMALE: Representative Lefor?

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 26

1 REP. LEFOR: Yes.

2 UNKNOWN FEMALE: Representative Monson?

3 REP. MONSON: Yes.

4 UNKNOWN FEMALE: Representative Nathe?

5 REP. NATHE: Yes.

6 UNKNOWN FEMALE: Representative Schauer?

7 REP. SCHAUER: Yes.

8 UNKNOWN FEMALE: Representative -- or Senator

9 Bekkedahl?

10 SEN. BEKKEDAHL: Aye.

11 UNKNOWN FEMALE: Senator Burckhard?

12 SEN. BURCKHARD: Aye.

13 UNKNOWN FEMALE: Senator Erbele?

14 SEN. ERBELE: Aye.

15 UNKNOWN FEMALE: Senator Klein?

16 SEN. KLEIN: Aye.

17 UNKNOWN FEMALE: Senator Oban?

18 SEN. OBAN: Yes.

19 UNKNOWN FEMALE: Senator Poolman?

20 SEN. POOLMAN: Aye.

21 UNKNOWN FEMALE: Senator Sorvaag?

22 SEN. SORVAAG: Aye.

23 REP. DEVLIN: That motion carried.

24 That should conclude the work of this Committee

25 unless Delayed Bills does something else with us or

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 27

1 whatever.

2 So, Representative Lefor, I assume you'll carry
3 1513 on the House floor, or I will assign you to do that.

4 Unless there's other volunteers, I will assign --
5 or I will carry House Bill 1504, the Redistricting Bill, on
6 the House floor.

7 (to someone in background) No, I'm not going to ask
8 you do to it.

9 (background)

10 (laughter)

11 REP. DEVLIN: I assume that's pretty much
12 unanimous, but.

13 I'm sorry, Senator Bekkedahl?

14 SEN. BEKKEDAHL: Thank you, Mr. Chairman.

15 I think we'd be remiss if, as a Committee, we
16 didn't thank you for your leadership and your -- and getting
17 this process through for us. You have been stellar.

18 (applause)

19 REP. DEVLIN: Well, I thank you. And, like I
20 sincerely said earlier, I appreciate all your hard work, and
21 I've also said more than once that the Legislative Council
22 Staff had a huge job, not only with this, but carrying the
23 Chairman, you know, so I greatly appreciate everything you
24 did, so.

25 (applause)

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 28

1 REP. DEVLIN: We are adjourned. Thank you. (bangs
2 gavel)

3 [END OF RECORDING]

4 [END OF TRANSCRIPT]

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NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Page 29

1 C E R T I F I C A T E P A G E

2

3 I, Angela P. Ferreire, Transcriptionist,
4 do hereby certify that this transcript
5 is a true and accurate record of the
6 electronically recorded proceedings,
7 transcribed under my direction
8 this 9th day of March, 2022.

9



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12 ANGELA P. FERREIRE

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NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: 1..anymore

	21.113.02009	21:12	18:20,24
<u>1</u>	4:8	22:24 23:9	19:1
1 21:11,12	22 12:22		addressed
22:14,23	23 12:22	<u>6</u>	12:13
23:8	16:15	60 15:2	addresses
10 14:13	24 5:20		15:7,8
18:3,9	25 13:8,14,	<u>7</u>	addressing
19:9,10	16,18 15:1	7,000 18:5	12:25
24:5	16:5	24:6	adjourned
1001 13:3	26 5:19		28:1
14:3 19:10	28 15:5	<u>8</u>	adjusted
10:00 12:3	21:24	8 12:14	4:23
11:00 12:5			adopt 22:16
13 12:14	<u>3</u>	<u>9</u>	affect 16:4
14 13:14	3 14:12	9 19:22	agree 18:17
1504 27:5	21:13	20:18	20:2 24:19
1513 12:9,	22:25		ahead 7:4
14 14:2	23:8,10,12	<u>A</u>	17:5 23:21
27:3	24:3		amended
16.1-03-07	33 4:13	ability 22:2	10:3,5
22:11	36 4:25	absolutely	13:4 25:9
16.1-03-17		12:18	amendment
23:19	<u>4</u>	acted 13:5	3:21 4:7,
19 18:4,5,7	4 21:13	activists	8,14 5:3,
24:5,6,7	22:25	16:20	14 7:7,10
	23:8,10,12	actual 8:8	8:8 18:20
<u>2</u>	40 5:19		22:17
2 14:12	16:19	add 19:11	amendments
23:8	47 13:13	added 18:23	7:8
2020 13:7,9		24:6	amount 13:25
14:13	<u>5</u>	address	anymore
2023 13:22	5 6:4 20:6	15:16,25	15:12
		17:23	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: apologize..bylaws

apologize	4	20:13	24:16 25:9
21:21		21:5,7	27:5
apparent	12:8	23:10 25:2	Bills 26:25
7:25 8:6,		27:7,9	
24	assistance	ball 12:20	block 4:22
appeared 7:3	24:15	20:21	blocks 4:17
applause	Assistant	bangs 2:1	border 4:13
27:18,25	7:15	28:1	Boschee
applied 7:10	assume 27:2,	basically	2:14,15
	11	13:23	9:16
apply 15:2	at-large		10:15,16
	15:13	Bekkedahl	16:8,9
appoint		3:1,2 4:12	17:6 18:17
12:15,20	August 11:23	5:1,2	20:25
13:24		11:2,3	24:19
19:4,14	authority	14:9	25:21,22
20:8,18,19	7:17 15:19	17:15,17	
appoints	17:10	24:12,13	boundaries
15:3	Avenue 5:22,	25:10	4:24 16:22
Appropriations	24,25 6:1,	26:9,10	bounds 3:20
24:24	2,6,8	27:13,14	4:15,20
approval 5:3	aye 5:9,10	Bellew 2:12,	briefly 7:19
approve 9:21	7:12,13	13 5:12,	Burckhard
approximately	11:3,5,7,	16,18	3:3,4
13:14	9,15 25:5,	6:14,16	6:18,19
April 11:22	6 26:10,	10:13,14	9:23,24
	12,14,16,	25:19,20	11:4,5
area 4:17,	20,22	big 6:23	26:11,12
21,24			
12:19,24	B	bill 5:15,	business
13:7 18:5		20 6:11	16:25
aren't 12:12	back 2:2	7:10 8:5,	20:21
	16:9 18:13	23 9:19,21	24:20
assembly	20:25	11:19	busy 22:21
19:13 20:7	background	12:8,14	bylaws 21:15
assign 27:3,	3:24 4:1,4	13:4,16,23	24:5,8,10
	15:23 16:3	14:2 15:7,	
	17:3 18:11	16 22:8,23	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: call..Council

	chairman	city 4:10	7:9 9:7
C	2:8,10		25:1
call 2:1	3:19 5:2,	clarification	
4:22	18 6:16,22	21:17	complete
careful 9:5	7:1 10:9,	clarifications	12:5
	11 12:10	7:22	completely
carried 5:11	14:3,11,24	clarify 7:23	16:14
7:14 26:23	15:6,15	9:3	concern
carry 18:24	16:4,9	Code 8:23	16:14
19:17	17:1,6,17	12:13,18	17:18,23
20:10	18:2,14	14:14 17:8	18:21,25
27:2,5	19:5,18		concerned
carrying	20:1,15,24	comfortable	17:12
27:22	21:6,10,	8:6	20:20
case 15:1,	14,20,23	committee	concerns
4,10,20	22:9,19	2:2 3:20	5:19 18:18
21:24 24:5	23:4,14,	5:3 8:1,6	19:1
cases 19:3	20,22	9:1,4,11,	conclude
catch 19:19	24:2,13	14 10:8	26:24
category	25:10,15,	11:21 13:1	conflict
18:9	17 27:14,	14:13	23:9,15
census 4:17,	23	15:4,11	conflicts
22 13:9	chairs	16:1,6	21:11,12
centerline	13:20,24	17:10,20,	22:24
5:21 6:1,3	15:9	21 18:6,24	consideration
chair 12:15,	change 4:10,	19:2,12,16	9:22
16,20	13 6:10,	20:2,10	considered
13:24	17,25 7:5	22:1,7	18:8 20:19
15:3,18	8:12 16:16	23:5,25	correct 3:18
16:1 17:12	19:8 22:5	24:9	14:19
18:22	changed 18:3	25:13,14	correction
19:4,14,15	chapter	26:24	5:12 7:2
20:8,9,19,	15:25	27:15	Council 6:9
22 21:3,17	20:11	committees	11:25
	Christmas	12:18	
	13:4	13:20	
		Committee's	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: couple..entire

