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

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, et al.,

Plaintiffs,
Civil No. 3:22-cv-00022-PDW-ARS
v.

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

Defendant.

## PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

Defendant's motion in limine should be denied. Defendant raises five arguments, none of which has merit.

First, Defendant's objection to the admission of expert reports should be overruled because, as other courts adjudicating redistricting cases in bench trials have concluded, expert reports are admissible under Federal Rules of Evidence ("Fed. R. Evid.") Rule 807’s residual hearsay exception and are particularly helpful to the Court given the complex nature of Voting Rights Act ("VRA") litigation.

Second, Defendant's contention that Plaintiffs' expert Dr. Loren Collingwood used an "unreliable" data source, Dave's Redistricting App ("DRA"), is misplaced. The voting age population ("VAP") data reported by DRA is drawn directly from the U.S. Census Bureau and, as Dr. Collingwood shows, reports precisely the same figures as does Defendant's preferred commercial software program, Maptitude. Moreover, DRA is routinely relied upon by experts, including court-appointed special masters, is used by state legislatures and redistricting
reasonable notice to the adverse party if "(1) the statement is supported by sufficient guarantees of trustworthiness-after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts." Fed. R. Evid. 807. Moreover, Rule 807, like all the rules of evidence, "should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." Fed. R. Evid. 102.

In Perez v. Texas, a three-judge court adjudicating claims against Texas’s 2013 redistricting plans ruled that expert reports were admissible under Rule 807. The court concluded that the reports "will be allowed subject to any further objections in open court if the expert testifies live or by trial deposition and adopts the statements in the report while under oath and subject to cross examination." Order at 1-2, Perez v. Texas, Case No. 11-CA-360-OLG-JES-XR (W.D. Tex. July 3, 2017), ECF No. 1447 (attached as Exhibit 1). The court reasoned that "in bench trials, and in this case in particular, expert reports can greatly assist the trier of fact in understanding the basis for the expert's opinions and determining how much weight to give the expert's opinion." Id. at 2. The court noted that it could disregard any hearsay or irrelevant portions, and that " $[t]$ he issues in this case are not simple, the data and methodology used by certain experts can be complex, and time is of the essence." Id. at 2 . The court thus concluded that "[a]llowing the expert reports under Rule 807 will serve the general purpose of the rules and the interests of justice." $I d .{ }^{1}$ Other courts

[^0]have followed the same approach. See, e.g., Bianco v. Globus Medical, Inc., 30 F. Supp. 3d 565, 570-71 (E.D. Tex. 2014) (expert report with sworn declaration admissible on issues to be determined by the judge); Televisa, S.A. de C.V. v. Univision Commcn's, Inc., 635 F. Supp. 2d 1106, 1109-10 (C.D. Cal. 2009) (finding expert report admissible under Rule 807 because it was signed, adopted as a true and correct copy, testified to under oath, and subject to cross examination).

VRA cases like this one involve complicated statistical analysis of voting patterns, election results, and socio-economic conditions. The expert reports in this case span hundreds of pages. It serves no purpose to multiply the trial proceedings by requiring the parties to elicit testimony and introduce individual exhibits for each particular fact and figure in the experts' reports when the reports themselves contain all the relevant facts and data, the experts are subject to cross examination, and the Court is competent to review the testimony and reports and determine how to weigh the evidence. ${ }^{2}$

Moreover, under Rule 703, because this is a bench trial rather than a jury trial, Plaintiffs' experts are permitted to testify at trial about otherwise inadmissible underlying facts or data supporting their opinions. As the Supreme Court has explained,
in jury trials, . . . federal law generally bar[s] an expert from disclosing such inadmissible evidence. In bench trials, however, . . . the Federal Rules place no restriction on the revelation of such information to the factfinder. When the judge sits as trier of fact, it is presumed that the judge will understand the limited reasons for the disclosure of the underlying inadmissible information and will not rely on that information for any improper purpose. As we have noted, [i]n bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions.
${ }^{2}$ After filing his motion to exclude expert reports, Defendant requested that the parties agree to the admission of all the data, charts, and figures from the reports as separate exhibits. While Plaintiffs have no objection, it certainly contradicts Defendant's argument, adds hundreds of exhibits for the parties and the Court to sort through, and makes little sense.

Williams v. Illinois, 567 U.S. 50, 69 (2012) (quotation marks and footnotes omitted) (emphasis in original) (second bracket in original). Thus, to the extent the reports themselves contain hearsay within hearsay or other inadmissible evidence, this Court is competent to hear that evidence without drawing any improper conclusions. Because Rule 703 would permit Plaintiffs' experts to testify at trial as to any otherwise inadmissible information contained in their reports, there is no reason the Court cannot receive those reports into evidence in order to save the Court's and the parties’ time.

Expert reports are routinely admitted into evidence in redistricting litigation given the complexity of the issues and the ability of judges presiding over bench trials to distinguish from material deserving more or less weight. The Court should do so here in the interest of judicial economy. ${ }^{3}$

## II. Dr. Collingwood properly used DRA—a reliable source for redistricting data-in his opinions regarding compactness and voting age population.

Dr. Collingwood properly relied upon DRA in reaching conclusions regarding compactness and voting age population ("VAP") in his expert report. With no support or basis to so conclude—and for the first time on the eve of trial—Defendant characterizes DRA as containing "unreliable data" and being "unreliable software." Memorandum in Support of Defendant['s] Motion in Limine ("Def’s Memo.") at 3. This criticism of DRA is unfounded and is belied by the evidence.

As an initial matter, Daubert challenges in bench trials generally are not a useful enterprise for the parties' and Court's time and resources. ${ }^{4}$ As the Eighth Circuit has explained, "Daubert is

[^1]meant to protect juries from being swayed by dubious scientific testimony. When the district court sits as the finder of fact, [ $t$ ]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself. Thus, we relax Daubert's application for bench trials." David E. Watson, P.C. v. United States, 668 F.3d 1008, 1015 (8th Cir. 2012) (internal quotation marks and citations omitted) (emphasis in original). In bench trials, if a party disagrees with an expert's assumptions and methods and thinks that "other assumptions and methods [are] more appropriate, it ha[s] the opportunity to make this apparent through cross-examination and by presenting [its] own expert witness." Id. (internal quotation marks omitted) (second bracket in original).

Regardless, Defendant's contention that DRA is an "unreliable" source of redistricting data is incorrect. As Dave Bradlee, the founder and owner of DRA, explains in his attached declaration, DRA is a free, online redistricting tool that allows anyone to draw or analyze redistricting plans for Congress, state legislatures, and local offices. Ex. 2 (Declaration of Dave Bradlee) 9氏1 3-4; see also http://www.davesredistricting.org. It was created in 2009 by Mr. Bradlee, a 20-year veteran of Microsoft with a Ph.D. in Computer Science from the University of Washington. Id. $\mathbb{1 4 \|}$ 2-3. It has revolutionized the redistricting process by giving the public the opportunity and ability to participate in a process that has all too often occurred behind closed doors-access that was previously limited to those able to pay thousands of dollars for commercial programs like Maptitude, the program touted by Defendant. Id. ๆ 4. DRA contains the Census data, such as total population and VAP by racial and ethnic group, necessary to draw and analyze redistricting plans. Id. $\mathbb{T 1 7} 7$-8. The VAP data reported by DRA is the same data contained in the commercial software

ECF No. 65-4 (Hood Dep.) at 65:16-66:10 (Dr. Hood acknowledging it was "not methodologically correct" for him to have equally weighed elections in his Gingles 3 analysis). But Plaintiffs have not moved to exclude Dr. Hood or his opinions because the Court's (and the parties') time is limited and the Court is perfectly competent to weigh competing expert testimony at trial.

Maptitude, and like Maptitude, DRA draws that data directly from the U.S. Census Bureau. Id. $\mathbb{\square}$
7. Among other analytical information, DRA reports compactness scores for districts using common measures such as the Reock score (which measures the ratio of the area of a district to the area of the smallest circle that encloses the district) and the Polsby-Popper score (the ratio of the area of a district to the area of a circle whose circumference is equal to the perimeter of the district). Id. 【โ 9-11. As Dr. Bradlee explains in his attached declaration, DRA and its data are compiled by experienced and knowledgeable computer and data scientists using the same official Census data and mathematical formulas used by commercial software like Maptitude. Id. © 6. The difference is that DRA does not charge any fee to users, while Maptitude comes at a steep cost. Id. - $4 .{ }^{5}$

Defendant offers no explanation for why DRA's reporting of VAP is purportedly unreliable, nor does he contend that it differs in any way-much less any material way-from Maptitude’s reporting of that data. Nor could he. As Dr. Bradlee explains in his attached declaration, the VAP data in DRA comes directly from the U.S. Census Bureau-just the same as it does for Maptitude. Id. © 7. Defendant offers no explanation for why a costly third-party company's downloading of Census data is somehow more reliable than a transparent, free third party's downloading of that same data. Moreover, Defendant—and his expert Dr. Hood—have access to Maptitude and presumably learned prior to filing this motion that the VAP data reported by Dr. Collingwood from DRA and the VAP data reported by Maptitude are precisely the same.

[^2]As Dr. Collingwood explains in his attached declaration (to which Maptitude reports are appended), Maptitude shows the exact same Native American VAP figures for the enacted plan's Districts 9, 9A, 9B, and 15 as does DRA. Ex. 3 (Collingwood Dec). $\mathbb{4}$ 5-6. The same is true for the reporting of the Native American VAP in District 9 in Plaintiffs’ Demonstrative Plans 1 and 2. Id. ๆ $6 .{ }^{6}$ Defendant's characterization of DRA as an "unreliable" source of VAP data is entirely baseless.

Contrary to Defendant's assertion, Def's Memo. at 6, DRA has been relied upon by courts adjudicating redistricting litigation. For example, the Virginia Supreme Court appointed two special masters (one nominated by each of the two major political parties) to draw Virginia’s 2021 redistricting plans. Both experts, Dr. Bernard Grofman and Mr. Sean Trende, relied upon DRA's compactness scores to evaluate whether their plans complied with Virginia’s compactness criterion in proposing maps to the court. See Memo from Bernard Grofman, Ph.D. and Sean Trende to the Chief Justice and Justices of the Supreme Court of Virginia at 19, 32, \& 46 (Dec. 7, 2021), https://www.vacourts.gov/courts/scv/districting/memorandum_re_va_redistricting_2021.pdf
(Attached as Ex. 4). In another case, the U.S. District Court for the Eastern District of Virginia appointed Dr. Grofman as a special master to draw a remedial plan for the Virginia Beach City Council after concluding that the city's at-large election method violated the VRA. Dr. Grofman

[^3]used DRA to assess the VAP by race in the districts he drew, describing DRA as "a free userfriendly mapping program that is becoming widely used in redistricting map-drawing." Special Master's Report at 2, 3, Holloway v. City of Virginia Beach, Case No. 2:18-cv-69 (E.D. Va. Sept. 26, 2021), ECF No. 281-1 (attached as Ex. 5), 531 F. Supp. 3d 1015, vacated and remanded on other grounds, 42 F.4th 266 (4th Cir. 2022). ${ }^{7}$

In addition to its use by courts, DRA is also widely used by legislatures and redistricting commissions, both for their own mapdrawing and for receiving redistricting proposals from the public. Indeed, the North Dakota Legislative Council recommended, in both the 2011 and 2021 redistricting cycles, that legislators and members of the public use DRA to submit proposals given the limited number of Maptitude licenses purchased by the legislature. See, e.g., Ex. 6 at 150 (Tr. of Aug. 26, 2021 N.D. Legislative Redistricting Committee). The North Dakota legislature is not alone in encouraging the use of DRA. See, e.g., Colo. Independent Redistricting Comm'ns, Opportunities for Public Engagement, https://redistricting.colorado.gov/content/opportunities-for-public-engagement ("We recommend . . . Dave's Redistricting" for submitting redistricting proposals to the Commission); Del. Gen. Assembly, Redistricting Information, https://legis.delaware.gov/redistricting (referring public to Dave’s Redistricting App for tool to submit proposed redistricting plans); Mo. Office of Administration, Redistricting Resources, https://oa.mo.gov/redistricting-resources (referring public to Dave’s Redistricting App); Mont.