19:21	15:22,24	11,12,21	
27:21	16:8 17:2,	16:7,15,18	E
couple 7:16	5,15,25	17:9,20,21	earlier 7:16
15:13	18:12	18:3,4,7,	12:11
creation	19:6,19	8,9,21,22,	27:20
21:11	20:16	24 19:1,	early 11:22
22:24	21:9,19,21	11,12,15,	east 6:7
	22:16	16,23	effect 24:11
	24:1,12,24	20:4,8,9,	effective
D	25:3,7,12,	10,18	19:14 20:7
	15,16	21:15,24	elected 7:25
deal 6:24	26:23	22:6 24:5,	8:2 13:20
decide 21:3	27:11,19	15,18	21:25
dedicated	28:1	districts	eliminated
22:12 23:2	didn't 27:16	4:11 12:17	5:24
Delayed	direct 23:15	15:8 16:5	eluded 22:5
26:25	direction	17:11	Emily 3:16
Deputy 7:15	18:19	21:25	4:6 7:19
design 14:16	discussing	22:12	19:25
desires	7:20	24:22	22:21
23:25	discussion	district's	23:16
determined	5:7 6:20	13:8	encompass
13:9 14:13	9:25 14:8	doesn't 3:25	4:25 8:25
Devlin 2:1,	25:12	15:16	9:8
7,8,9	Discussions	17:10	encompasses
3:15,23,25	20:16	don't 8:8,11	8:21
4:3,6 5:1,	district	11:23 12:5	encompassing
4,6,11	4:13,25	14:25	18:5
6:13,17,19	5:19 6:4,	15:6,21	end 6:5,7
7:11,14	5,7 8:22	16:22	12:25
8:10,16	9:1 12:15,	22:4,9	28:3,4
9:4,10,14,	16,18,21,	23:14	entire 19:2
24 10:5,7,	23,24	24:16	
9,10 11:17	13:10,20	drafted 9:22	
14:4,6,8,	15:1,3,5,	10:2 23:23	
15,21,23		drawn 16:7	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Index: Erbele..highlighted**

Erbele 3:5,6	8:6	figuring	giving 15:18
11:6,7		13:18	21:1,2
14:22,23,	extending	16:12	Good 7:11
24 15:6,	4:12		19:19
10,15,20		filled 21:15	
16:4 18:20	<hr/> F <hr/>	final 7:10	government
26:13,14	facilitate	find 16:21	16:23
Erbele's	24:21	fine 21:1	great 17:22
15:25	fairly 7:25	25:14	greatly
17:18	8:5,24	floor 27:3,6	27:23
established	fall 18:8	folks 16:21	grew 15:2
17:19	Fargo 18:9,	forces 24:17	16:5
18:22	10	form 6:15	growing 15:1
19:15,22	fast 25:8	formal 4:14	16:19
20:9	favor 5:8	forward 5:15	guess 16:9
evening	7:12 25:5	9:20,22	<hr/> H <hr/>
12:3,5	FEMALE 2:6,	13:21	handed 13:3
excuse 17:8	8,10,12,	20:22	hard 11:20,
20:3	14,16,18,	22:2,7	24 27:20
Executive	20,22,24	Fourth 5:21	Headland
15:4 16:6	3:1,3,5,7,	6:1,2,6,8	2:16,17
18:6 19:2	9,11,13	fully 8:10	10:17,18
22:1,7	10:9,11,		21:17,20,
existing	13,15,17,	<hr/> G <hr/>	21,23
16:15	19,21,23,	gavel 2:1	25:23,24
21:13 22:7	25 11:2,4,	28:2	held 3:17
24:7	6,8,10,12,	geographic	helpful
expand 15:18	14,16	13:7	24:23
explain 5:16	25:15,17,	geographical	he'll 2:4
12:9	19,21,23,	12:24	he's 17:22
explicitly	25 26:2,4,	give 6:9	highlighted
8:5	6,8,11,13,	17:10	4:21
express 9:2	15,17,19,		
expressing	21		
	figure 16:21		

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Index: highlighting..legislative**

highlighting 4:18	incorporate 7:6	20:12	20:10
Holmberg 2:10,11 9:21 10:4, 11,12 25:17,18	information 8:8	I'm 9:18 13:4 16:2, 18 19:10 20:20 21:9,11 22:2,23 23:5,21 24:1 27:7, 13	language 3:20 4:15 6:10,25 8:8,11 20:2,15 21:12 22:6,10, 14,24 23:1,15,17
hope 17:23	intersection 5:21,25 6:2	I've 11:21 27:21	large 13:19
House 7:24 9:22 12:14 14:2 27:3, 5,6	involvement 15:9	<hr/> J <hr/>	largely 15:12
huge 27:22	isn't 2:3 8:13	job 27:22	laughter 4:2,5 27:10
hurtful 24:23	issue 15:25 17:19 24:4,10	joined 8:20	leadership 27:16
<hr/> I <hr/>	item 8:15 9:1	Judson 3:21 4:9,10	leave 17:13 19:21
idea 13:9 19:20	it's 5:13, 19 6:8,10, 23,24 8:6, 10 9:2 10:4 19:1, 2 20:22 21:1,8 22:21 23:18 24:14	<hr/> K <hr/>	Lefor 2:18, 19 10:19, 20 12:9,10 14:19 15:6,15 17:1,4,6 19:5,6,7, 18,20 20:12,17, 24 21:8 25:25 26:1 27:2
identifiable 4:24	identified 5:23	kind 4:17, 18 7:2 19:21 23:6	
identities 16:16	image 4:19	Klein 3:7,8 6:21,22 7:1 11:8,9 26:15,16	
immediately 12:3	inaudible 3:22 23:13,21	Kreidt 4:9	
include 7:4	I'd 12:4 16:12 18:18 19:21	<hr/> L <hr/>	
	I'll 4:3	lacks 17:20, 21 18:23 19:12,16	legislative 8:22 11:25 19:13 20:7

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Index: legislators..opportunity**

27:21	March 11:22	motion 5:11	non-profit
legislators	Mary 23:5	6:15 7:14	16:10
21:25	meeting	10:2 20:12	Northwest
legislature	24:25	22:16	5:22,24,25
7:24 9:20	meetings	25:3,8	6:1,2,3,6,
16:23	12:12	26:23	7,8
let's 23:18	meets 14:14	move 5:2	notepad 9:17
lines 12:22	members 3:19	6:16,17	notice 12:3
live 16:21	7:24 8:1	8:14 9:19,	13:2
living 16:7	9:14 15:13	21 14:5	number 8:19
local 16:20	16:1 20:1	20:14,22	12:25
longer 15:5	22:8 23:4	22:2,4,7	13:10 18:3
16:7	mention 12:2	moved 23:24	24:7
looked 6:24	mentioned	25:10	numbered 4:8
13:12	4:12,16	muddies 22:8	numbers
lost 16:6	8:18		11:23
lot 11:24	merged 7:9	N	
17:8,9	metes 3:20	Nathe 2:22,	O
lowers 13:25	4:15,20	23 5:5,6	Oban 3:9,10
	middle 4:19	10:23,24	11:10,11
	mine 15:2	14:10,11,	21:6,9,10
	minutes	16,20	22:5,9,19,
	24:25	21:19	21 23:8,
	Monson 2:3,	25:11	10,13,16,
	20,21	26:4,5	21,23
	10:1,2,6,	nay 5:11	26:17,18
	21,22	7:14 25:7	Oban's 22:17
	17:16,25	necessarily	odd 4:17
	18:2 24:1,	8:9	offers 24:14
	2 26:2,3	needed 8:4,9	office 21:14
makes 17:23	months 13:21	nervous 9:18	operate
19:24	morning 7:7	newly 17:19,	16:11
	12:4	20 18:22	opportunity
map 3:16		19:15 20:9	
6:10			

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: Oppose..question

21:1,3	17:12	19:7,9	16:10,24
24:15	18:21	20:3,14	problem 6:4
Oppose 5:11	19:3,14,15	25:4	7:20
7:14	20:8,19	26:19,20	problems
opposed	21:3,15	Poolman's	9:10
20:21 25:7	pass 14:5	19:24	proceed 4:6
order 2:2	25:9	20:12	process 12:6
organization	passed 7:7,8	22:17	27:17
16:13	pattern 4:18	population	proposal
18:22	pen 9:17	13:7,8,19	6:12
19:15	people 16:21	positions	proposed
20:9,19	18:5 24:6,	16:22	20:2
22:11	25	possibly	provide
23:23	percent	4:12 20:3	18:19
24:22	13:8,14,	power 17:8	provided
organizations	16,18 15:2	pre-	8:21 21:15
16:10,24	16:6,19	redistricting	provision
organize	person 19:4	12:24	15:7
12:16	phonetic	precedent	provisions
15:21	18:16	16:17	13:15
<hr/>	place 13:11	precinct	15:24
P	14:1	8:20,21	23:24
Pardon 23:22	point 9:19	precincts	pull 23:5
part 4:20	18:16	9:8	put 16:12
16:16 22:1	political	prefer 24:18	22:10
parties	16:20	presented	23:17
16:20	poll 10:8	5:3,15	putting
18:18	25:13,14	president	14:17
24:20	Poolman	15:14	<hr/>
parts 8:20	3:11,12	pretty 13:19	Q
party 12:15,	11:12,13	18:25	<hr/>
16,20	14:4,5,7	27:11	question
13:24	18:1,12,14	private	7:17 22:18
15:8,18			

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: questions..revision

23:16	redistricting	9:4,10,14,	6:14 9:16
questions	2:2 11:21	24 10:2,5,	10:1,13,
5:7 6:13,	19:13 20:7	6,7,10,14,	15,17,19,
20 7:11,16	22:10,13	16,18,20,	21,23,25
8:13 14:4,	23:1,3,17,	22,24	12:8 14:10
10,21	19 27:5	11:1,17	15:22 16:8
20:16	reduce 13:10	12:10	17:6,16,25
quote 12:23,	referring	14:4,6,8,	18:17 19:6
25 13:7	10:3	11,15,16,	20:3,17,
_____	refers 12:23	19,20,21,	24,25
R	_____	23 15:6,	21:19,21
_____	relevant	15,22,24	24:1,19
raised 7:15	23:5	16:8,9	25:19,21,
reached 7:21	remaining	17:1,2,4,	23,25
reaching	15:13	5,6,15,25	26:2,4,6,8
9:17	remiss 27:15	18:2,12	27:2
read 14:25	reorganization	19:5,6,7,	research
17:19	23:3	18,19,20	17:8
19:12 20:6	reorganization	20:12,16,	reside 18:8
reads 5:20	s 13:10,13,	17,24	responsibiliti
reassessed	25	21:8,9,17,	es 19:17
24:9	reorganize	19,20,21,	20:11
recall 12:11	15:11	23 22:16	responsibility
received 4:8	16:19	24:1,2,12,	17:9
recommendation	24:16	24 25:3,7,	review 9:5
18:15	REP 2:1,7,	11,12,16,	reviewed
record 8:7	9,13,15,	20,22,24	7:16
9:3	17,19,21,	26:1,3,5,	reviewing
recorded 4:3	23,25	7,23	9:6
RECORDING	3:15,23,25	27:11,19	revised
28:3	4:3,6 5:1,	28:1	17:21
red 4:18,24	4,5,6,11,	repeat 22:20	19:23
	18 6:13,	Representative	revision
	16,17,19	2:3,12,14,	20:4
	7:11,14	16,18,20,	
	8:10,16	22,24 4:9	
		5:6,12,16	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: revisit..start

revisit	3:2,4,6,8,	20:3,12	Sixteen
14:14	10,12,14	21:9 22:5,	11:16,17
rivers 4:23	5:2 6:18,	16,17,19	Sixteenth
roads 4:23	22 9:21,23	23:8,22	6:3
7:3	10:4,12	24:12 25:4	slept 12:6
role 16:23	11:3,5,7,	26:8,11,	small 3:21
roll 2:5	9,11,13,15	13,15,17,	4:10 20:4
rolling	14:5,7,22,	19,21	software 7:3
12:21	24 15:10,	27:13	someplace
rule 15:2	20 16:4	sense 17:23	18:4
rules 21:16	17:17	19:24	sort 21:16
run 8:2	18:14 19:9	separate	Sorvaag
16:13	20:14	8:22 23:2	3:13,14
<hr/>	21:6,10	setting	11:14,15
s	22:9,21	16:17	26:21,22
<hr/>	23:10,13,	shaded 4:24	southern
Schauer	16,21	shape 4:17	4:13
2:24,25	24:13	shaped 4:18	speak 12:21
10:25 11:1	25:10,18	share 12:23	specific
20:17,24	26:10,12,	shifting	20:5 22:12
26:6,7	14,16,18,	16:15	specifically
Seconded 5:6	20,22	signify 5:8	12:13
secretary	27:14	7:12 25:5	23:19
7:15,21	Senate 24:24	silent 12:18	spend 16:12
8:4,7,17	Senator 3:1,	simply 7:4	split 4:10
15:13	3,5,7,9,	18:21	squiggly
section 8:22	11,13 4:12	19:10	4:18
12:14	5:1 6:19,	sincerely	Staff 5:3,14
21:10,12,	21 7:1	27:20	6:23 8:1
13 22:11,	9:24 11:2,	single 8:20	11:25
12,14,23,	4,6,8,10,	situation	27:22
25 23:2,	12,14	16:18	start 11:22
18,25 24:3	14:4,9,23		
SEN 2:11	15:6,15,25		
	17:15,18		
	18:1,12		
	19:7,23		

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING
Meeting on 11/09/2021 **Index: started..UNKNOWN**

started 9:17 24:25	submit 14:2	8:23 9:2,7 12:19	tool 24:21
starting 12:14	20:6 21:12 22:24 24:3	13:16,23 16:19	total 7:9
starts 5:20	subsections	17:11,12, 13 21:3	touch 7:19
state 7:15, 21 8:4,7, 17 12:15, 20 13:24 15:3,8,18 16:11,16, 23 17:10, 12 18:18 19:3,14 20:8 21:3	21:13 22:25	22:6,11 25:14	township 9:8
	sum 7:9	27:11	townships 8:18,19,20
	Sunday 12:3, 5	there's 8:15 21:16 22:6 23:15	TRANSCRIPT 28:4
	suppose 2:5 25:13	24:17 27:4	treasurer 15:14
	<hr/> T <hr/>	they're 22:3 24:8	tree 13:4
statement 5:23	talk 20:18	they've 6:24 16:6 22:7	tweaks 3:21
statute 16:13 23:6 24:20	talked 12:12	thing 7:18 17:7	<hr/> U <hr/>
stay 20:20 24:19	technical 7:2,4,6	things 12:12	unanimous 27:12
stayed 13:19	telling 16:11,24 18:18 21:2	THOMPSON 3:19 4:7 7:1,21	understand 14:25 16:14 17:18,22 22:10
stellar 27:17	tells 21:16	8:15,17 9:7,13	UNISON 5:10 7:13 25:6
street 5:13 6:3	temporary 12:15 13:24 15:3 19:4,14 20:8,18	16:1 20:1 22:19	UNKNOWN 2:6, 8,10,12, 14,16,18, 20,22,24 3:1,3,5,7, 9,11,13 10:9,11, 13,15,17, 19,21,23, 25 11:2,4,
subdistrict 8:2,3,25 9:9	term 13:22	23:4,12, 14,20,22	
subdistricts 7:24	terms 16:17 18:20	thought 12:4 20:23	
subdivisions 23:7	that's 4:3 6:12,22,23	threshold 13:15	
		time 16:12	

NORTH DAKOTA LEGISLATIVE ASSEMBLY REDISTRICTING COMMITTEE MEETING

Meeting on 11/09/2021

Index: unwilling..you're

6,8,10,12, 14,16 25:15,17, 19,21,23, 25 26:2,4, 6,8,11,13, 15,17,19, 21	we'd 15:21 27:15 we'll 2:1 7:6 18:12 we're 8:13 9:19 16:16 we've 24:10 25:3	wouldn't 14:17 25:13 would've 12:2 write 6:9 <hr/> Y <hr/>
unwilling 22:3 <hr/> V <hr/>	whispers 11:16 Willis 18:10	years 14:13 yesterday 3:17 4:9, 16 6:4 7:8,16
vacancy 21:14	wiped 19:2	you'd 25:13
vacant 21:14	wishes 9:7 25:1	you'll 13:2, 6 27:2
verbiage 19:24	wondering 8:4 21:10 22:23 23:8	you're 4:19 16:15 23:8
version 13:2,3 14:3 19:10	won't 12:2	
vice 2:10 10:11 15:14 25:17	wording 19:21 words 14:25 17:19 18:23 19:11	
volunteers 27:4 <hr/> W <hr/>	work 11:20, 24 16:20 26:24 27:20	
wanted 7:23 15:16	workable 8:10	
Washburn 7:8	working 6:23	
west 5:25 6:1,5	worms 22:15	

EXHIBIT 20

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as Governor
of the State of North Dakota, et al.,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

DECLARATION TO ACCOMPANY THE EXPERT REPORT OF WESTON MCCOOL

Pursuant to 28 U.S.C. § 1746, I, Weston McCool, declare that:

My name is Weston McCool. I am an expert witness designated by Plaintiffs in the above referenced case now pending in the United States District Court for the District of North Dakota.

A true and correct copy of my curriculum vitae is attached hereto as a part of my report. The following report, a true and correct copy of which is attached and incorporated herein for all purposes, is a summary of my opinions and conclusions. The materials I relied upon to develop my analyses and opinions are cited therein and/or produced herewith for all counsel.

The court testimony and publications I am required to disclose are described in my attached report and/or curriculum vitae.

My reasonable and necessary hourly rate for my time in this case is \$200.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 30th day of November, 2022

A handwritten signature in black ink, appearing to read "Weston McCool". The signature is written in a cursive style with some overlapping letters.

Weston McCool, Ph.D

Expert Witness Report
In the case of
Turtle Mountain Band of Chippewa Indians v. Jaeger
U.S. District Court for the District of North Dakota, Eastern Division
prepared by:

Weston C. McCool, Ph.D.
Department of Anthropology
University of Utah
November 2022

OUTLINE OF THE REPORT

Summary of Findings

I. Introduction

1. Qualifications
2. Quantitative Socioeconomic Methods

II. The Senate Factors Applied to North Dakota

3. The extent to which minority group members bear the effects of discrimination in areas such as income, education, employment, and health, which hinder their ability to participate effectively in the political process.