[^4]Districting \& Apportionment Comm'n, Instructions for Measuring Competitiveness in Dave's Redistricting, https://leg.mt.gov/content/Districting/2020/maps/State-Legislative/measuring-legislative-district-competitiveness.pdf (using Dave's Redistricting App for mapping and data source to comply with redistricting criteria); Okla. Senate, Public Map Submissions, https://oksenate.gov/redistricting/public-map-submissions ("The Oklahoma Legislature is excited to partner with Dave’s Redistricting App (DRA)" to allow public to submit redistricting proposals); Penn. Legislative Reapportionment Comm'n, How to Submit a Statewide Map at 3-7, https://www.redistricting.state.pa.us/resources/documents/LRC\ Map\ Guide.pdf (encouraging citizens to use Dave’s Redistricting App to submit proposed redistricting plans); S.D. Legislature, Redistricting, https://sdlegislature.gov/Redistricting/Home (linking to legislative redistricting proposals drawn on DRA); Ex. 7 (Decl. of Sarah Augustine, Chair of the Washington Redistricting Comm'n) I 7, https://www.courts.wa.gov/content/publicUpload/Redistricting/AugustineDecl\ Nov\ 21\% 20signed.pdf (explaining in declaration to Washington Supreme Court that Commission staff used Dave's Redistricting App to draw redistricting plans).

Defendant is wrong to contend that the "only federal court that has addressed the admissibility of the output and data from [DRA] [to be] inadmissible." Def's Memo. at 6. As explained above, at least one federal court and one state supreme court have admitted DRA compactness and voting-age-population data and maps to draw court-ordered plans (including as part of a VRA compliance analysis). Moreover, in the case cited by Defendant, the court took no issue with the underlying data in DRA or the reliability of the application itself. Ohio Org. Collaborative v. Husted, No. 2:15-dc-1802, 2016 WL 8201848, at *8 (S.D. Ohio May 24, 2016). Rather, the court declined to permit maps created with DRA that showed the location of polling
stations in relation to minority populations because the "parameters [ ] used to produce the maps" was not explained. Id. at *8. But unlike VAP data, DRA does not contain polling station locations; that information would have needed to be separately imported and layered in by the expert from another data source-the precise parameters that were not explained to the court. The Ohio Organizing court did not conclude that DRA's reporting of Census voting age population data or compactness scores was inaccurate, but rather that the proponents in that case had not adequately explained how they generated the polling place locations contained in their maps. Here, Plaintiffs have offered testimony from the owner and creator of DRA demonstrating the reliability of the Census and compactness data used by Dr. Collingwood, have shown that the data is the same as reported in Defendant's preferred source, and have demonstrated the breadth of its use and acceptance in the field.

To be sure, Defendant notes that Dr. Collingwood testified at his deposition that there is a discrepancy between the compactness scores reported by DRA and Maptitude for certain North Dakota legislative districts. Def's Memo. at 5-6. But Defendant omits that Dr. Collingwood explained that "Maptitude is really finnicky" and, for example, will sometimes "misplace[] where [a] boundary" is when map files are uploaded into it. ECF No. 74-1 at 185 (Collingwood Dep.). Thus, Dr. Collingwood explained, "if there's a discrepancy between the two, it's just as likely that the discrepancy is actually coming from Maptitude." Id. Indeed, Defendant’s expert Dr. Hood faced this precise issue when his consultant attempted to load the enacted plan and Plaintiffs’ demonstrative plans into Maptitude to generate compactness reports for his expert report, as shown below:


Ex. 8 (Email from Clark Benson, Polidata, to Dr. Hood). Yet Defendant assumes, without any evidence, that DRA is the source of the discrepancy. ${ }^{8}$

In his rebuttal report, Dr. Collingwood used Dr. Hood’s reporting of compactness scores generated from Maptitude "so that we at least had an even comparison" and were using apples-toapples numbers. Id. at 183. But that does not mean the DRA compactness scores were inaccurate, just that it made sense for the two experts to use a single program, whether that was Maptitude's or DRA's, as they compared the compactness scores of the districts.

DRA is a reliable source of Census and redistricting data that is widely used by experts, courts, legislatures, redistricting commissions, and the public. It has made redistricting

[^5]substantially more transparent—and was recommended by the North Dakota legislature itself. Defendant's characterization of this important tool as "unreliable" is unfounded and unwarranted.

## III. Dr. Weston McCool properly concluded that systemic disparities hinder North Dakota Native Americans' ability to participate effectively in the political process.

Dr. Weston McCool properly concluded that systemic disparities hinder North Dakota Native Americans’ ability to participate effectively in the political process. As the Eighth Circuit has held, "[o]nce lower socio-economic status of [the minority group] has been shown, there is no need to show the causal link of this lower status on political participation." Whitfield v. Democratic Party of State of Ark., 890 F.2d 1423, 1431 (8th Cir. 1989) (quoting United States v. Dallas Cnty. Comm'n, 739 F.2d 1529, 1537 (11th Cir. 1984)). The Eighth Circuit cited the Senate Report from which the totality of circumstances factors are derived, which explains that
[d]isproportionate educational, employment, income levels and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown, and where the level of [minority] participation in politics is depressed, plaintiffs need not prove any further causal link between their disparate socio-economic status and the depressed level of political participation.

Id. (quoting S. Rep. No. 417 at 29 n.144, 1982 U.S. Code Cong. \& Admin. News at 207); see also Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976, 1037-38 (D.S.D. 2004) (explaining that plaintiffs are not required to prove the causal nexus, "[r]ather the burden is on 'those who deny the causal nexus to show that the cause is something else'" (quoting United States v. Marengo Cnty. Comm'n, 731 F.2d 1546, 1569 (11th Cir. 1984))). The Eighth Circuit further explained that "[i]nequality of access is an inference which flows from the existence of economic and educational inequalities." Id. (quoting Dallas Cnty. Comm'n, 739 F.2d at 1537). In this case, it is undisputed that Native American voters' participation in politics is depressed, as Dr. Collingwood has explained, see ECF No.65-3 (Collingwood Rebuttal Report) at 4 (showing that Native American voter turnout in

District 9 is generally 20-30 percentage points lower than white turnout), and as Defendant's expert Dr. Hood admitted that his own analysis shows, see ECF No. 65-4 (Hood Dep.) at 83 (reporting 38.9\% turnout among District 9 Native American voters for 2020 presidential election versus $69.7 \%$ turnout among District 9 white voters). ${ }^{9}$

Defendant is therefore wrong to conclude that Dr. Weston McCool made an improper "conclusory statement[]," Def’s Memo. at 8, that merely "cited the Senator Factor[]," id., for the proposition that Native American's health, education, and economic disparities hinder their participation in the political process. Rather, binding Circuit precedent holds that this is precisely the inference that must be drawn from the data. Having established the predicate facts, Senate Factor 5's linkage to the hindered participation in the political process is assumed. There was nothing improper in Dr. McCool inferring that linkage.

## IV. Dr. Weston McCool used reliable health data from the Kaiser Family Foundation.

Dr. Weston McCool used reliable health data from the Kaiser Family Foundation ("KFF"). As Defendant explains, Dr. McCool cited KFF for one statistic-the rate at which Native American versus white residents of North Dakota avoid health care due to its cost. Def's Memo. at 9. Defendant contends that KFF is "unreliable," Def’s Memo. at 9, and objects to Dr. McCool’s use of its statewide data rather than looking at data focused on Districts 9 and 15, id. at 10. These objections are misplaced.

First, KFF is a universally accepted, reliable source of health statistics and information. For example, the North Dakota Legislative Council routinely relies upon KFF for health statistics. See, e.g., N.D. Legislative Council, Telehealth Study - Background Memorandum (Aug. 2021), https://ndlegis.gov/sites/default/files/resource/committee-memorandum/23.9024.01000.pdf

[^6](citing KFF health statistics); N.D. Legislative Council, Health Insurance Guaranteed Issue Background Memorandum (July 2019) https://ndlegis.gov/sites/default/files/resource/committeememorandum/21.9072.01000.pdf (citing KFF health data); N.D. Legislative Council, Children's Mental Health Services Resources (July 2018) https://ndlegis.gov/sites/default/files/resource/committee-memorandum/19.9355.01000.pdf (advising Health Services Committee to consult KFF resources). So does the North Dakota Department of Health and Human Services. See, e.g., Presentation to N.D. House Appropriations Comm., Medical Servs. Budget - House Bill 1012, https://www.nd.gov/dhs/info/testimony/2021/house-approp-hr/hb1012-medical-services-overview-expansion-1-14.pdf (citing health statistics from KFF); Presentation to N.D. Senate Appropriations Comm, Senate Bill 2012, https://www.nd.gov/dhs/info/testimony/2019/senate-approp/sb2012-overview-medical-services-2019-1-17.pdf (citing health statistics from KFF).

Reliance on KFF extends beyond North Dakota. The U.S. Supreme Court has repeatedly cited KFF's health statistics in its opinions. See, e.g., Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 699 (2014) (relying upon annual survey of health statistics published by KFF); Little Sisters of the Poor Saints Peter \& Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2393 (2020) (Alito, J., concurring) (citing to health statistics reported by KFF). So have federal circuit and district courts. See, e.g., Merck \& Co., Inc. v. U.S. Dep't of Health \& Human Servs., 962 F.3d 531, 538 n. 5 (D.C. Cir. 2020) (citing health statistics from KFF); Forrest Gen. Hosp. v. Azar, 926 F.3d 221, 223 n. 7 (5th Cir. 2019) (relying upon health statistics reported by KFF); Stewart v. Azar, 313 F. Supp. 3d 237, 248 (D.D.C. 2018) (relying upon health statistics reported by KFF); California v. Trump, 267 F. Supp. 3d 1119, 1124 n. 7 (N.D. Cal. 2017) (citing health statistics reported by KFF).

The federal government relies on KFF too. The National Institutes of Health, as part of its National Library of Medicine, recommends KFF as a resource for health statistics. See NIH Nat'l Library of Medicine, Finding and Using Health Statistics, Kaiser Family Foundation, https://www.nlm.nih.gov/nichsr/stats_tutorial/section4/ex7_KFF.html. The National Resource Directory, a government database of "validated resources" for veterans, lists KFF among its recommended resources. https://nrd.gov/; https://nrd.gov/resource/detail/ 11162263/Kaiser+Family+Foundation. The federal government has likewise cited KFF health statistics as the basis for issuing rules and regulations. See, e.g., Reproductive Health Services, Dep’t of Veterans Affairs, 87 Fed. Reg. 55287-01, 2022 WL 4105056, Interim Final Rule (Sept. 9, 2022) (relying upon health statistics from KFF for rulemaking); COVID-19 Vaccination \& Testing; Emergency Temporary Standard, Dep’t of Labor, Interim Final Rule, 86 Fed. Reg. 6140201, 2021 WL 5130519 (Nov. 5, 2021) (relying upon health data from KFF for rulemaking); Religious Exemptions \& Accommodations for Coverage of Certain Preventative Servs. Under the Affordable Care Act, Dep’t of Treasury, 26 CFR Part 54, 82 Fed. Reg. 47792-01, 2017 WL 4551336 (Oct. 13, 2017) (relying upon statistics from KFF for rulemaking); Average Cost of a Health Insurance Policy, Dep’t of Health \& Human Servs., 42 C.F.R. § 100.2 (Aug. 6, 2007) (relying upon health statistics from KFF to calculate compensation under Vaccine Injury Compensation program).

If KFF suffices as a reliable source of data for the North Dakota legislature, the North Dakota Department of Health and Human Resources, the U.S. Supreme Court and lower federal courts, the National Institutes of Health, and federal agency rulemaking, then surely it is a reliable source of data for an expert in this case.

Second, Defendant's contention that Dr. McCool's reliance on the KFF data is improper because it reports statewide, not localized, health disparities is likewise incorrect. As the Ninth Circuit has explained, "the court decisions from which the Senate factors were derived . . . both considered the existence of statewide discrimination as a factor . . . ." Gomez v. City of Watsonville, 863 F.2d 1407, 1418 (9th Cir. 1988) (emphasis in original); see White v. Register, 412 U.S. 755, 766-68 (1973) (citing statewide discrimination against Black and Mexican-American residents); Zimmer v. McKeithen, 485 F.2d 1297, 1306 (5th Cir. 1973) (citing effect of statewide racial segregation in education). As the Gomez court emphasized, this relevance of statewide data applies to the precise Senator Factor analyzed by Dr. McCool:

These arguments apply with equal force to the fifth Senate Factor, which states that courts may consider 'the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process.' Moreover, the literal language of the fifth Senate factor does not even support the reading that only discrimination by [the locality] may be considered; the limiting language describes the people being discriminated against, not the discriminator.