- a. Income
- b. Poverty
- c. Education
- d. Health Insurance Coverage
- e. Computer Ownership and Internet Access
- f. Housing
- g. Employment

III. Conclusion

Summary of Findings:

Seven socioeconomic variables were selected for this analysis: income, poverty, education, health insurance coverage, computer ownership and internet access, home ownership, and employment (see results in Table 1). The data for these variables were compared for: (1) AIAN residents of Rolette County versus White residents of Rolette County, (2) AIAN residents of Benson County versus White residents of Benson County, and (3) AIAN residents of Ramsey County versus White residents of Ramsey County, for a total 21 separate quantitative socioeconomic tests. In all cases

where statistics were compiled, the AIAN population is statistically significantly at a disadvantage when compared to Whites. AIAN residents earn substantially less household income compared to Whites, AIAN residents are significantly more likely to earn an income under the poverty line compared to Whites, they are overrepresented in lower levels of educational attainment, and underrepresented in higher levels of educational attainment, AIAN households are significantly less likely to own a computer or have access to broadband internet compared to Whites, they are less likely to own their home, less likely to have health insurance coverage, and more likely to be unemployed. These race-based disparities are, in a word, systemic. For every socioeconomic variable used, AIAN populations are systemically and significantly at a socioeconomic disadvantage compared to their White neighbors, which hinders their ability to participate in the political process (Senate Report 1982).

I. INTRODUCTION

1. Qualifications

I am a National Science Foundation Postdoctoral Research Fellow in the Anthropology Department at the University of Utah. My formal education includes a BS (2009) in Anthropology from the University of Utah, two MAs (2013, 2015) in Archaeology from the University of Utah and University of California, Santa Barbara, respectively, and a Ph.D. (2020) in Archaeology from the University of California, Santa Barbara.

I have extensive experience in quantitative methods, including spatial, environmental, socioeconomic, demographic, and statistical modeling including the use of geospatial (GIS) methods. My formal research program focuses on investigating the relationship between changing social and environmental conditions and human decision making, particularly as it relates to

human conflict and migration. My research has produced a dozen published articles in major peer-reviewed scientific journals such as *Nature*, *Nature Communications*, *Proceedings of the National Academy of the Sciences*, *Nature Scientific Reports*, *PLOS ONE*, *The Journal of Biological Anthropology*, and more, all of which involve social, demographic, and/or spatial modeling. I have been hired by the plaintiffs for this case and I am compensated at the rate of \$200/hour. The results and conclusions I reach in this report are mine alone, are not related to or endorsed by the University where I have an appointment and were reached through an independent process of research and inquiry.

2. Quantitative Socioeconomic Methods

All data used for the quantitative socioeconomic analysis were derived from (1) the 2015-2019 five-year American Community Survey (ACS) for North Dakota, and (2) the Kaiser Family Foundation's State Health Facts Report (for the healthcare avoidance due to cost variable). ACS racial variables in the socioeconomic analysis are American Indian and Alaskan Native-alone (henceforth, AIAN) and non-Hispanic White-alone (henceforth, White). These demographic variables are preferable to the "race in combination with one or more other races" variable as it includes White and AIAN individuals that would either have to be dropped from the analysis or would be counted twice as they would be lumped into both racial categories for the socioeconomic analyses. Estimates in this analysis incorporate the margin of errors (MOE) given in the ACS detailed tables. All variable estimates include the MOE by listing the upper and lower estimates, the MOE range, and the differences in the MOE ranges between AIAN and White estimates. This "MOE difference" variable compares errors between AIAN and White estimates to determine whether the comparative errors wash out. All statistical analyses were conducted in the R

programming environment (R Core Team 2020), which is an open-source programming language used as a statistical software and data analysis tool.

The quantitative methods in this report rely on descriptive and inferential statistics to present data findings and assess whether observed differences in socioeconomic factors are statistically significant and not due to the vagaries of data sampling or random error. The descriptive and inferential statistics used here are standard practice in quantitative analysis and common in every introductory statistics course.

Statistical tests are warranted for the socioeconomic analysis because they evaluate whether the census survey data (samples) are representative of the population at large – the demographic we are interested in evaluating. Without statistical tests we cannot determine whether the observed differences or similarities between the sampled data are representative of some characteristic of the population as a whole and not due to sampling error. Statistical significance is defined here using the established social science alpha parameter of $\alpha < 0.05$ (McKillup 2006). In other words, for a test to be considered statistically significant it must have less than a 5% probability that the observed effect is the result of sampling error. When a statistical test used in this report yields a p-value (the probability of attaining the observed results) of < 0.05 , we can conclude that the observed effect is representative of the population as a whole and reject the null hypothesis. For each of the tests in this report, the null hypothesis is that there are no differences in the socioeconomic variables based on race.

We rely on one type of inferential statistical test: The Chi Squared Test of Independence, which produces a statistic that measures the difference between the observed and expected frequencies of an outcome for a set of variables to determine whether they are independent of one another. For example, if a county consists of 50 White residents and 50 AIAN residents, and

unemployment is 50%, we expect 25 White residents (50%) and 25 AIAN residents (50%) to be unemployed, these are our “expected” values. If in fact only 10 White residents (10%) are unemployed while 40 AIAN residents (80%) are unemployed (or vice-versa), we can see that the “observed” values do not match our expected values. The Chi Square Test of Independence tests whether the differences between expected and observed values are statistically significantly different, and what the probability is that the difference is due to sampling error.

II. THE SENATE FACTORS APPLIED TO NORTH DAKOTA

3. Socioeconomic Analysis

1. Rolette County

Seven variables are evaluated in this socioeconomic analysis. As the MOE difference between AIAN population and the Rolette County White population is small for each of the seven analyses (Table 1), we conduct statistical tests only on the primary variable estimates, rather than the lower and upper estimates.

1a. Rolette County and the Turtle Mountain Reservation Demography

The total estimated population for the Turtle Mountain Reservation is 9,247, while the total population estimate for the broader Rolette County is 14,511, with 11,325 AIAN residents and 2,633 White residents (Figure 1).

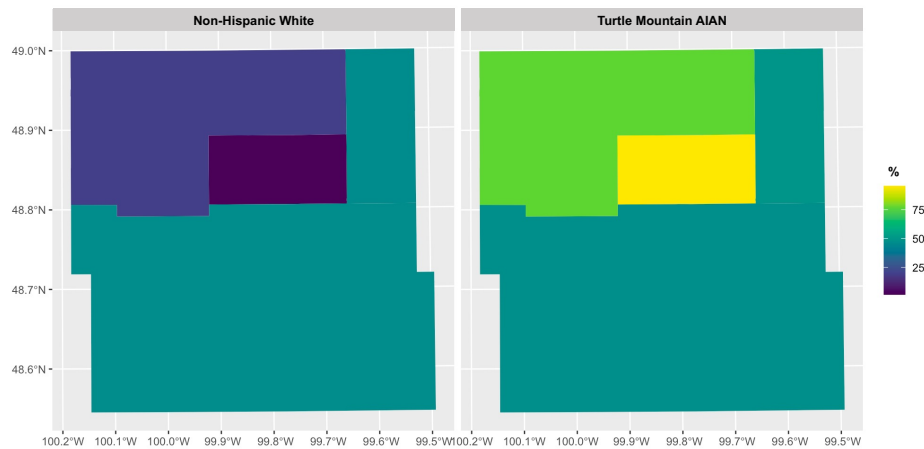


Figure 1. A Census Tract map of the 2019 5-year ACS racial distribution of AIAN and White population in Rolette County, North Dakota. The map includes the Turtle Mountain Reservation population.

1b. Median Household Income

The median income for AIAN households in Rolette County is \$37,750, while median household income for Whites is \$60,556. These data show a large race-based discrepancy in income, with White households earning substantially more than AIAN households.

1c. Poverty

In Rolette County, 31.5% of AIAN households are below the poverty line compared to 6.0% of White households. This difference is statistically significant ($X^2 = 694.37$, $p\text{-value} < 0.001$), with AIAN households significantly overrepresented below the poverty line compared to Whites. Put another way, we have greater than 99.9% confidence that that the sample of income data is representative of the population as a whole and that the null hypothesis (no relationship between race and poverty) can be rejected. A similar degree of confidence is present in all subsequent statistical tests.

1d. Educational Attainment

For the AIAN population 37.3% of adults 25-years and older have a high school diploma or did not complete high school, compared to 40% of Whites. 17.3% of the AIAN population earned a

college degree, compared to 26.5% of Whites. There are statistically significant differences in educational attainment by race, with the AIAN population significantly ($X^2 = 165.85$, p-value <0.001) overrepresented in lower educational attainment categories and underrepresented in higher educational attainment categories when compared to Whites.

1e. Computer Ownership and Broadband Internet Access

In the AIAN community, 86.5% of households own a computer, while 72.2% of households have access to broadband internet. For Rolette White households, 89.2% own a computer and 76.1% have access to broadband internet. Both differences are statistically significant (computer ownership $X^2 = 13.339$, p-value = 0.0003; Internet Access $X^2 = 16.172$, p-value <0.001), with AIAN households having reduced access to computers and the internet compared to Whites.

1f. Home Ownership, Value and Rent Payments

Home ownership also shows substantial bias, as 69.3% of the AIAN population owns a home compared to 78.4% of the Rolette White population. This difference is statistically significant ($X^2 = 33.734$, p-value <0.001), with the AIAN population significantly underrepresented in home ownership compared to Rolette Whites.

1g. Health Insurance Coverage

In Rolette County, 29.2% of AIAN residents do not have health insurance coverage, compared to 7.7% of Whites in Rolette County. This difference is statistically significant ($X^2 = 510.01$, p-value <0.001), with AIAN residents significantly less likely to have health insurance coverage relative to Whites. Native Americans can also access free or reduced cost healthcare without health insurance through Indian Health Service (IHS) programs. But statewide data from North Dakota suggest that IHS is not making up for disparate access to health insurance coverage among Native Americans and Whites. Despite access to IHS services, AIAN in North Dakota, who are over

nearly four times more likely than whites to be uninsured, are also over three times more likely than whites to report that they avoided care due to cost, with 3.9% of Whites reporting not seeing a doctor because of cost, compared to 13.9% of AIAN according to the Kaiser Family Foundation’s State Health Facts report. While these are state-wide data, they are the best available data on health care avoidance due to cost.