863 F.2d at 1418 (emphasis in original); cf. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 437 (2006) (holding that consideration of proportionality for a statewide plan must assess statewide, not regional, proportionality of representation). Defendant's contention that statewide disparities cannot be considered as part of the fifth Senate Factor is incorrect as a legal matter, and certainly is not a basis to exclude the data.

## V. The Court Should Not Limit the Scope of Testimony for Chairperson Jackson Street

The Court should allow Chairperson Lonna Jackson Street, if called, to testify regarding the subjects identified in Plaintiffs' supplemental disclosures. Defendant's objection to the subjects identified with respect to Chairperson Jackson Street—specifically "the Tribe, its voters and local election conditions, and the needs of Tribal residents with respect to the state legislature" is
baseless as these topics all fall within the broader category of information Plaintiffs previously disclosed with respect to previous Chairperson Yankton, i.e. "the injury the Spirt Lake Tribe and its members have suffered by the State's use of a redistricting plan that dilutes their vote." Compare Def. Ex. 3, Plaintiffs' 2nd Suppl. 26(a)(1) Disclosures, ECF 95-3 with Def. Ex. 2, Plaintiffs' Initial Rule 26(a)(1) Disclosures, ECF 95-2; see Transamerica Life Ins. Co. v. Lincoln Nat. Life Ins. Co., 255 F.R.D. 645, 657 (N.D. Iowa 2009) (allowing witness testimony over objection with respect to topics that "could reasonably be read" as included in party’s disclosures). Nor can Defendant reasonably claim to be prejudiced by the disclosure of more specific topics for Chairperson Jackson Street. Transamerica, 255 F.R.D. at 657 ("it is difficult to see how Lincoln has been harmed by more specific disclosure of the content of [the witness's] testimony"). This is particularly so given that Defendant never sought to depose former Chairperson Yankton, forgoing any opportunity to determine the scope of his testimony, which reasonably encompasses the specific topics identified with respect to Chairperson Jackson Street, among other topics.

Regardless, Plaintiffs still intend to call former Chairperson Yankton to testify at trial, as he served as Chairperson for the Spirit Lake Nation during the 2021 redistricting process and during the majority of this suit and thus has relevant information about the injuries alleged by Spirt Lake. Chairperson Jackson Street was only recently elected Chairperson, replacing former Chairperson Yankton, and while Plaintiffs may call Chairperson Jackson Street in addition to Chairperson Yankton, they will do so to the extent she has non-cumulative information and evidence from the time since she became Chairperson that is within the scope of the identified topics and becomes relevant at trial. ${ }^{10}$

[^7]
## CONCLUSION

For the foregoing reasons, Defendant's motion in limine should be denied.

[^8] the right to call both witnesses. $I d$.

May 22, 2023
/s/ Michael S. Carter
Michael S. Carter
OK Bar No. 31961
Matthew Campbell
NM Bar No. 138207, CO Bar No. 40808
mcampbell@narf.org
NATIVE AMERICAN RIGHTS FUND
250 Arapahoe Ave.
Boulder, CO 80302
Telephone: (303) 447-8760
Counsel for Plaintiffs

Samantha B. Kelty
AZ Bar No. 024110, TX Bar No. 24085074
kelty@narf.org
NATIVE AMERICAN RIGHTS FUND
950 F Street NW, Ste. 1050
Washington, DC 20004
Telephone: (202) 785-4166
Counsel for Plaintiffs
/s/ Timothy Q. Purdon
Timothy Q. Purdon
N.D. Bar No. 05392

TPurdon@RobinsKaplan.com
ROBINS KAPLAN, LLP
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501
Telephone: (701) 255-3000
Fax: (612) 339-4181
Counsel for Plaintiffs Spirit Lake Nation
and Turtle Mountain Band of Chippewa
Indians

Respectfully submitted,
/s/ Mark P. Gaber
DC Bar No. 988077
mgaber@campaignlegal.org
Molly E. Danahy
DC Bar No. 1643411
mdanahy@campaignlegal.org
Nicole Hansen
NY Bar 5992326
nhansen@campaignlegal.org
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
Telephone: (202) 736-2200
Fax: (202) 736-2222
Counsel for Plaintiffs
Bryan Sells (admitted pro hac vice)
GA Bar No. 635562
bryan@bryansellslsaw.com
THE LAW OFFICE OF BRYAN L. SELLS, LLC
PO Box 5493
Atlanta, GA 31107-0493
Telephone: (404) 480-4212
Counsel for Plaintiffs

## 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,
Civil No. 3:22-cv-00022-PDW-ARS
v.

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

Defendant.

## DECLARATION OF MARK P. GABER

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

1. I am an attorney at 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 1 is a true and correct copy of the Order of the court in Perez v. Texas, Case No. 11-CA-360-OLG-JES-XR (W.D. Tex. July 3, 2017), ECF No. 1447.
5. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of David G. Bradlee.
6. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of Dr.

Loren Collingwood.
7. Attached hereto as Exhibit 4 is a true and correct copy of the Memorandum from Bernard Grofman, Ph.D and Sean Trende to the Chief Justice of the Supreme Court of Virginia,
dated December 7, 2021, and available at https://www.vacourts.gov/courts/scv/districting/memorandum_re_va_redistricting_2021.pdf.
8. Attached hereto as Exhibit 5 is a true and correct copy of the Report of Special Master Bernard Grofman, Ph.D., in the matter Holloway v. City of Virginia Beach, 2:18-cv-69 (E.D. Va. Sept. 26, 2021), ECF No. 281-1. I serve as counsel for Plaintiffs in the Holloway matter.
9. Attached hereto as Exhibit 6 is a true and correct copy of a transcript of the August 26, 2021 North Dakota Legislative Redistricting Committee meeting, which was produced to the parties in the Walen v. Burgum matter by Defendants.
10. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of the Chair of the Washington Redistricting Committee, Sarah Augustine, to the Washington Supreme Court, dated November 21, 2021, and available at https://www.courts.wa.gov/content/publicUpload/Redistricting/AugustineDecl\ Nov\ 21\% 20signed.pdf.
11. Attached hereto as Exhibit 8 is a true and correct copy of an email dated January 5, 2023 between Clark Benson and Dr. Trey Hood III, produced to Plaintiffs by Defendants in response to a subpoena to Dr. Hood.

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

Executed this 22nd day of May, 2023 in Washington, DC

## /s/ Mark P. Gaber

Mark P. Gaber

Senior Direct, Redistricting
Campaign Legal Center
1101 14th St. NW, Suite 400

Washington, DC 20001
202-736-2200
mgaber@campaignlegalcenter.org

## EXHIBIT 1

# UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION 

SHANNON PEREZ, et. al. )

|  | Plaintiffs |
| :--- | :--- |
| v. | ) |
| GREG ABBOTT, et. al. | ) |
|  |  |
|  | Defendants |

## ORDER

Pending before the Court is the parties' dispute regarding the admissibility of expert reports (docket nos. 1439, 1440, 1441, 1444). Defendants object to the admission of any expert reports into evidence. They contend the expert reports constitute inadmissible hearsay under Fed. R. Evid. 801(c) because they are out-ofcourt statements offered to prove their truth. Plaintiffs assert that expert reports are admissible under Fed. R. Evid. 807, the residual exception to the hearsay rule. Defendants claim the residual exception should only be applied in "exceptional circumstances."

The Court has considered the parties' arguments and the applicable law and finds that expert reports will not be pre-admitted or admitted in lieu of live expert testimony but the reports will be allowed subject to any further objections in open court if the expert testifies live or by trial deposition and adopts the statements in
the report while under oath and subject to cross examination. See Bianco v. Globus Medical, Inc., 30 F. Supp. 3d 565, 570-71 (E.D. Tex. 2014) (pretrial expert report was inadmissible as out of court statement, but report offered into evidence through sworn declaration was admissible on issues to be determined by the judge); see also Televisa, S.A. de C.V. v. Univision Communications, Inc., 635 F. Supp. 2d 1106, 1109-10 (C.D. Cal. 2009) (expert report admissible under Rule 807 because expert signed the report, adopted it as a true and correct copy, testified under oath, and was subject to cross examination). Allowing the admission of expert reports under these parameters should dispel any concerns about trustworthiness.

In bench trials, and in this case in particular, expert reports can greatly assist the trier of fact in understanding the basis for the expert's opinions and determining how much weight to give the expert's opinion. Williams v. Illinois, 567 U.S. 50, 77-78 (2012). If the basis evidence for the expert's opinion is hearsay, and nothing more, the Court can simply disregard that evidence when reaching its decision. Likewise, if some (but not all) of the basis evidence is irrelevant, the Court can disregard the irrelevant evidence when reaching a decision. But if the basis for the expert's opinion is relevant data from reliable sources, and the expert's analysis and methodology is sound, the Court will likely give the expert's findings more weight. The issues in this case are not simple, the data and methodology used by certain experts can be complex, and time is of the essence. Allowing the expert reports under Rule 807 will serve the general purpose of the rules and the interests of justice.

It is therefore ORDERED that expert reports will not be pre-admitted or admitted in lieu of live expert testimony but the reports will be allowed subject to any further objections in open court if the expert testifies live or by trial deposition and adopts the statements in the report while under oath and subject to cross examination.

SIGNED on this 3rd day of July, 2017.

$\overline{\text { ORLANDO L. GARCIA }}$
CHIEF U.S. DISTRICT JUDGE
/s/
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

## EXHIBIT 2

## 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, et al.,

## Defendant.

## DECLARATION OF DAVID G. BRADLEE

I, David G. ("Dave") Bradlee, pursuant to 28 U.S.C. § 1746, declare that:

1. I am over 18 years of age and am competent to testify as to the matters stated in this declaration. This testimony is based upon my personal knowledge.
2. I received a B.S. in Math and Computer Science from Union College and a Ph.D. in Computer Science from the University of Washington. I spent over twenty years of my career at Microsoft, mostly as a Principal Software Development Lead and Development Manager.
3. In 2009, I created and launched Dave's Redistricting App ("DRA"). At the time, DRA was the only web application that allowed the public - at no cost-to draw congressional and legislative district boundaries for all 50 states. The new version of DRA, DRA 2020, was launched in late 2018. DRA can be accessed at https://davesredistricting.org.
4. My goal in launching DRA was to help make redistricting fairer and more transparent. DRA has transformed the redistricting process by affording anyone the ability to draw district boundaries. Prior to DRA's launch, the only option for redistricting software was
commercial products. The software and licenses for these commercial products cost thousands of dollars, and that cost multiplies as you purchase the data sets for more states.
5. Particularly throughout this past redistricting cycle, DRA's use has exponentially grown. It is used by the public, media, legislators, state and local redistricting commissions, expert witnesses, and court-appointed special masters.
6. I work with a team experienced in software development to maintain and operate DRA. My colleagues received degrees from MIT, Williams College, Harvard Business School, Vassar, UCLA, and the University of Washington Law School.
7. I obtained the population data-including the voting-age population ("VAP") data-reported by DRA directly from the U.S. Census Bureau when it released the P.L. 94-171 redistricting data in August 2021. This is the exact same data that commercial redistricting software products, like Maptitude or ESRI ArcGIS, use.
8. For the 2020 Census, DRA reports VAP racial data using the "any part" methodology of combining people who identified as more than one race on their Census form. For example, the Native American VAP data include American Indian and Alaska Native alone or in combination with other races, including Hispanic.
9. DRA provides several tools to analyze redistricting plans. For example, users can check to see that all precincts have been assigned to a district, that the districts are contiguous, and that the districts satisfy population equality requirements. DRA also reports the number of counties, precincts/wards, or cities that a plan splits.
10. DRA also includes statewide election data, and allows users to see the total votes for candidates for statewide offices within particular districts. The vast majority of the election data in DRA is from the Voting and Election Science Team at University of Florida and Wichita

## Case 3:22-cv-00022-PDW-ARS Document 98-3 Filed 05/22/23 Page 4 of 4

State University. The data is housed at the Harvard University Dataverse, available at this link:
https://dataverse.harvard.edu/dataverse/electionscience.
11. DRA reports plan-wide average compactness scores as well as individual compactness scores for districts, including the commonly used Reock and Polsby-Popper scores.

DRA uses the standard equations to calculate these scores.

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

May 22, 2023


## EXHIBIT 3

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

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, et al.,

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

## DECLARATION OF DR. LOREN COLLINGWOOD

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

1. I am over 18 years of age and am competent to testify as to the matters stated in this declaration. This testimony is based upon my personal knowledge.
2. I have reviewed Defendant's Motion in Limine, which argues that Dave's Redistricting App ("DRA") is an unreliable source of Voting Age Population ("VAP") data and compactness scores. This is not correct.
3. I routinely use DRA in my research and expert work and have always found it to be reliable and accurate. So do other experts in the field, including one of the most respected and experienced experts and Court-appointed special masters, Dr. Bernie Grofman. Indeed, because DRA is substantially easier to use than commercial alternatives, it reduces the possibility of error.
4. DRA's VAP data comes directly from the Census Bureau. It is no different in this regard than commercial software providers like Maptitude.
5. After reviewing Defendant's Motion in Limine, I compared the VAP data reported by DRA and cited in my report with the VAP data reported by Maptitude. First, I note that

Defendant's expert Dr. Hood and the Legislature cited "single race" Native American VAP figures, while I used the "any part" Native American figures reported by DRA and routinely used in Voting Rights Act cases. To compare the two sources, I obtained Maptitude reports for District 9, 9A, 9B, and 15 in the enacted plan and for Plaintiffs' Demonstrative Plans 1 and 2 listing both VAP metrics.
6. As the attached Maptitude reports show, the DRA and Maptitude VAP data is the same. For example, Maptitude reports the same "any part" Native American figures for District 9 (54.5\%), District 9A (79.8\%), District 9B (32.2\%) and District 15 (23.1\%) as does DRA. Likewise, both Maptitude and DRA report that Plaintiff's Demonstrative Plan 1 has an "any part" Native American VAP of $66.1 \%$ and, for Plaintiffs' Demonstrative Plan 2, 69.1\%. Ex. 1 (Maptitude Reports - Plaintiffs' Demonstrative Plan 1); Ex. 2 (Maptitude Reports - Plaintiffs' Demonstrative Plan 2).
7. With respect to compactness scores, Defendants' motion does not explain why it assumes that the minor discrepancies between DRA's scores and Maptitude's scores originate with DRA. It is just as likely that Maptitude is the source. In any event, given that Dr. Hood's compactness analysis involved comparing different districts, what matters is that we use one source of scores in making that comparison, whether it is Maptitude or DRA. That is why in my rebuttal report I analyzed the Maptitude reports, which Dr. Hood had used.
8. The suggestion that DRA is not reliable is not true.


## EXHIBIT 1

## District: 9



Map layers
Indian Reservation
County
Districts
7.515
©2021 CALIPER; ©2020 HERE

District: 9A


| Field | Value |
| ---: | ---: |
| District | 9 A |
| Population | 7922 |
| Deviation | $-7,978$ |
| \% Deviation | $-50.18 \%$ |
| $18+$ PPop | 5269 |
| 18+_Ind | 4055 |
| \% 18+_Ind | $76.96 \%$ |
| 18+_AP_Ind | 4204 |
| \% 18+_AP_Ind | $79.79 \%$ |

## District: 9B

| Field | Value |
| ---: | ---: |
| District | 9 B |
| Population | 8236 |
| Deviation | $-7,664$ |
| \% Deviation | $-48.2 \%$ |
| $18+$ POp | 5986 |
| 18+_Ind | 1760 |
| \% 18+_Ind | $29.4 \%$ |
| 18+_AP_Ind | 1929 |
| \% 18+_AP_Ind | $32.23 \%$ |



Map layers
Indian Reservation
County
Districts
$\begin{array}{lll}0 & 5 & 10\end{array}$
©2021 CALIPER; ©2020 HERE

District: 15


## EXHIBIT 2

## District: 9


©2021 CALIPER; ©2020 HERE

Map layers
Indian Reservation
County
Districts

## District: 9


©2021 CALIPER; ©2020 HERE

Map layers
Indian Reservation
County
Districts

## EXHIBIT 4

## memo

To: The Chief Justice and Justices of the Supreme Court of Virginia
From: Bernard Grofman, Ph.D. and Sean Trende
CC:
Date: 12/7/2021*
Re: Redistricting maps

## INTRODUCTION

We are pleased to present this Court with three draft maps for its review. As described in this Court's Redistricting Appointment Order ("Redistricting Order"), we have proposed "a single redistricting map for the Virginia House of Delegates, a single redistricting map for the Senate of Virginia, and a single redistricting map for Virginia's representatives to the United States House of Representatives." Redistricting Order at 1-2.

We are also pleased to report that we have "work[ed] together to develop any plan to be submitted to the Court for its consideration," Code § 30-399(F). These maps reflect a true joint effort on our part. We agreed on almost all issues initially, and the few issues on which we initially disagreed were resolved by amicable discussion.

When drawing these maps, we have worked diligently to craft maps that comply with the statutory and constitutional provisions enumerated by this Court. See Redistricting Order at 2-3. The purpose of this memo is to relate our approach to the various constitutional provisions to this Court, and then to explain the reasoning for choices that we made in the specific districts. We

[^9]further anticipate that when we release the plans for public comment, the Court may wish to include this memo with that release.

We first emphasize, however, that our prime directive for drawing these maps comes not from the constitutional or statutory provisions described by this Court, but rather from the Court's order itself. In particular, we took seriously the Court's command that, although we were nominated by the political parties, we would behave in "an apolitical and nonpartisan manner." $I d$ at 3. Our duty is owed not to the parties that nominated us, but rather to the Court that appointed us and to the residents of the Commonwealth that it serves.

## SPECIFIC CONSTITUTIONAL AND STATUTORY PROVISIONS

This Court commanded us to comply fully with:

- Article I § 2 of the United States Constitution and the $14^{\text {th }}$ Amendment to that constitution;
- The Voting Rights Act of 1965 ("VRA"), as amended;
- Article II $\S 6$ to 6 -A of the Constitution of Virginia;
- Code §§ 30-399(E) and 24.2-304.04;
- Other applicable federal and state constitutional and statutory provisions.

Although we were instructed to first follow the $14^{\text {th }}$ Amendment, followed by the VRA, we begin instead with the requirements of Code § 24.2-304.04 (hereinafter "Statutory Criteria"), which provides the standards and criteria for congressional and legislative districts. We do so because the equal protection provisions of the $14^{\text {th }}$ Amendment and the VRA are inextricably linked with the requirements of the Statutory Criteria, while the $14^{\text {th }}$ Amendment's equal population requirements are listed first in the Code. We also note at the outset that the Statutory Criteria comprise a wide range of considerations, which can only be implemented when taken in
conjunction with one another. In our work, however, we followed the Court's command and prioritized federal constitutional and statutory requirements, as well as those in the Virginia Constitution.

To summarize our approach: we carefully drew districts that met constitutional and statutory population requirements. In doing so, we minimized county and city splits, while respecting natural boundaries and communities of interest ("COIs") to the extent possible. We attempted to draw compact districts, although equal population requirements and Virginia's geography often conspired to limit our ability to do so. While we were mindful of federal and state requirements to draw districts that would elect the minority candidate of choice, we did so within the confines of the criteria above. In other words, we drew districts that would elect the candidate of choice of a minority group only if the district could be drawn in a compact fashion that did not needlessly split counties. Despite these strictures, we believe we have drawn more districts where minority groups will be empowered to elect their candidate of choice than exist under the current maps.

Equal Representation: Clause 1 of the Statutory Criteria commands that "[d]istricts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts." This mirrors the constitutional command that congressional districts must be drawn with populations "as nearly as practicable" to equality. Karcher v. Daggett, 462 U.S. 725 (1983), see also Gray v. Sanders, 372 U.S. 368, 381 (1963); Wesberry v. Sanders, 376 U.S. 1 (1963). We worked diligently to ensure that the congressional districts were reasonably close to equipopulous.

The maximum five percent deviation the Statutory Criteria describe for state legislative districts fits well within the $10 \%$ deviation guideline that the Court has allowed for state
legislative districts, Brown v. Thompson, 462 U.S. 835 (1983), and therefore does not raise immediate constitutional concerns. The ideal population of a state senate district is 215,785 . Therefore, populations for state senate districts were kept in a range between 210,390 and 221,179 . The ideal population of a House of Delegates district is 86,314 . Therefore, populations for House of Delegates districts were kept in a range between 84,157 and 88,471 . We were, however, mindful that deviations from absolute equality must still be justified by a legitimate governmental objective. Cox v. Larios, 542 U.S. 947 (2004).

Equal Protection and Ability-to-Elect Districts: The next Statutory Criteria requires that "[d]istricts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness." This is covered in the succeeding paragraph.

No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group. No district shall be drawn that results in a denial or abridgement of the rights of any racial or language minority group to participate in the political process and to elect representatives of their choice. A violation of this subdivision is established if, on the basis of the totality of the circumstances, it is shown that districts were drawn in such a way that members of a racial or language minority group are dispersed into districts in which they constitute an ineffective minority of voters or are concentrated into districts where they constitute an excessive majority. The extent to which members of a racial or language minority group have been elected to office in the state or the political subdivision is one circumstance that may be considered. Nothing in this subdivision shall establish a right to have members of a racial or language minority group elected in numbers equal to their proportion in the population.

The subsequent Statutory Criteria is related; it demands that "[d]istricts shall be drawn to give racial and language minorities an equal opportunity to participate in the political process
and shall not dilute or diminish their ability to elect candidates of choice either alone or in coalition with others."

We therefore endeavored, where practicable to do so consistently with the $14^{\text {th }}$ Amendment, to draw districts that would elect a minority group's candidate of choice, without placing an excessive number of minority group members within the district. We note that the statutory language here suggests more than simply drawing districts in areas where the drawing of a minority opportunity district would be required by the VRA Section 2 feasible litigation threshold of a minimum 50\% minority Citizens Voting Age Population ("CVAP") as set down in Bartlett v. Strickland.

We are mindful, however, that the Supreme Court of the United States has repeatedly held that the use of race in drawing legislative districts can trigger strict scrutiny. Shaw v. Reno, 509 U.S. 630 (1993). Strict scrutiny is triggered when race is the "predominant factor" in drawing district lines. The U.S. Supreme Court has assumed, without deciding, that compliance with the VRA reflects a compelling governmental interest; thus when the VRA preconditions established in Thornburg $v$ Gingles, 478 U.S. 30 (1986), are met and the totality of the circumstances would demand race-conscious drawing, the $14^{\text {th }}$ Amendment would allow it. The Supreme Court has not, to our knowledge, held that compliance with state statutory or constitutional requirements can satisfy strict scrutiny.

To avoid this question, we simply drew districts without race as the predominant interest. Instead, we began by drawing districts that comply with traditional good government districting criteria (contiguity, minimizing splits in counties and cities, and where feasible in census designated places, compactness, etc.) and considered race only after we had drawn a map fully subject to the constraints of those traditional factors. Indeed, we sought to limit splits of counties and cities to as close as feasible to the mathematical minimum possible. As shown below, we
believe we have provided maps that do at least as well or better as the current map in terms of creating districts where the minority community has a realistic opportunity to elect a candidate of choice, while at the same time creating plans that are far superior in terms of limiting county and city splits and in terms of vastly improved compactness. We add that there is also no issue of using politics as a proxy for race, since we only considered political data after the maps were drawn, to see if the districts drawn were indeed ability-to-elect districts.

Communities of Interest ("COIs"): The Statutory Criteria next provide that "[d]istricts shall be drawn to preserve communities of interest. For purposes of this subdivision, a 'community of interest' means a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests. A 'community of interest' does not include a community based upon political affiliation or relationship with a political party, elected official, or candidate for office."