1h. Employment

Of those in the labor pool, 10.3% of AIAN population is unemployed compared to 2.5% of the Rolette White population. This difference is statistically significant ($X^2 = 80.742$, p-value <0.001), with AIAN residents more likely to be unemployed relative to the White population.

2. Benson County

As with section one of the socioeconomic analysis, I evaluate seven variables.

2a. Benson County Demography

According to the 2019 5-year ACS survey, the total population of Benson County, North Dakota is 6,860. Of those, 2,794 are White and 3,696 are AIAN (Figure 2).

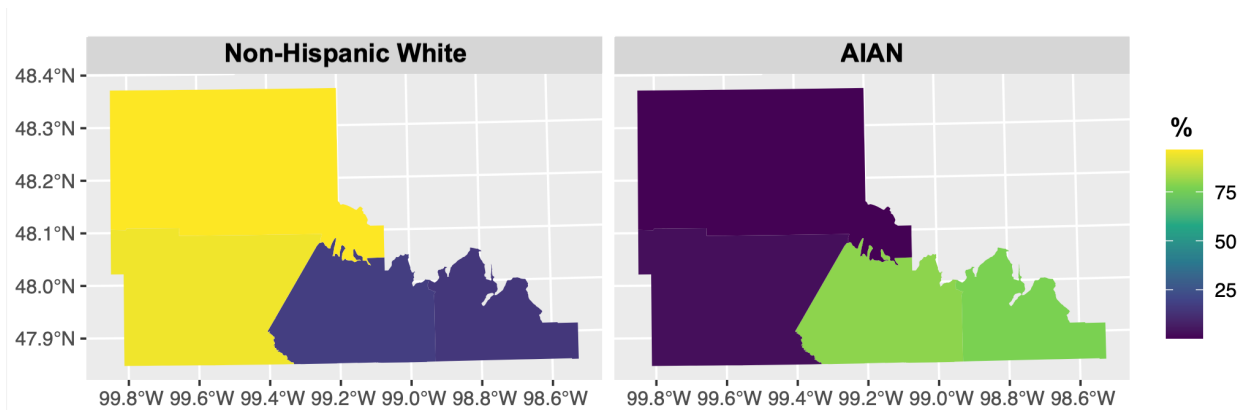


Figure 2. A Census Tract map of the 2019 ACS racial distribution of AIAN and White population in Benson County, North Dakota.

2b. Median Household Income

Median income for AIAN households in \$28,795, compared to \$68,785 for Benson County White households. The MOE difference is negligible, showing a marked income disparity that disadvantages the AIAN community.

2c. Poverty

49.8% of the AIAN population income is below the poverty line, compared to 8.9% of Whites. This difference is statistically significant ($X^2 = 1219.2$, p-value <0.001), showing the AIAN population is overrepresented below the poverty line compared to Whites.

2d. Educational Attainment

54.7% of AIAN adults 25-years and older have attained a high school degree or less, compared to 34.6% of Whites. Only 6% of AIAN adults 25-years and older have earned a college degree, compared to 24.7% of Whites. These differences are statistically significant ($X^2 = 365.36$, p-value <0.001), with AIAN adults significantly underrepresented in higher levels of educational attainment and overrepresented in lower levels of educational attainment compared to Whites.

2e. Computer Ownership and Broadband Internet Access

71.3% of AIAN household own a computer compared to 90.5% of White households. 41.3% of AIAN households have access to broadband internet compared to 78.2% of White households. Both differences are statistically significant (computer ownership $X^2 = 360.55$, p-value <0.001 ; internet access $X^2 = 889.28$, p-value <0.001), with AIAN households having significantly reduced computer ownership and internet access compared to Whites.

2f. Home Ownership

45.3% of AIAN households own their home compared to 82.4% of White households. This difference is statistically significant ($X^2 = 327.23$, p-value <0.001), with the AIAN population

significantly less likely to own their home and significantly more likely to rent their home compared to Whites.

2g. Health Insurance Coverage

15.9% of the AIAN population has no health insurance coverage, compared to 4.4% of Whites. This difference is statistically significant ($X^2 = 215.73$, p-value <0.001), with AIAN individuals significantly less likely to have health insurance coverage compared to Whites. Native Americans can also access free or reduced cost healthcare without health insurance through Indian Health Service (IHS) programs. However, statewide data from North Dakota suggest that IHS is not making up for disparate access to health insurance coverage among Native Americans and Whites. Despite access to IHS services, AIAN in North Dakota, who are over nearly four times more likely than whites to be uninsured, are also over three times more likely than whites to report that they avoided care due to cost, with 3.9% of Whites reporting not seeing a doctor because of cost, compared to 13.9% of AIAN according to the Kaiser Family Foundation's State Health Facts report. While these are state-wide data, they are the best available data on health care avoidance due to cost.

2h. Employment

Of those in the labor pool, 11.3% of the AIAN population is unemployed, compared to 2.9% of Whites. This difference is statistically significant ($X^2 = 71.001$, p-value <0.001), with unemployment significantly higher among the AIAN population compared to Whites.

3. Ramsey County

3a. Ramsey County Demography

According to the 5-year ACS survey, the population of Ramsey County, North Dakota is 11,521. Of these, 9,640 are White-alone and 1,108 are AIAN (Figure 3).

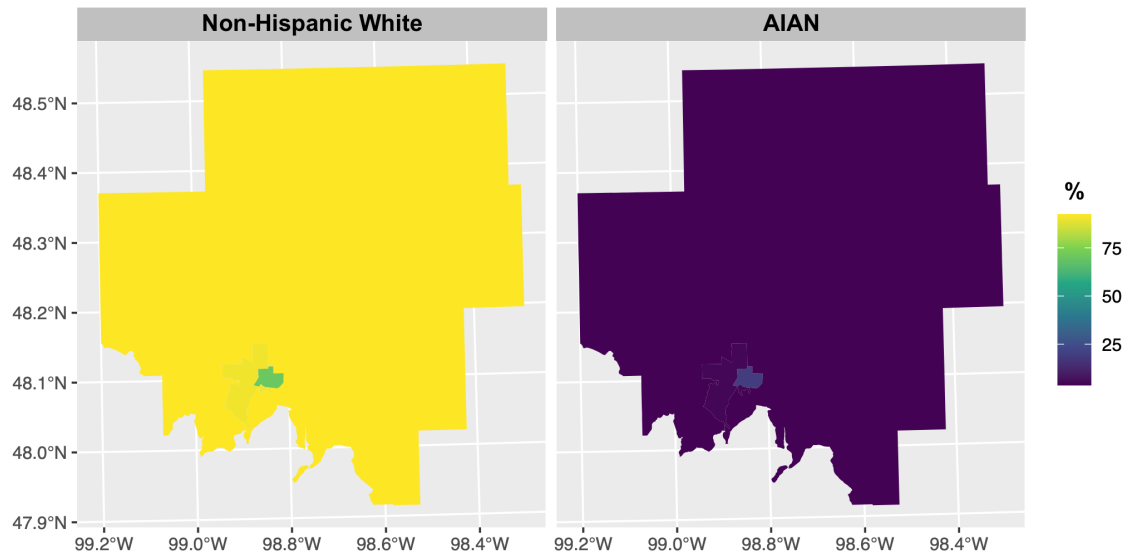


Figure 3. A Census Tract map of the 2019 ACS racial distribution of AIAN and White population in Ramsey County, North Dakota.

3b. Median Household Income

Median income for AIAN households in Ramsey County is \$37,000 compared to \$62,252 for Whites. While the MOE is quite large for these estimates, the lower and upper estimates are not overlapping, meaning that White median household income is substantial higher than AIAN income regardless of the margin of error in the estimates.

3c. Poverty

27.5% of the AIAN household income is under the poverty line, compared to 9% for White households. This difference is statistically significant ($X^2 = 362.95$, $p\text{-value} < 0.001$). White MOE is substantial, it is largely non-overlapping indicating that regardless of the margin of error, poverty is greater among AIAN household compared to White households.

3d. Educational Attainment

55.5% of AIAN adults 25-years and older have attained a high school degree or less, compared to 35% of Whites. Only 6.8% of AIAN adults have attained a college degree compared to 27.6% for Whites. These differences are statistically significant ($X^2 = 171.88$, p-value <0.001) although the large MOEs for the less than high school and high school degree educational attainment categories render this result somewhat tentative. The much lower MOE for the college-level attainment category strongly indicates AIAN adults 25-years and older are significantly less likely to earn a college degree compared to Whites.

3e. Computer Ownership and Broadband Internet Access

84.6% of AIAN households own a computer compared to 91.5% of White households. 65.4% of AIAN households have access to broadband internet compared to 85.9% of White households. Both differences are statistically significant (Computer Ownership $X^2 = 58.201$, p-value <0.001 ; Internet Access $X^2 = 319.71$, p-value <0.001), showing AIAN households have significantly reduced access to computers and the internet. High MOEs however render these results somewhat tentative.