This is obviously a broad definition of communities of interest. We sought to add some additional specificity to this to this based on the history, demography, and topography of the Commonwealth of Virginia. First and foremost, we carefully reviewed the communities of interest submitted by Virginia's residents to the Virginia Redistricting Commission. While it was not possible to respect every user-submitted community, we did attempt to incorporate them where possible. Second, we reviewed Virginia data from Representable, a non-profit organization that allows individuals to draw their communities of interest and then stores those communities of interest in digital form.

Third, we were mindful of the Supreme Court of the United States' attempts at defining communities of interest. While there has never been a formal definition given, that Court has listed "shared broadcast and print media, public transport infrastructure, and institutions such as schools and churches" as part of its definition of a community of interest. Bush v. Vera, 517 U.S.

952 (1996). We have attempted to incorporate those considerations into our districts as much as possible.

In particular, we were mindful of the Blue Ridge Mountains as an important geographic divider in Virginia's history. We also considered the course of the Shenandoah Valley (served largely by I-81), the federal definition of Appalachia, the historic importance of Southside Virginia and the Piedmont region in general and the Fall Line as important geographic markers. We also were mindful of the Commonwealth's major metropolitan areas and the travel arteries that feed them: Northern Virginia, greater Richmond, and the Hampton Roads area, as defined both by the United States Census Bureau and major media markets. This is not an exclusive list, but simply serves to illustrate to the Court how we interpreted the term "communities of interest" in Virginia.

Finally, we acknowledge there are likely other communities of interest of which we are not aware. We look forward to receiving the commentary of this Court and of the public to help improve the map in this regard.

Contiguity: Clause 6 of the Statutory Criteria provides that "Districts shall be composed of contiguous territory, with no district contiguous only by connections by water running downstream or upriver, and political boundaries may be considered." We identified two potential definitions of contiguity: "census" and "functional" contiguity. Census contiguity includes the broader definition of contiguity, which simply requires that census blocks or Voting Tabulation Districts ("VTDs") be connected to each other by shared borders without regard to the underlying geographic features.

Functional contiguity is more demanding. It effectively requires that a representative be able to travel between any two points within a district without leaving the district.

The Statutory Criteria fall somewhere between this, requiring, under our reading, that we avoid using a river as a connector without also including populations on the banks. We have nevertheless opted to draw districts that are functionally contiguous to the extent possible. We observe, however, that the goals of maintaining functional contiguity, maximizing compactness, minimizing county splits, and adhering to one-person-one-vote standards are often at odds with each other.

Finally, we sought to avoid "fracking," which occurs when a single district traverses a county line more than once (i.e., when two tendrils extend into the county from a neighboring county).

Prisoners: The Statutory Criteria state that prisoners should be counted as residents of the locality where they resided before their incarceration. We understand this to be implemented in Legislative Services' data.

Partisanship: The Statutory Criteria also require that "[a] map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party." First, by adhering to the statutory criteria described above, we minimize the risk of any undue favoritism toward either party. It would be difficult to draw gerrymanders under these constraints had we wanted to.

Second, once the maps were drawn, we examined the political data in their totality, with particular attention to the median district. Our rough goal was to see if the median district in a Congressional map approximated Joe Biden's and Donald Trump's statewide vote shares for 2020, and if it approximated the Democrats' statewide results for 2017 for state legislative
districts. ${ }^{1}$ This is called the "mean-median" standard in discussions of gerrymandering. ${ }^{2}$ It was our agreed-upon understanding, however, that since the standard asked that maps not "unduly" favor one party or the other, we would leave the maps in place unless the results were both (a) truly egregious and (b) able to be remedied while adhering to the other criteria above.

[^10]Nesting: Although not explicitly a Statutory Criteria, we agreed to "nest" our districts. That is to say, to the extent practicable, we carved our Senate districts out of U.S. House districts (with a little less than four complete Senate districts in a House district), and then drew the House of Delegates districts out of Senate districts (with roughly five House districts created out of two Senate districts). There are a variety of reasons for this, the most important of which is that having overlapping jurisdictions helps to ensure that the communities of interest that underlay the House of Delegates districts have multiple layers of representation. In other words, a community of interest that lies at the heart of one district is unlikely to be an "add-on" attached to a different Senate district for equal population purposes.

Once again, it was impossible to adhere to this standard religiously in light of competing criteria, but it did guide us when drawing districts. In particular, we tried to adhere to drawing roughly 25 contiguous State House of Delegates districts within an area encompassed by 10 contiguous Senate districts, and to the extent made feasible by geographic constraints we chose the Senate districts to represent areas of the state with similar communities of interest. For example, we sought to draw both Senate and House districts within the Shenandoah Valley, the D.C. Metro area, the Richmond area and the Hampton Roads area.

Incumbency: The Statutory Criteria make no mention of protecting incumbents. We therefore maintained ignorance about the residences of incumbents. Even as we submit these plans to the Court, we do not know which incumbents have been placed in districts with other incumbents, with one exception described below. We plan on maintaining that ignorance until the maps are finally approved, unless otherwise instructed by the Court.

Numbering: When the districts are approved by this Court, our preference would be to renumber the districts in a sensible manner. For now, we have opted to retain the traditional regional numbering of the districts for Congressional Districts to facilitate public comment.

Specific descriptions of the districts and highlights of key features of those districts follows.

## UNITED STATES CONGRESS

## District Descriptions

## Districts 8 and 11 (Fairfax and Arlington counties, Alexandria, Fairfax and Falls

Church cities: We began our congressional map drawing with the realization that the counties of Fairfax and Arlington, when paired with the cities of Fairfax, Falls Church, and Alexandria, had a population sufficient to hold two congressional districts entirely, with only 18,000 residents left over.

Taken together, these counties are roughly $50 \%$ non-Hispanic White, so we checked to see if a reasonably compact district where a minority group would have the ability to elect a candidate of choice was possible to draw here. We quickly discovered that the minority groups are quite dispersed throughout these counties, and that while it is possible to draw a minoritymajority district, it is difficult to push any minority group above even a third of the population. In the absence of evidence that minority groups in Fairfax County routinely form political coalitions and share interests, we concluded that we could not usefully consider race as a factor here.

We examined possible districts that split Fairfax County roughly upon a North/South line but concluded that this configuration split too many communities of interest. We then examined districts that kept one district entirely within the Capital Beltway (District 8). This district was necessarily underpopulated by about 158,000 residents. We examined adding communities of interest toward the west, effectively creating an "Orange Line" district that extended westward from Arlington along I-66. While there was much to commend the "Orange Line" district, the remaining Fairfax district (the $11^{\text {th }}$ ) was rendered excessively non-compact. We therefore opted to send the $8^{\text {th }}$ district southward along I-395 and U.S. 1. This version of the $8^{\text {th }}$ had too many people, so we moved Springfield and Franconia into the Fairfax district, with a few precincts
around Lorton moved into the Prince William County district (the newly created $7^{\text {th }}$ district). Finally, a few VTDs were split to smooth the lines, and to assure roughly equal population.

## Districts 6 and 9 (Appalachia, Shenandoah Valley)

We next proceeded to draw the $6^{\text {th }}$ and $9^{\text {th }}$ districts. We agreed almost immediately that the Blue Ridge Mountains served as a natural dividing line for communities of interest, especially given the paucity of easy crossings of those mountains. A problem immediately became apparent, however: the population of those counties is approximately 150,000 residents short of supporting two full districts.

We considered having a district that crossed the Blue Ridge in Prince William County (along I-66) as well as one that crossed near Charlottesville (along I-64). We observed, however, that the entire Valley of Virginia from Winchester to Roanoke fit almost perfectly within a district bordered by the Blue Ridge, and that the counties west of the Blue Ridge that remained constituted almost all of the counties in Virginia classified as part of Appalachia by the U.S. Government. (About the Appalachian Region - Appalachian Regional Commission (arc.gov)). We also examined historical maps of Virginia and noted that before the Civil War, the Blue Ridge was typically utilized to divide Virginia's districts, although districts sometimes crossed it to the south. See generally Kenneth C. Martis, The Historical Atlas of United States Congressional Districts:1789-1983 (1982). After the Civil War, the Commonwealth was less solicitous of the Blue Ridge, but this likely reflected an effort to dilute Republican voting strength in the Shenandoah and in southwest Virginia.

We therefore opted to place the counties north of Roanoke and west of the Blue Ridge in a single district representing the Valley of Virginia. Salem is moved back into the same district as Roanoke, and most of the smaller towns surrounding Roanoke were placed in that district as
well. The $9^{\text {th }}$ district retains most of the panhandle and is composed of almost all of the counties in Virginia classified as Appalachian. A few counties east of the Blue Ridge are added for purposes of population equality.

## Districts 2 and 3 (Hampton Roads and Virginia Beach)

The Hampton Roads area presently contains one district that consistently elects the candidate of choice of the African-American population. Ultimately, we opted to draw a compact district comprised of the four major cities in the Hampton Roads area: Norfolk, Newport News, Hampton and Portsmouth. We then split the City of Chesapeake roughly at the Hampton Roads Beltway in order to maintain the district's compactness while achieving population equality.

Having drawn a compact district that respected county and city lines to the extent possible, we then examined racial and political data. The district is approximately $44.5 \%$ African-American, which is only marginally lower than the current $3^{\text {rd }}$ district's $47.2 \%$. It routinely gives Democratic presidential candidates around two-thirds of the vote. Even under implausible assumptions (such as African-Americans in the region splitting 70-30 between the Democratic and Republican party) African-American voters should still comprise a comfortable majority of voters in the Democratic primary.

This left few options for the $2^{\text {nd }}$ District, which was redrawn to include the Eastern Shore, all of Virginia Beach, and the remainder of Chesapeake City. Suffolk City and Isle of Wight County were added as the next counties out, as were Franklin City and a small portion of Southampton County for population equality reasons. The district loses functional contiguity in the cities of Suffolk and Chesapeake, but the Great Dismal Swamp makes issues of functional contiguity inevitable in that portion of the state.

## Districts 4 and 5 (Richmond and Southside)

We next drew metro Richmond. We initially looked at a compact district that included only Richmond City and Henrico/Chesterfield counties, but this district would cause dilution problems under the Statutory Criteria. African-Americans would total a little more than a third of the population, and their candidate of choice might not emerge from the Democratic primary. We ultimately opted for a district that is reasonably compact and that still respects county borders. It picks up the remainder of Southampton County left over from district 2, and then splits only the large suburban counties of Henrico and Chesterfield along east-west lines, roughly at the Fall Line. Some additional smaller counties in the South are added for geographic and population equality purposes. The newly constructed $4^{\text {th }}$ has a $45.3 \%$ Black CVAP, which is higher than the $40 \%$ Black CVAP in the $4^{\text {th }}$ as presently constituted and would likely continue to elect the African-American population's candidate of choice.

The 5th district continues Virginia's lengthy tradition of placing a district in Southside Virginia. Historically anchored in Danville, today the equal population requirement demands that the district stretch up to Charlottesville and into the Richmond suburbs in Chesterfield County.

## Districts 1, 7, and 10 (North Tidewater and outer Northern Virginia)

Both the Selection Committee and the Redistricting Commission opted to use the eight regions identified by the University of Virginia's Weldon Cooper Center. Under this map, Northern Virginia consists of Arlington, Fairfax, Loudoun, Prince William, Clarke, Warren, Rappahannock, Culpeper, Spotsylvania, Stafford and King George counties, as well as the independent cities of Fairfax, Alexandria, Falls Church, Manassas, Manassas Park, and

Fredericksburg. These counties' populations combine for almost exactly four congressional districts. Yet the current map spreads their populations over seven districts, with six of them taking in substantial portions of the region's population.

We sought to remedy this. As noted above the $8^{\text {th }}$ and $11^{\text {th }}$ congressional districts are now placed entirely within Fairfax County and those localities closer to Washington, D.C. We sought to place two additional districts almost entirely within the remainder of Northern Virginia. Our exploration of the area mostly consisted of variants on two basic approaches. The first approach involved a district that traveled across Prince William County into southern Loudoun County, while a second district took in the extended outer areas of Northern Virginia. We referred to this as the "ringed approach." The second approach contained a district wholly anchored in Loudoun County, and one in Prince William County. In this approach, the Prince William District extended southward along I-95 to Fredericksburg, while the Loudoun District turned south down US-29 toward Charlottesville.

We ultimately opted for the second approach, which we thought better reflected travel patterns and communities of interest in the area. But switching over to the ringed approach, if the Court preferred it, would be a trivial task. The remainder of the state fell nicely into a single district that is anchored in the northern Tidewater area, but which then takes in the northern Richmond suburbs and a few lightly populated counties in the northern Piedmont area.

## Assessment of Congressional Districts Under Statutory Criteria

Equal Representation: The ideal population size for a Congressional district in Virginia is 784,672 . The largest positive deviation from the ideal population comes in district 10 , which is overpopulated by 1,797 residents. The largest negative deviation from the ideal population comes in district 1 , which is underpopulated by 1,259 residents. All absolute percentage deviations are under $0.25 \%$.

| Evaluation of Equal Population Criteria, Draft Virginia Congressional Districts |  |  |  |
| :---: | :---: | :---: | :---: |
| District | Population | Deviation | Pct. Deviation |
| 1 | 783,413 | $-1,259$ | $-0.16 \%$ |
| 2 | 784,453 | -219 | $-0.03 \%$ |
| 3 | 784,353 | -319 | $-0.04 \%$ |
| 4 | 784,366 | -306 | $-0.04 \%$ |
| 5 | 785,740 | 1,068 | $0.14 \%$ |
| 6 | 783,436 | $-1,236$ | $-0.16 \%$ |
| 7 | 783,613 | $-1,059$ | $-0.13 \%$ |
| 8 | 784,141 | -531 | $-0.07 \%$ |
| 9 | 786,021 | 1,349 | $0.17 \%$ |
| 10 | 786,469 | 1,797 | $0.23 \%$ |
| 11 | 785,388 | 716 | $0.09 \%$ |

Equal Protection and Ability-to-Elect Districts: The following table provides racial breakdowns for the draft Congressional Districts. Districts three and four are minority-majority districts, and Black voters represent $44.5 \%$ and $45.26 \%$ of the populations, respectively. We believe this is sufficient to elect a Black candidate of choice in both districts. These minority proportions are very similar to those drawn by the federal court in Personhuballah v. Alcorn, No. 3:13cv678 (E.D. Va.).

| Evaluation of Racial Criteria, Draft Virginia Congressional Districts |  |  |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |  |
| 1 | $77.57 \%$ | $22.43 \%$ | $2.96 \%$ | $15.35 \%$ | $3.13 \%$ | $0.83 \%$ | $0.83 \%$ |  |
| 2 | $65.04 \%$ | $34.96 \%$ | $5.09 \%$ | $23.68 \%$ | $4.94 \%$ | $0.86 \%$ | $0.86 \%$ |  |
| 3 | $45.99 \%$ | $54.01 \%$ | $5.20 \%$ | $44.50 \%$ | $2.88 \%$ | $1.05 \%$ | $1.05 \%$ |  |
| 4 | $48.04 \%$ | $51.96 \%$ | $3.53 \%$ | $45.26 \%$ | $2.06 \%$ | $0.97 \%$ | $0.97 \%$ |  |
| 5 | $73.14 \%$ | $26.86 \%$ | $2.12 \%$ | $22.02 \%$ | $1.98 \%$ | $0.71 \%$ | $0.71 \%$ |  |
| 6 | $86.52 \%$ | $13.48 \%$ | $3.08 \%$ | $8.33 \%$ | $1.32 \%$ | $0.58 \%$ | $0.58 \%$ |  |
| 7 | $56.74 \%$ | $43.26 \%$ | $12.77 \%$ | $21.74 \%$ | $7.36 \%$ | $0.73 \%$ | $0.73 \%$ |  |
| 8 | $62.87 \%$ | $37.13 \%$ | $11.17 \%$ | $13.52 \%$ | $11.35 \%$ | $0.59 \%$ | $0.59 \%$ |  |
| 9 | $90.51 \%$ | $9.49 \%$ | $1.44 \%$ | $6.32 \%$ | $1.05 \%$ | $0.56 \%$ | $0.56 \%$ |  |
| 10 | $72.89 \%$ | $27.11 \%$ | $6.37 \%$ | $10.64 \%$ | $9.09 \%$ | $0.64 \%$ | $0.64 \%$ |  |
| 11 | $62.89 \%$ | $37.11 \%$ | $8.55 \%$ | $8.46 \%$ | $19.15 \%$ | $0.59 \%$ | $0.59 \%$ |  |

Contiguity: The districts are all contiguous under the census standard for contiguity (described above). As noted above, there is one minor deviation from functional contiguity in the $2^{\text {nd }}$ district, which is demanded by Virginia landforms.

Compactness: Below are the Reock and Polsby-Popper scores for the districts. These are two commonly used measures of spatial compactness. To simplify greatly, Reock scores measure how "stretched" a district is, while Polsby-Popper scores measure how "dimpled" the district is. Under both metrics, higher scores are better.

Districts 2, 6, and 9 score relatively poorly using Reock scores. This is to be expected, given the geographic constraints placed upon them. All of the districts perform well under the Polsby-Popper metric.

| Evaluation of Compactness Criteria, Draft Virginia Congressional Districts |  |
| :---: | :---: |
| Reock | Polsby-Popper |
| 0.3198 | 0.3138 |
| 0.2320 | 0.2111 |
| 0.4345 | 0.3377 |
| 0.4979 | 0.3036 |
| 0.4754 | 0.3378 |
| 0.2213 | 0.2220 |
| 0.3997 | 0.2593 |
| 0.5273 | 0.4020 |
| 0.1647 | 0.2020 |
| 0.3769 | 0.2535 |
| 0.5711 | 0.3957 |

However, since we are drawing a whole map for the state, the most important compactness comparison is for the state as whole. Dave's Redistricting App provides a composite compactness score for a whole map. The Special Masters' ("SMs") congressional map is more compact than the current congressional map, a value of 51 for the SMs map as compared to a value of only 25 for the current map. In other words, we have effectively doubled the degree to which the congressional map is a compact one.

Partisanship: A summary of the average Democratic performance in Virginia statewide races from 2016 to 2020 is provided below. The results are sorted by Democratic vote share. Over this time, the average Democratic performance was $54.01 \%$ to the Republicans' $44 \%$. The median district, district 10, went for Democrats by, on average, a seven-point margin, making it a little more than a point more Republican than the Commonwealth overall. In a very good

Republican year, Republicans could win a majority of the seats in Virginia's delegation.
Generally, however, we would expect to see a 6-5 Democratic edge in Virginia's delegation. In very good Democratic years, Democrats might perhaps achieve the same 7-4 advantage that they now enjoy from having won two highly competitive seats in 2020 . Overall, this map is wellbalanced, does not unduly favor any party, and does not require further adjustment.

| 2016-2020 Composite Election Results, Draft Virginia Congressional Districts Average Dem Performance $=54.01 \%$ |  |  |
| :---: | :---: | :---: |
| District | Democratic | Republican |
| 8 | 75.8\% | 21.8\% |
| 3 | 68.3\% | 29.8\% |
| 11 | 67.3\% | 30.5\% |
| 4 | 66.7\% | 31.6\% |
| 7 | 58.5\% | 39.5\% |
| 10 | 52.6\% | 45.3\% |
| 2 | 49.6\% | 48.3\% |
| 5 | 44.6\% | 53.6\% |
| 1 | 43.8\% | 54.2\% |
| 6 | 38.5\% | 59.5\% |
| 9 | 30.8\% | 67.6\% |

## SENATE OF VIRGINIA

As explained in greater detail above, our approach was to base state senate districts on congressional districts. Forty does not divide evenly by 11, so we were unable to achieve this goal exactly; it was simply a guiding principle. Because these districts closely adhere to the Congressional District boundaries, these descriptions are briefer.

## District Descriptions

## Districts 1-7 (Appalachia, Shenandoah Valley)

Each of these districts is anchored in a small city or cities in the region. District 1 is anchored in Winchester. District 2 is anchored in Harrisonburg. District 3 is anchored in Staunton and Waynesboro. District 4 is anchored in Roanoke. District 5 is anchored in Radford and Blacksburg. District 6 is anchored in Bristol and Norton. District 7 is anchored in Galax and Martinsville.

Special care was taken to place Staunton and Waynesboro in the same district, as they form a community of interest. We attempted to place Roanoke, Salem and Blacksburg in the same district, to reflect what some have reported as a community of interest. We were unable to do so given equal population constraints.

## Districts 8-17 (Southside and Richmond)

Districts $8,9,11$, and 17 are all anchored by Southside and south-central cities:
Lynchburg in the $8^{\text {th }}$, Danville and the US-58/US-360 corridors in the $9^{\text {th }}$, Charlottesville and the US-29 corridor for the $11^{\text {th }}$ and Franklin/Emporia for the $17^{\text {th }}$.

Districts 10 and 12-16 are all anchored in the Richmond area. We worked to have one district based in the Henrico County suburbs, one in the Chesterfield County suburbs, and one in the exurbs of Goochland and Powhatan counties. Unfortunately, competing considerations forced a split of Hanover County.

Districts 13,14 and 15 are minority opportunity districts. We forced ourselves to draw these districts within the constraints placed on other districts: Compactness, minimization of county splits and attention to communities of interest. In particular, we anchored these districts in distinct areas that contain minority populations with different needs: The $13^{\text {th }}$ is based in Petersburg and Hopewell, the $14^{\text {th }}$ is based in eastern Chesterfield County, and the $15^{\text {th }}$ is based in Richmond and Henrico counties.

## Districts 18-24 (Hampton Roads)

These were among the most difficult districts to draw in the commonwealth, as they require a careful balancing of competing considerations based upon geography, community, and race. District 20 contains the Eastern Shore, crosses over into Virginia Beach, and then takes in a small sliver of northern Norfolk. District 19 contains southern Virginia Beach and the main city of Chesapeake. District 22 includes western Virginia Beach, while 18 and 21 take in the majority of Portsmouth and Norfolk, respectively. We are able to avoid crossing the Monitor-Merrimack Bridge or the Hampton Roads Bridge-Tunnel. We were thus able to keep the Virginia Peninsula intact. District 23 includes the City of Hampton and southern Newport News, while district 24 includes the remainder of the Peninsula up to Williamsburg.

## Districts 25 and 26 (Tidewater)

Commentators emphasized the importance of the Northern Neck and Middle Peninsula as communities of interest. These were combined into a single Senate district, along with James City County. West Point was added to the $26^{\text {th }}$ to enable functional contiguity. The $25^{\text {th }}$ includes most of the remaining Tidewater area.

## Districts 27-32 (Outer Northern Virginia)

These districts follow naturally from the decisions made on how to draw Congressional Districts 7 and 10. We simply started in northern Prince George County, and drew counter-
clockwise, with some smoothing for population equality and respecting locality boundaries.
District 31 could be made more compact by having District 32 adhere more religiously to the Loudoun/Fairfax border, but that would require more aggressive splitting of locales like Ashburn.

## Districts 33-40 (Inner Northern Virginia)

Finally, we drew districts approximating Congressional Districts 8 and 11. We ultimately opted to anchor one district in each major census designated place and city. District 40 is anchored in Arlington/Falls Church (we acknowledge some debate in the COIs about whether to place Falls Church with Arlington or with Fairfax). District 39 is anchored in Alexandria. District 38 is anchored in Reston and McLean. District 37 is anchored in Oakton, Tyson's Corner and the City of Fairfax. District 36 is anchored in Centreville. District 35 is anchored in Annandale and Burke. District 34 is anchored in Franconia and Springfield. District 33 crosses into Prince William County, and is built around Lorton, Woodbridge, and the Potomac River banks.

## Assessment of Senate Districts Under Statutory Criteria

Equal Representation: The ideal population size for a senate district in Virginia is 215,785. The largest positive deviation from the ideal population comes in district 32 , which is overpopulated by 5,141 residents. The largest negative deviation from the ideal population comes in district 28 , which is underpopulated by 5,213 residents. All absolute percentage deviations are under $2.5 \%$, as required by Virginia law.