3f. Home Ownership

16.6% of AIAN residents own their home compared to 65.7% of White residents. This difference is statistically significant ($X^2 = 324.36$, p-value <0.001), with AIAN residents significantly more likely to rent their home and less likely to own compared to Whites. While the MOEs are large, they are non-overlapping, indicating these results are valid.

3g. Health Insurance Coverage

20.5% of AIAN residents have no health insurance coverage, compared to 4.0% of White residents. This difference is statistically significant ($X^2 = 522.69$, p-value <0.001), with AIAN residents significantly less likely to have health insurance. Large MOEs render this result

somewhat tentative. Native Americans can also access free or reduced cost healthcare without health insurance through Indian Health Service (IHS) programs. But statewide data from North Dakota suggest that IHS is not making up for disparate access to health insurance coverage among Native Americans and Whites. Despite access to IHS services, AIAN in North Dakota, who are over nearly four times more likely than whites to be uninsured, are also over three times more likely than whites to report that they avoided health care due to cost, with 3.9% of Whites reporting not seeing a doctor because of cost, compared to 13.9% of AIAN according to the Kaiser Family Foundation's State Health Facts report. While these are state-wide data, they are the best available data on care avoidance due to cost.

3h. Employment

2.3% of AIAN residents are unemployed, compared to 0.43% of White residents. This difference is statistically significant ($X^2 = 21.744$, p-value <0.001), with AIAN residents significantly more likely to be unemployed compared to White residents. While large MOEs show the lower estimates for AIAN and White residents are the same, the upper estimates deviate substantially, suggesting the bias towards greater AIAN unemployment may be higher than the primary estimate suggests.

III. CONCLUSION

For all analyses, there is race-based bias that disadvantages the AIAN population when compared to Whites. These differences are statistically significant across the board, and systemic in nature. Table one provides a complete overview of the descriptive and inferential statistics for more quantitative context. These systemic disparities hinder the ability of AIAN tribal members to participate effectively in the North Dakota political process (Senate Report 1982).

REFERENCES

McKillup, S. (2011). *Statistics explained: An introductory guide for life scientists*. Cambridge University Press.

R Core Team, (2020). *R: A Language and Environment for Statistical Computing*. R Foundation for Statistical Computing, Vienna, Austria.

Senate Report (1982), No. 97-417, accompanying the Voting Rights Act Amendments of 1982.

Variable	Rolette AIAN	lower estimate	upper estimate	MOE range	Rolette White	lower estimate	upper estimate	MOE range	MOE difference	p-value
Median household income	\$37,750	\$33,669	\$41,831	\$8,162	\$60,556	\$53,870	\$67,242	\$13,372	\$5,210	NA
Below poverty Level	31.50%	27.00%	36.10%	9.10%	6.00%	4.60%	7.60%	3.00%	-6.10%	<0.001
EDU: High School or lower	37.30%	26.50%	43.30%	16.80%	40.0%	30.60%	49.40%	18.80%	2.00%	<0.001
EDU: College degree	17.30%	13.60%	21.30%	7.70%	26.50%	21.70%	31.30%	9.60%	1.90%	<0.001
Owens a computer	86.50%	83.40%	89.60%	6.20%	89.20%	86.00%	92.40%	6.40%	0.20%	0.0003
Broadband internet	72.20%	67.4%	76.90%	9.50%	76.10%	71.50%	80.80%	9.30%	-0.20%	0.0003
Owens a home	69.30%	65.10%	73.60%	8.50%	78.40%	71.70%	85.20%	13.50%	5.00%	<0.001
No health insurance	29.20%	25.2%	35.30%	10.10%	7.70%	4.50%	11.0%	6.50%	-3.60%	<0.001
Unemployed	10.30%	6.1%	15.00%	8.90%	2.50%	0.0%	3.70%	3.70%	-5.20%	<0.001
Variable	Benson AIAN	lower estimate	upper estimate	MOE range	Benson White	lower estimate	upper estimate	MOE range	MOE difference	p-value
Median household income	\$28,795	\$24,711	\$32,879	\$8,168.00	\$61,445	\$57,856	\$65,034	\$7,178	-\$990.00	NA
Below poverty level	49.80%	44.10%	55.60%	11.50%	8.90%	6.60%	11.20%	4.60%	-6.90%	<0.001
EDU: High School or lower	54.70%	44.40%	65%	20.60%	34.60%	28.90%	40.40%	11.50%	-9.10%	<0.001
EDU: College degree	6%	3.40%	8.60%	5.20%	24.70%	20.80%	28.60%	7.80%	2.60%	<0.001
Owens a computer	71.30%	66.60%	76%	9.40%	90.50%	88.70%	92.30%	3.60%	-5.80%	<0.001
Broadband internet	41.30%	36.50%	46.10%	9.60%	78.20%	74.80%	81.60%	6.80%	-2.80%	<0.001
Owens a home	45.30%	39.80%	50.70%	10.90%	82.40%	78.90%	85.90%	7.00%	-3.90%	<0.001
No health insurance	15.90%	11.70%	20.00%	8.30%	4.40%	2.90%	6.30%	3.40%	-4.90%	<0.001
Unemployed	11.30%	6.20%	19.10%	12.90%	2.90%	1.40%	6.10%	4.70%	-8.20%	<0.001
Variable	Ramsey AIAN	lower estimate	upper estimate	MOE range	Ramsey White	lower estimate	upper estimate	MOE range	MOE difference	p-value
Median household income	\$37,000	\$29,992	\$44,008	\$14,016	\$62,252	\$56,890	\$67,614	\$10,724	-\$3,292	NA
Below poverty level	27.50%	15.20%	39.80%	24.60%	9%	6.30%	11.70%	5.40%	-19.20%	<0.001
EDU: High School or lower	55.50%	14.90%	87.30%	72.40%	35.00%	27.30%	42.60%	15.30%	-57.10%	<0.001
EDU: College degree	6.80%	0%	17.20%	17.20%	27.80%	23%	32.60%	9.60%	-7.60%	<0.001
Owens a computer	84.60%	66.4%	100%	33.60%	91.50%	89.20%	93.80%	4.60%	-29.00%	<0.001
Broadband internet	65.40%	43.50%	87.30%	43.80%	85.90%	83.00%	88.90%	5.90%	-37.90%	<0.001
Owens a home	16.60%	2.90%	30.20%	27.30%	65.70%	61.40%	70.10%	8.70%	-18.60%	<0.001
No health insurance	20.50%	2.00%	40.30%	38.30%	4.0%	2.10%	6%	3.80%	-34.50%	<0.001
Unemployed	2.30%	0%	17%	17.10%	0.43%	0%	1.40%	1.40%	-15.70%	<0.001

Table 1. Descriptive and inferential statistics for all seven socioeconomic variables including primary estimates and margin of errors (MOE) for the three counties.

Weston Craig McCool

Curriculum Vitae

Department of Anthropology
University of Utah
260 S. Central Campus Drive
Salt Lake City, UT 84112

Postdoctoral Fellow
NSF SPRF
weston.mccool@anthro.utah.edu
Phone: (801) 450-3016

Appointments

- 2021-present Postdoctoral Fellow, National Science Foundation SPRF program. Sponsoring Scientist: Dr. Brian Coddling. Affiliated institution: University of Utah, Dept. of Anthropology.
- 2020-2021 Postdoctoral Researcher, University of California at Santa Barbara, Dept. of Anthropology. Sponsoring Scientist: Dr. Douglas J. Kennett.

Education

- Ph.D.** Anthropology, University of California at Santa Barbara, 2020
M.A. Anthropology, University of California at Santa Barbara, 2015
M.A. Anthropology, University of Utah, 2013
B.S. Anthropology, University of Utah, 2009

Research Expertise

Environmental archaeology	Geospatial modeling
Bioarchaeology	Statistical modeling
Climate change	Big data
Inequality	Isotope chemistry
Conflict	Peruvian Andes
Settlement patterns and demography	North American Southwest
Dietary reconstructions	

Publications

- In-Press* Wilson, Kurt M., **Weston C. McCool**. **The Environmental Null: Documenting the changing influence of physical and social environments on prehistoric Andean diets**. In: *Foodways of the Ancient Andes: Transforming Diet, Cuisine, and Society* (Eds., Alfonso-Durruty, M.P., Blom, D.E.), University of Arizona Press.
- 2022 **McCool, Weston C.**, Kurt M. Wilson, Kenneth B. Vernon. **Ecological constraints on violence avoidance tactics: An explanation for high rates of lethal and sublethal**