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 26 of 56

Evaluation of Equal Population Criteria, Draft Virginia Senate Districts 1-20

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 1 | 219,464 | 3,679 | 1.70\% |
| 2 | 213,860 | -1,925 | -0.89\% |
| 3 | 215,770 | -15 | -0.01\% |
| 4 | 218,232 | 2,447 | 1.13\% |
| 5 | 219,146 | 3,361 | 1.56\% |
| 6 | 213,557 | -2,228 | -1.03\% |
| 7 | 217,620 | 1,835 | 0.85\% |
| 8 | 214,868 | -917 | -0.42\% |
| 9 | 214,702 | -1,083 | -0.50\% |
| 10 | 212,752 | -3,033 | -1.41\% |
| 11 | 215,978 | 193 | 0.09\% |
| 12 | 219,101 | 3,316 | 1.54\% |
| 13 | 213,623 | -2,162 | -1.00\% |
| 14 | 219,329 | 3,544 | 1.64\% |
| 15 | 220,199 | 4,414 | 2.05\% |
| 16 | 218,175 | 2,390 | 1.11\% |
| 17 | 216,724 | 939 | 0.44\% |
| 18 | 213,095 | -2,690 | -1.25\% |
| 19 | 212,136 | -3,649 | -1.69\% |
| 20 | 218,607 | 2,822 | 1.31\% |

## Evaluation of Equal Population Criteria, Draft Virginia Senate Districts 21-40

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 21 | 214,208 | -1,577 | -0.73\% |
| 22 | 213,170 | -2,615 | -1.21\% |
| 23 | 215,570 | -215 | -0.10\% |
| 24 | 211,657 | -4,128 | -1.91\% |
| 25 | 217,082 | 1,297 | 0.60\% |
| 26 | 212,878 | -2,907 | -1.35\% |
| 27 | 213,276 | -2,509 | -1.16\% |
| 28 | 210,572 | -5,213 | $-2.42 \%$ |
| 29 | 216,720 | 935 | 0.43\% |
| 30 | 215,164 | -621 | -0.29\% |
| 31 | 220,345 | 4,560 | 2.11\% |
| 32 | 220,926 | 5,141 | 2.38\% |
| 33 | 212,814 | -2,971 | $-1.38 \%$ |
| 34 | 213,696 | -2,089 | -0.97\% |
| 35 | 214,667 | -1,118 | -0.52\% |
| 36 | 216,066 | 281 | 0.13\% |
| 37 | 220,175 | 4,390 | 2.03\% |
| 38 | 215,783 | -2 | 0.00\% |
| 39 | 215,194 | -591 | -0.27\% |
| 40 | 214,492 | -1,293 | -0.60\% |

Equal Protection and Ability-to-Elect Districts: The following table provides racial breakdowns for the draft senate districts. We note at the outset that we do not have as many minority-majority districts as the existing plans. We believe that this is the incorrect inquiry under both Virginia and federal law. Rather, the emphasis is upon districts where minority groups would have the ability to elect their candidates of choice. In this respect, we believe that
we improve over existing law by creating an additional "ability to elect" district in the Richmond area.

The plan may draw criticism for not drawing minority-majority districts in the northern Virginia area. The Statutory Criteria do require that we draw districts where minority groups are able to elect their candidates of choice, either alone or in coalition with other groups. This follows the approach of a majority of federal circuits, which require such coalition districts. See Campos v. City of Baytown, 840 F.2d 1240 (5th Cir.), reh'g denied, 849 F.2d 943 (1988), cert. denied, 492 U.S. 905 (1989). But see Nixon v. Kent County, 76 F.3d 1381 (6th Cir. 1996) (en banc) (concluding that coalition districts are not required by the VRA).

Federal courts, however, require evidence that the minority groups placed in coalition districts are cohesive and frequently work together toward common ends. This definition seems implicit in the state requirement that the different minority groups form actual coalitions. While we could conceivably draw coalition districts, as discussed above, the minority groups in Fairfax County are dispersed across the county roughly evenly. We also have no record of groups working and voting together, particularly in primaries. We note that the state senators from coalition districts in Northern Virginia under the current maps are non-Hispanic Whites. While non-Hispanic Whites can, of course, be the minority candidate of choice, in the absence of any other record evidence suggesting that such coalitions are effective in Northern Virginia, we opted instead to honor the competing interests of compactness and nesting of districts.

We also note that, while we are generally ignorant of incumbent residences, one of our able research assistants noted that two minority state Senators are paired together in the Richmond area in the same district. After some discussion we concluded that the statutory guarantee is not to have particular incumbents elected, but rather the ability of minority groups to
elect a candidate of choice from a field of candidates. We did, however, want to bring this to the Court's attention.

Evaluation of Racial Criteria, Draft Virginia Senate Districts 1-20

| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | 89.13\% | 10.87\% | 3.64\% | 5.32\% | 1.21\% | 0.63\% | 0.02\% |
| 2 | 89.52\% | 10.48\% | 4.12\% | 4.36\% | 1.35\% | 0.55\% | 0.06\% |
| 3 | 89.90\% | 10.10\% | 1.75\% | 6.75\% | 0.95\% | 0.55\% | 0.08\% |
| 4 | 78.83\% | 21.17\% | 2.46\% | 15.56\% | 2.24\% | 0.56\% | 0.03\% |
| 5 | 91.07\% | 8.93\% | 1.55\% | 4.61\% | 1.96\% | 0.51\% | 0.09\% |
| 6 | 95.04\% | 4.96\% | 0.91\% | 3.08\% | 0.37\% | 0.55\% | 0.02\% |
| 7 | 85.62\% | 14.38\% | 1.80\% | 11.53\% | 0.44\% | 0.62\% | 0.01\% |
| 8 | 79.55\% | 20.45\% | 2.09\% | 16.49\% | 1.15\% | 0.74\% | 0.02\% |
| 9 | 63.65\% | 36.35\% | 1.43\% | 33.71\% | 0.49\% | 0.72\% | 0.04\% |
| 10 | 77.77\% | 22.23\% | 1.68\% | 18.98\% | 0.75\% | 0.76\% | 0.04\% |
| 11 | 78.93\% | 21.07\% | 2.52\% | 14.45\% | 3.29\% | 0.69\% | 0.04\% |
| 12 | 76.44\% | 23.56\% | 2.92\% | 16.13\% | 3.72\% | 0.75\% | 0.02\% |
| 13 | 42.61\% | 57.39\% | 3.42\% | 51.85\% | 1.03\% | 0.99\% | 0.07\% |
| 14 | 48.27\% | 51.73\% | 2.22\% | 45.97\% | 2.41\% | 0.89\% | 0.01\% |
| 15 | 47.76\% | 52.24\% | 5.40\% | 42.97\% | 2.77\% | 1.02\% | 0.07\% |
| 16 | 71.75\% | 28.25\% | 3.61\% | 16.06\% | 7.62\% | 0.52\% | 0.06\% |
| 17 | 53.40\% | 46.60\% | 2.45\% | 41.84\% | 1.24\% | 1.23\% | 0.02\% |
| 18 | 47.79\% | $52.21 \%$ | 3.58\% | 44.79\% | 2.48\% | 1.14\% | 0.11\% |
| 19 | 72.22\% | 27.78\% | 5.27\% | 16.72\% | 4.61\% | 0.90\% | 0.12\% |
| 20 | 74.15\% | 25.85\% | 4.63\% | 16.45\% | 3.50\% | 0.81\% | 0.09\% |

Evaluation of Racial Criteria, Draft Virginia Senate Districts 21-40

| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 21 | 44.82\% | 55.18\% | 6.14\% | 44.33\% | 3.29\% | 1.09\% | 0.05\% |
| 22 | 54.17\% | 45.83\% | 7.39\% | 27.64\% | 9.27\% | 0.70\% | 0.07\% |
| 23 | 40.73\% | 59.27\% | 4.49\% | 50.95\% | 2.52\% | 0.88\% | 0.13\% |
| 24 | 64.23\% | 35.77\% | 6.23\% | 23.97\% | 4.12\% | 0.99\% | 0.17\% |
| 25 | 76.98\% | 23.02\% | 3.40\% | 16.73\% | 1.65\% | 1.03\% | 0.05\% |
| 26 | 77.53\% | 22.47\% | 2.88\% | 17.46\% | 1.22\% | 0.79\% | 0.02\% |
| 27 | 68.41\% | 31.59\% | 7.46\% | 19.35\% | 3.39\% | 0.88\% | 0.07\% |
| 28 | 82.71\% | 17.29\% | 3.82\% | 11.22\% | 1.21\% | 0.85\% | 0.08\% |
| 29 | 51.54\% | 48.46\% | 13.95\% | 26.03\% | 7.01\% | 0.79\% | 0.15\% |
| 30 | 57.99\% | 42.01\% | 15.14\% | 15.08\% | 10.66\% | 0.45\% | 0.04\% |
| 31 | 75.00\% | 25.00\% | 7.29\% | 7.29\% | 9.58\% | 0.53\% | 0.09\% |
| 32 | 54.64\% | 45.36\% | 10.22\% | 10.28\% | 23.69\% | 0.47\% | 0.10\% |
| 33 | 49.58\% | 50.42\% | 13.56\% | 23.79\% | 11.55\% | 0.68\% | 0.13\% |
| 34 | 55.94\% | 44.06\% | 12.47\% | 18.01\% | 12.30\% | 0.64\% | 0.11\% |
| 35 | 57.48\% | 42.52\% | 12.75\% | 8.68\% | 20.28\% | 0.62\% | 0.09\% |
| 36 | 61.84\% | 38.16\% | 7.53\% | 6.21\% | 23.35\% | 0.68\% | 0.09\% |
| 37 | 62.62\% | 37.38\% | 9.51\% | 7.50\% | 19.30\% | 0.68\% | 0.04\% |
| 38 | 69.10\% | 30.90\% | 7.26\% | 7.14\% | 15.79\% | 0.35\% | 0.03\% |
| 39 | 61.09\% | 38.91\% | 10.41\% | 20.12\% | 7.15\% | 0.68\% | 0.03\% |
| 40 | $72.71 \%$ | 27.29\% | 9.19\% | 8.05\% | 9.16\% | 0.52\% | 0.09\% |

Contiguity: The districts are all contiguous under the census standard for contiguity (described above). To our knowledge, they are contiguous under functional contiguity as well.

Compactness: Below are the Reock and Polsby-Popper scores for the districts. These are two commonly used measures of spatial compactness. To simplify greatly, Reock scores measure
how "stretched" a district is, while Polsby-Popper scores measure how "dimpled" the district is.
Under both metrics, higher scores are better.
Districts $2,3,6$, and 7 score relatively poorly using Reock scores. This is to be expected, given the geographic constraints placed upon them. All of the districts perform well under the Polsby-Popper metric.

| Evaluation of Compactness Criteria, Draft Virginia Senate Districts 1-20 |  |  |
| :---: | :---: | :---: |
| District | Reock | Polsby-Popper |
| 1 | 0.3745 | 0.4002 |
| 2 | 0.2564 | 0.2493 |
| 3 | 0.2515 | 0.2093 |
| 4 | 0.3527 | 0.2035 |
| 5 | 0.3402 | 0.2451 |
| 6 | 0.2509 | 0.2898 |
| 7 | 0.2332 | 0.2985 |
| 8 | 0.4159 | 0.3181 |
| 9 | 0.3268 | 0.3734 |
| 10 | 0.3581 | 0.2079 |
| 11 | 0.2742 | 0.2644 |
| 12 | 0.3853 | 0.3010 |
| 13 | 0.5010 | 0.2871 |
| 14 | 0.3205 | 0.2222 |
| 15 | 0.3088 | 0.1653 |
| 16 | 0.4649 | 0.2839 |
| 17 | 0.2757 | 0.2549 |
| 18 | 0.4424 | 0.4223 |
| 19 | 0.3812 | 0.4630 |
| 20 | 0.3244 | 0.3882 |

Evaluation of Compactness Criteria, Draft Virginia Senate Districts 21-40

| District | Reock | Polsby-Popper |
| :---: | :---: | :---: |
| 21 | 0.5470 | 0.5411 |
| 22 | 0.5694 | 0.4124 |
| $23$ | 0.3648 | 0.3497 |
| 24 | $0.3029$ | $0.2435$ |
| $25$ | $0.3903$ | $0.1461$ |
| 26 | 0.5008 | 0.2372 |
| 27 | $0.5667$ | $0.3387$ |
| $28$ | $0.4884$ | $0.3234$ |
| 29 | $0.3389$ | $0.2190$ |
| $30$ | $0.4421$ | $0.3111$ |
| 31 | $0.3985$ | $0.2480$ |
| $32$ | $0.4623$ | $0.3658$ |
| 33 | $0.3524$ | $0.2829$ |
| $34$ | $0.4183$ | $0.4092$ |
| 35 | 0.4093 | $0.2617$ |
| 36 | $0.5147$ | 0.2501 |
| $37$ | 0.3060 | 0.2548 |
| 38 | $0.3123$ | $0.3527$ |
| 39 | $0.4743$ | $0.4465$ |
| 40 | 0.2930 | 0.3470 |

However, since we are drawing a whole map for the state, the most important compactness comparison is for the state as whole. Dave's Redistricting App provides a composite compactness score for a whole map. The Special Masters' ("SMs") Senate map is more compact than the current Senate map, a value of 52 for the SMs map as compared to a
value of 9 for the current Senate map. In other words, we have effectively more than quintupled the degree to which the Senate map is a compact one.