- violence in the Prehispanic Andean highlands.** *Environmental Archaeology* DOI: 10.1080/14614103.2022.2137652.
- 2022 Kennett, Douglas J., Marilyn Masson, Carlos Peraza Lope, Stanley Serafin, Richard George, Thomas Spencer, Julie Hoggarth, Brendan J. Culleton, Thomas Harper, Keith M. Prufer, Susan Milbrath, Stanley Russell, Eunice Uc González, **Weston C. McCool**, Valorie V. Aquino, Jason H. Curtis, Victor Polyak, Norbert Marwan, Mingua Zhang, Andrew Mason, Gideon Henderson, Gerald H. Haug, Mark Brenner, Yemane Asmerom, James U.L. Baldini, Sebastian F. M. Breitenbach, David A. Hodell. **Drought induced civil conflict among the Maya.** *Nature Communications* 13: 3911.
- 2022 **McCool, Weston C.**, Kenneth B. Vernon, Peter M. Yaworsky, Brian F. Coddling. **Subsistence strategy mediates ecological drivers of human violence.** *PLoS One* 17(5): e0268257.
- 2022 **McCool, Weston C.**, Brian F. Coddling, Kenneth B. Vernon, Peter M. Yaworsky, Kurt M. Wilson, Norbert Marwan, Douglas J. Kennett. **Climate change induced population pressure drives high rates of lethal violence in the Prehispanic central Andes.** *Proceedings of the National Academy of the Sciences* 119(17): e2117556119.
- 2022 Wilson, Kurt M., **Weston C. McCool**, Daniel A. Contreras, Simon C. Brewer, Joan Brenner Coltrain, Nicole Zamora-Wilson, Ashlyn M. Huggard, Percy J. Schryver, Roxanne F. Lois Lamson, Brian F. Coddling. **Climate and demography drive 7000 years of dietary change in the Central Andes.** *Nature Scientific Reports* 12(1): 1-16.
- 2021 **McCool, Weston C.**, Amy S. Anderson, Douglas J. Kennett. **Using a multimethod life history approach to navigate the osteological paradox: A case study from the Nasca highlands.** *American Journal of Biological Anthropology* 175(4): 816-833.
- 2020 **McCool, Weston C.**, Joan Brenner-Coltrain, Aldo Accinelli, Douglas J. Kennett. **The Character of Conflict: A bioarchaeological study of violence in the Nasca highlands of Peru during the Late Intermediate Period (950 – 1450 C.E.).** *American Journal of Biological Anthropology* 174(4): 614-630.
- 2020 Daniel M. Fernandes, et al., **Weston C. McCool**, and David Reich. **A Genetic history of the pre-contact Caribbean.** *Nature* 590: 103-110.
- 2020 **McCool, Weston C.**, Daniel C. McCool. **We must either protect him or destroy him.** In: *Vision and Place: John Wesley Powell and reimagining the Colorado River Basin* (Eds., Robison, McCool, Minckley). University of California Press.
- 2019 **McCool, Weston C.**, Aldo Accinelli, Joan Brenner-Coltrain. **Patrones osteológicos de guerra endémica en la Sierra de Nasca durante el Intermedio Tardío (1000-**

- 1450 d.C.**). In: *Actas del VI Congreso Nacional de Arqueología*. Lima, Perú: Ministerio de Cultura.
- 2019 **McCool, Weston C., Peter J. Yaworsky. Fight or Flight: Assessing Fremont territoriality in Nine Mile Canyon, Utah.** *Quaternary International* 518: 111-121.
- 2018 **McCool, Weston C., Joan Brenner-Coltrain. A potential oxygen isotope signature of maize beer consumption: An experimental pilot study.** *Journal of Ethnoarchaeology* 10(1): 56-67.
- 2017 **McCool, Weston C. Coping with Conflict: Defensive strategies and chronic warfare in the Prehispanic Nasca region.** *Latin American Antiquity* 28(3): 373-393.
- 2015 Parker, Bradley J., **Weston C. McCool. Indices of household maize beer production in the Andes: An ethnoarchaeological investigation.** *Journal of Anthropological Research* 71(3): 359-400.

In Progress

- In-Review* **McCool, Weston C. Migration, settlement, and warfare in the Nasca highlands of Peru.** Edited volume to be named.
- In-Review* **McCool, Weston C., Brian F. Coddling. Homicide rates in the United States increase when and where resources are scarce and unequally distributed.** *Evolution and Human Behavior*.
- In-Prep* **McCool, Weston C., Kurt M. Wilson, Brian F. Coddling, Amy Anderson, Alexis J. Baide. Divergent climatic and demographic stressors predict high rates of morbidity in the Prehispanic central Andes.** In: *The Dynamic Influences of Climate Change on Prehistoric Lifeways in the Americas* (Eds., Wilson, K.M., McCool, W.C.), Quaternary International Special Issue.
- In-Prep* Yaworsky, Peter M., Kenneth B. Vernon, **Weston C. McCool, Brian F. Coddling. Land use patterns of the west Tavaputs Plateau driven by population expansion and contraction during the Formative Period.** In: *The Dynamic Influences of Climate Change on Prehistoric Lifeways in the Americas* (Eds., Wilson, K.M., McCool, W.C.), Quaternary International Special Issue.
- In-Prep* Vernon, Kenneth B., **Weston C. McCool, Brian F. Coddling. Settlement adaptations to varying climate among Fremont farmers in Utah.** In: *The Dynamic Influences of Climate Change on Prehistoric Lifeways in the Americas* (Eds., Wilson, K.M., McCool, W.C.), Quaternary International Special Issue.
- In-Prep* Wilson, Kurt M., **Weston C. McCool, Joan Brenner Coltrain. Climatic influences on subsistence intensification along the coasts of the prehispanic Central Andes.** In:

The Dynamic Influences of Climate Change on Prehistoric Lifeways in the Americas (Eds., Wilson, K.M., McCool, W.C.), Quaternary International Special Issue.

In-Prep Arkush, Elizabeth, **Weston C. McCool**, Ryan Smith. **The Late Intermediate period in the south-central highlands: Key problems in timing.** In: *Leveraging Radiocarbon in the Central Andes: From Chronologies to Research Agendas* (Eds., Contreras, D., Marsh, E., Rademaker, K.), Quaternary International Special Issue.

In-Prep **McCool, Weston C.**, Kenneth B. Vernon, Peter M. Yaworsky, Brian F. Coddling. **The archaeology of warfare needs a general theory of behavior.** Target journal: *Evolutionary Anthropology*.

Technical reports

2022 Bruce M. Pavlik, Lisbeth A. Louderback, Brian F. Coddling, Kenneth Blake Vernon, Heidi M. Simper, **Weston C. McCool**, and Stefania Wilks. **Archaeo-ecosystems of the four corners: Ethnobotanical surveys of Puebloan sites, San Juan County, Utah, project year 3.** Report submitted to the Bureau of Land Management, Monticello, UT.

Popular press and University press releases

2022 **Violence of abundance**, by Jim Logan. *The Current*. <https://www.news.ucsb.edu/2022/020634/violence-abundance>

2022 **Climate change induced refugee crisis, chronic war, in ancient Peru**, by Lisa Potter. *The U*. <https://attheu.utah.edu/facultystaff/climate-change-nasca-highlands/>

2022 **Violenza sociale e conflitto: figli soltanto dei cambiamenti climatici?**, By Sofia Belardinelli. Università Di Padova. <https://ilbolive.unipd.it/it/news/violenza-sociale-conflitto-figli-soltanto>

2022 **Climate drove 7000 years of dietary changes**, by Lisa Potter. *The U*. <https://attheu.utah.edu/facultystaff/climate-drove-dietary-changes/>

2021 **Google maps for time travelers**, By David Malakoff. *American Archaeology Magazine*, 25(2). Magazine article about McCool and Yaworsky 2019.

2021 **A history of violence**, By Jim Logan. *The Current*. <https://www.news.ucsb.edu/2021/020225/history-violence>

Field and Lab Experience

2021-present PI: Climate and Conflict in the Ancient Southwest Project.

2018-present PI: Nasca Highlands Life History Project.

- 2018-present PI: Nasca Highlands Warfare Project.
- 2017-present Collaborator: Fremont Agriculture and Risk Project (Dr. Peter Yaworsky).
- 2014-2017 PI: The Upper Southern Nasca Region Hillforts Project.
- 2017 Training program in osteological methods. Forensic Anthropology Center, University of Tennessee, Knoxville.
- 2015-2016 PI: The Upper Southern Nasca Region Hillforts Project.
- 2014 Crew member for the Yamobamba Excavation Project. Supervisor: Patricia Chirinos.
- 2014 GIS database editor, Central California Information Center. Supervisor: Lynn Gamble, PhD.
- 2013 Co-PI: Household Maize Beer Production in the Andes: An Ethnoarchaeological Investigation.
- 2013 Field-technician for the Wari Road Survey Project. Supervisor: Matt Edwards, PhD.
- 2012 Co-PI: Household Maize Beer Production in the Andes: An Ethnoarchaeological Investigation. Preliminary scouting trip.

Grants and Awards Received

- 2023-in-prep PI: National Science Foundation (SAR): "An Archaeological investigation of the resiliency of coupled human-environmental systems in Grand Staircase Escalante National Monument." \$252,000.
- 2023-pending PI: National Science Foundation (SAR): "Evaluating the deep time relationships between climate change, population dynamics, and warfare in the Prehispanic central Andes." \$258,117.
- 2021 PI: National Science Foundation (SPRF-FR) Social Behavioral and Economic Postdoctoral Research Fellowship (# 2104456): "Evaluating the Climatological, Political, and Demographic Drivers of Conflict: An Archaeological Case Study." \$138,000.
- 2019 The Brian Fagan Fund: \$500.

- 2019 Co-PI: National Science Foundation (DDRIG) Doctoral Dissertation Research Improvement Grant (# 1934521): “Evaluating the impacts of warfare on a Late Intermediate period population in the southern Nasca region.” \$20,000.
- 2019 Broom Graduate Student Research and Travel Grant: \$1,850.
- 2019 Department of Anthropology Graduate Student Research Grant: \$1,800.
- 2018 Charles J. Erasmus Fund: \$1,175.
- 2018 Department of Anthropology Graduate Student Research Grant: \$800.
- 2017 Charles J. Erasmus Fund: \$1,000.
- 2017 Department of Anthropology Graduate Student Research Grant: \$1,021.
- 2016 Humanities and Social Sciences Research Grant: \$3,000.
- 2016 Department of Anthropology Graduate Student Research Grant: \$1,000.
- 2015 Department of Anthropology Graduate Student Research Grant: \$4,300.
- 2013 Co-PI: University of Utah Research Committee grant: \$5,000.

Federal Research Grants

- 2022 Bureau of Land Management, “Archaeological Survey of Cottonwood Wash, San Rafael Desert, Emery County, Utah.” Cooperative Agreement L20AC00267, Grant Number 13090284. Brian F. Coddling (PI), Jerry D. Spangler (Co-PI), Kate E. Magargal and **Weston C. McCool** (Senior Personnel), Kenneth B. Vernon, Kasey Cole, Kurt M. Wilson, and Ishmael Medina (graduate researchers) (12/1/20--6/30/22; \$18,698).

Internal Fellowships

- 2019 One-quarter fellowship from the dean’s discretionary block grant for 2019-2020: \$7,425 (Fall Quarter)
- 2018 UCSB Anthropology Graduate Fellowship: \$6,425 (Fall Quarter)
- 2017 UCSB Anthropology Graduate Fellowship: \$6,425 (Winter Quarter)

Teaching

Teaching Experience

Teaching Associate

Human Osteology (ANTH 180B), Spring 2019. University of California, Santa Barbara
Human Evolution (ANTH 121), Winter 2018. University of California, Santa Barbara
Human Evolution (ANTH 121), Spring 2017. University of California, Santa Barbara
Human Evolution (ANTH 121), Spring 2016. University of California, Santa Barbara

Teaching Assistant

Introduction to Biological Anthropology (ANTH 5), University of California, Santa Barbara

- Spring 2020 (head TA)
- Winter 2020 (head TA)
- Fall 2017
- Fall 2016
- Fall 2015
- Fall 201

Intro to Biocultural Anthropology (ANTH 7), University of California, Santa Barbara

- Winter 2014

Introduction to Cultural Anthropology (ANTH 2), University of California, Santa Barbara

- Winter 2016
- Winter 2019
- Spring 2014
- Fall 2013

Introduction to Archaeology (ANTH 3), University of California, Santa Barbara

- Spring 2015

Introduction to World Prehistory, University of Utah

- Spring 2013
- Fall 2012

Teaching Interests

Introduction to Anthropology, Introduction to Archaeology, World Prehistory, Statistical Analysis, The Archaeology of Warfare, Spatial Analysis and GIS, Latin American Prehistory, North American Prehistory, Climate Change and Human History, Bioarchaeology, Osteology, Human Evolution, Human-Environment Interactions, Human Ecology in Anthropology.

Conference Presentations

- 2022 Richard George, **Weston C. McCool**, Douglas J. Kennett, SAA organized session: Archaeology with altitude: Papers in honor of Mark Aldenderfer. Presentation: Modeling climate-population-conflict relationships in the Maya and Nasca regions.
- 2022 Elizabeth Arkush, **Weston C. McCool**, Ryan Smith, SAA organized session: Leveraging radiocarbon in the central Andes: From chronologies to research agendas. Presentation: The Late Intermediate period in the south-central Highlands: Key problems in timing.
- 2022 Kenneth B. Vernon, Jerry Spangler, Brian F. Coddling, **Weston C. McCool**, Peter M. Yaworsky, SAA organized session: The influence of climate change on diet, demography,

- and climate. Presentation: Resilience to climate change among Farmers in the Basin-Plateau region.
- 2022 Kurt M. Wilson, Brian F. Coddling, **Weston C. McCool**, Daniel Contreras, Joan Brenner Coltrain, SAA organized session: The influence of climate change on diet, demography, and climate. Presentation: Climate change drives 7,000 years of dietary variation in the central Andes.
- 2022 **Weston C. McCool**, Brian F. Coddling, Kenneth, B. Vernon, Kurt M. Wilson, Peter M. Yaworsky, Norbert Marwan, Douglas J. Kennett, SAA organized session: The influence of climate change on diet, demography, and climate. Presentation: Divergent climactic and demographic stressors predict high rates of morbidity in the Prehispanic central Andes.
- 2022 **Weston C. McCool** and Kurt M. Wilson, Co-Chair of SAA organized session: The influence of climate change on diet, demography, and conflict.
- 2021 Beth Scaffidi and **Weston C. McCool**. EAA organized session: Earth, water and fire: approaching living habitat and community landscape management. Presentation: Violence-related trauma and social conflict at pre-Hispanic Andean cities vs. the outlands: insights from bioarchaeological big data.
- 2021 **Weston C. McCool**, Amy Anderson, Joan Brenner-Coltrain, and Douglas J. Kennett. Recent archaeological research in Nasca, invited talk: Patterns and Process: mapping out conflict, complexity, diet, disease, and demography in the Nasca highlands during the Late Intermediate period (1000 – 1450 C.E.).
- 2021 **Weston C. McCool** and Kate Magargal, Co-chair of SAA organized session: Life is risky: human behavioral ecology approaches to variable outcomes.
- 2021 **Weston C. McCool**. SAA organized session: Life is Risky: human behavioral ecology approaches to variable outcomes. Presentation: Examining trade-offs between food acquisition and violence avoidance: population-level effects and variability in risk-preference.
- 2019 **Weston C. McCool**. Sesquicentennial of the Colorado River Exploration Expedition Conference. Presentation: The deep history of the Colorado River Basin.
- 2019 **Weston C. McCool**. SAA annual conference. Poster: Inferring the Character of Conflict using Victim Profiles and Trauma Distributions: A case study from the Late Intermediate period Nasca highlands.
- 2018 **Weston C. McCool**. SAA organized session: Comparative perspective on warfare. Paper: Regional defensive strategies and chronic warfare in the Nasca highlands.

- 2017 **Weston C. McCool**. SAA annual conference. Poster: Coping with Conflict: Defensive strategies and chronic warfare in the Prehispanic Nasca region.
- 2017 **Weston C. McCool**, 2017. UCSB Anthropology Graduate Colloquium. Coping with Conflict: Defensive strategies and chronic warfare in the Prehispanic Nasca region.
- 2017 **Weston C. McCool**. Institute of Andean Studies annual conference. Poster: Optimizing defense: Assessing the relationship between fortification investment and settlement accessibility.
- 2016 **Weston C. McCool** and Peter M. Yaworsky. California Workshop on Evolutionary Social Sciences. Poster: Fremont defensive strategies in Nine Mile Canyon, Utah.
- 2016 Peter M. Yaworsky and **Weston C. McCool**. Utah Professional Archaeological Council Annual Conference. Poster: Functionality of Fremont tower structures in Nine Mile Canyon, Utah.
- 2015 **Weston C. McCool**. SAA annual conference. Poster: A potential oxygen isotope signature of maize beer consumption: An experimental pilot study.
- 2014 **Weston C. McCool**. SAA annual conference. Paper: Household maize beer production in the Andes: An ethnoarchaeological investigation.
- 2014 Matthew Edwards and **Weston C. McCool**. Institute of Andean Studies Annual Meeting. Poster: Wari and Inca roads of the Pampas Galeras.
- 2013 **Weston C. McCool** and Bradley J. Parker. University of Utah History Conference. Paper: Alcohol and Society: An ethnoarchaeological investigation.

Service

Society for American Archaeology Program Committee Volunteer, 2022.

Undergraduate intern coordinator, Kennett Biogeochemistry Isotope Lab, Dept. of Anthropology, University of California, Santa Barbara.

Brown Bag Colloquium coordinator, Dept. of Anthropology, University of California, Santa Barbara.

Social Chair, Dept. of Anthropology, University of California, Santa Barbara.

Volunteer, graduate student preview weekend, Dept. of Anthropology, University of California, Santa Barbara.

Invited Speaker: University of Utah Anthropology Colloquium Speaker Series. The relationship between resource availability and human violence: An evolutionary perspective.

Invited Discussant: 15th Biennial Conference of Science and Management for the Colorado Plateau and Southwest Region: John Wesley Powell and reimagining the Colorado River Basin: Sesquicentennial perspectives: Native American Panel.

Guest Lecturer, Introduction to Environmental Studies and Sustainability, 2022. Environmental Studies Program, University of Utah.

Guest Lecturer, Archaeological Methods, 2018, 2019, 2020. Dept. of Anthropology, University of California, Santa Barbara.

Guest Lecturer, Archaeological Theory, 2019, 2020. Dept. of Anthropology, University of California, Santa Barbara.

Guest Lecturer, California and Great Basin Indians, 2021. Dept. of Anthropology, University of California, Santa Barbara.

References

Dr. Brian Codding, Professor, Department of Anthropology, University of Utah.
brian.codding@anthro.utah.edu

Dr. Douglas Kennett, Professor, Department of Anthropology, University of California, Santa Barbara. kennett@anth.ucsb.edu

Dr. Amber VanDerwarker, Professor, Department of Anthropology, University of California, Santa Barbara. vanderwarker@anth.ucsb.edu.