Partisanship: Because state races occur in the off-years, which can have very different turnout patterns from presidential and midterm election years, we determined that it was important not to use elections from presidential or midterm elections to evaluate partisanship. Instead, we used data from Virginia Attorney General elections. A summary of the Democratic performance in the 2017 Attorney General election is provided below. The results are sorted by Democratic vote share. The average Democratic performance in this race was $53.3 \%$ to the Republican's $46.6 \%$. As you can see below, the median districts, 31 and 17, gave the Democrat $54.3 \%$ of the vote and $53.2 \%$ of the vote, respectively. Thus, each party will have to win an election in "unfriendly" territory in order to control the state senate. Overall, this map is wellbalanced, does not unduly favor any party, and does not require further adjustment.

2017 Attorney General Election Results, Draft Virginia Senate Districts 1-20
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 14 | 79.5\% | 20.4\% |
| 39 | 78.9\% | 21.0\% |
| 40 | 78.7\% | 21.2\% |
| 21 | 74.8\% | 25.1\% |
| 23 | 71.0\% | 28.9\% |
| 37 | 70.5\% | 29.4\% |
| 34 | 69.7\% | 30.2\% |
| 38 | 67.8\% | 32.1\% |
| 35 | 67.7\% | 32.2\% |
| 18 | 65.0\% | 34.9\% |
| 33 | 65.0\% | $34.9 \%$ |
| 32 | 63.9\% | 36.0\% |
| 15 | 62.4\% | 37.5\% |
| 36 | 62.3\% | 37.6\% |
| 11 | 62.1\% | 37.8\% |
| 13 | 62.0\% | $37.9 \%$ |
| 29 | 60.1\% | 39.7\% |
| 22 | 57.4\% | 42.5\% |
| 30 | 54.9\% | 45.0\% |
| 31 | 54.3\% | 45.7\% |

2017 Attorney General Election Results, Draft Virginia Senate Districts 21-40
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 17 | 53.2\% | 46.8\% |
| 16 | 52.3\% | 47.6\% |
| 24 | 51.6\% | 48.2\% |
| 4 | 47.8\% | 52.1\% |
| 27 | 47.6\% | 52.2\% |
| 20 | 46.1\% | 53.8\% |
| 12 | 43.1\% | 56.8\% |
| 19 | 42.1\% | 57.8\% |
| 26 | 41.1\% | 58.9\% |
| 9 | 39.6\% | 60.3\% |
| 25 | 37.2\% | 62.7\% |
| 28 | 37.0\% | 62.8\% |
| 1 | 36.4\% | 63.5\% |
| 5 | 36.3\% | 63.6\% |
| 3 | 35.9\% | 64.0\% |
| 10 | 35.9\% | 64.0\% |
| 2 | 33.2\% | 66.7\% |
| 8 | 31.8\% | 68.1\% |
| 7 | 30.6\% | 69.3\% |
| 6 | 23.3\% | 76.6\% |

## VIRGINIA HOUSE OF DELEGATES

Because there are so many districts, we will not endeavor to describe each one. Because the senate districts are the bases for these districts, their basic underlying motivation should be familiar.

## Statutory Criteria

Equal Representation: The ideal population size for a House of Delegates district in Virginia is 86,314 . The largest positive deviation from the ideal population comes in district 75 , which is overpopulated by 2,149 residents. The largest negative deviation from the ideal population comes in district 27, which is underpopulated by 2,101 residents. All absolute percentage deviations are under $2.5 \%$, as required by Virginia law.

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 38 of 56

Evaluation of Equal Population Criteria, Draft Virginia House Districts 1-25

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 1 | 84,957 | -1,357 | -1.57\% |
| 2 | 85,400 | -914 | -1.06\% |
| 3 | 86,887 | 573 | 0.66\% |
| 4 | 85,616 | -698 | -0.81\% |
| 5 | 86,826 | 512 | 0.59\% |
| 6 | 84,634 | -1,680 | -1.95\% |
| 7 | 85,669 | -645 | -0.75\% |
| 8 | 87,350 | 1,036 | 1.20\% |
| 9 | 86,572 | 258 | 0.30\% |
| 10 | 87,624 | 1,310 | 1.52\% |
| 11 | 87,486 | 1,172 | 1.36\% |
| 12 | 87,285 | 971 | 1.12\% |
| 13 | 86,448 | 134 | 0.16\% |
| 14 | 85,572 | -742 | -0.86\% |
| 15 | 88,051 | 1,737 | 2.01\% |
| 16 | 86,208 | -106 | -0.12\% |
| 17 | 86,477 | 163 | 0.19\% |
| 18 | 87,324 | 1,010 | 1.17\% |
| 19 | 85,437 | -877 | -1.02\% |
| 20 | 85,244 | -1,070 | -1.24\% |
| 21 | 86,571 | 257 | 0.30\% |
| 22 | 84,270 | -2,044 | $-2.37 \%$ |
| 23 | 84,720 | -1,594 | -1.85\% |
| 24 | 84,934 | -1,380 | -1.60\% |
| 25 | 87,209 | 895 | 1.04\% |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 39 of 56

Evaluation of Equal Population Criteria, Draft Virginia House Districts 26-50

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 26 | 87,291 | 977 | 1.13\% |
| 27 | 84,213 | -2,101 | -2.43\% |
| 28 | 87,454 | 1,140 | 1.32\% |
| 29 | 87,418 | 1,104 | 1.28\% |
| 30 | 85,420 | -894 | -1.04\% |
| 31 | 87,054 | 740 | 0.86\% |
| 32 | 85,347 | -967 | -1.12\% |
| 33 | 87,217 | 903 | 1.05\% |
| 34 | 86,651 | 337 | 0.39\% |
| 35 | 87,055 | 741 | 0.86\% |
| 36 | 86,397 | 83 | 0.10\% |
| 37 | 87,329 | 1,015 | 1.18\% |
| 38 | 87,965 | 1,651 | 1.91\% |
| 39 | 86,896 | 582 | 0.67\% |
| 40 | 86,918 | 604 | 0.70\% |
| 41 | 85,276 | -1,038 | -1.20\% |
| 42 | 86,234 | -80 | -0.09\% |
| 43 | 86,222 | -92 | -0.11\% |
| 44 | 87,779 | 1,465 | 1.70\% |
| 45 | 85,313 | -1,001 | -1.16\% |
| 46 | 84,739 | -1,575 | -1.82\% |
| 47 | 85,689 | -625 | -0.72\% |
| 48 | 84,443 | -1,871 | -2.17\% |
| 49 | 84,673 | -1,641 | -1.90\% |
| 50 | 84,359 | -1,955 | $-2.26 \%$ |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 40 of 56

Evaluation of Equal Population Criteria, Draft Virginia House Districts 51-75

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 51 | 85,784 | -530 | -0.61\% |
| 52 | 87,218 | 904 | 1.05\% |
| 53 | 86,080 | -234 | -0.27\% |
| 54 | 88,305 | 1,991 | 2.31\% |
| 55 | 86,747 | 433 | 0.50\% |
| 56 | 86,862 | 548 | 0.63\% |
| 57 | 86,076 | -238 | -0.28\% |
| 58 | 84,577 | -1,737 | -2.01\% |
| 59 | 85,634 | -680 | -0.79\% |
| 60 | 85,394 | -920 | -1.07\% |
| 61 | 84,921 | -1,393 | -1.61\% |
| 62 | 87,359 | 1,045 | 1.21\% |
| 63 | 84,966 | -1,348 | -1.56\% |
| 64 | 85,980 | -334 | -0.39\% |
| 65 | 87,139 | 825 | 0.96\% |
| 66 | 85,065 | -1,249 | -1.45\% |
| 67 | 85,966 | -348 | -0.40\% |
| 68 | 85,450 | -864 | -1.00\% |
| 69 | 87,386 | 1,072 | 1.24\% |
| 70 | 88,236 | 1,922 | 2.23\% |
| 71 | 84,328 | -1,986 | -2.30\% |
| 72 | 88,033 | 1,719 | 1.99\% |
| 73 | 87,751 | 1,437 | 1.66\% |
| 74 | 88,305 | 1,991 | 2.31\% |
| 75 | 88,463 | 2,149 | 2.49\% |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 41 of 56

Evaluation of Equal Population Criteria, Draft Virginia House Districts 76-100

| District | Population | Deviation | Pct. Deviation |
| :---: | :---: | :---: | :---: |
| 76 | 85,270 | -1,044 | -1.21\% |
| 77 | 87,759 | 1,445 | 1.67\% |
| 78 | 87,774 | 1,460 | 1.69\% |
| 79 | 87,800 | 1,486 | 1.72\% |
| 80 | 85,693 | -621 | -0.72\% |
| 81 | 84,718 | -1,596 | -1.85\% |
| 82 | 86,012 | -302 | -0.35\% |
| 83 | 86,459 | 145 | 0.17\% |
| 84 | 87,624 | 1,310 | 1.52\% |
| 85 | 87,829 | 1,515 | 1.76\% |
| 86 | 85,949 | -365 | -0.42\% |
| 87 | 87,516 | 1,202 | 1.39\% |
| 88 | 86,371 | 57 | 0.07\% |
| 89 | 86,704 | 390 | 0.45\% |
| 90 | 87,890 | 1,576 | 1.83\% |
| 91 | 87,076 | 762 | 0.88\% |
| 92 | 86,158 | -156 | -0.18\% |
| 93 | 85,906 | -408 | -0.47\% |
| 94 | 84,653 | -1,661 | $-1.92 \%$ |
| 95 | 84,324 | -1,990 | $-2.31 \%$ |
| 96 | 85,578 | -736 | -0.85\% |
| 97 | 86,997 | 683 | 0.79\% |
| 98 | 86,690 | 376 | 0.44\% |
| 99 | 85,558 | -756 | -0.88\% |
| 100 | 84,937 | -1,377 | -1.60\% |

Equal Protection and Ability-to-Elect Districts: The following table provides racial breakdowns for the draft House districts. We note at the outset that we do not have as many minority-majority districts as the existing plans. We reiterate our conclusion from our Senate analysis that this is the incorrect inquiry under both Virginia and federal law. Rather, the emphasis is upon districts where minority groups would have the ability to elect their candidates of choice. In this respect, we believe that we improve over the current map. We reiterate that we do not believe we have sufficient evidence before us to intentionally draw coalition districts, although such districts may naturally occur in the course of drawing compact districts that minimize county splits.

## Evaluation of Racial Criteria, Draft Virginia House Districts 1-25

| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | 79.98\% | 20.02\% | 6.95\% | 4.66\% | 7.83\% | 0.31\% | 0.02\% |
| 2 | 71.88\% | 28.12\% | 9.24\% | 7.35\% | 10.38\% | 0.59\% | 0.19\% |
| 3 | 60.73\% | 39.27\% | 14.15\% | 15.02\% | 8.99\% | 0.73\% | 0.03\% |
| 4 | 46.87\% | 53.13\% | 11.98\% | 31.12\% | 9.03\% | 0.24\% | 0.03\% |
| 5 | 72.61\% | 27.39\% | 7.04\% | 14.12\% | 4.85\% | 1.05\% | 0.02\% |
| 6 | 76.46\% | 23.54\% | 3.50\% | 2.13\% | 17.48\% | 0.28\% | 0.00\% |
| 7 | 72.74\% | 27.26\% | 7.65\% | 7.49\% | 11.33\% | 0.22\% | 0.00\% |
| 8 | 55.70\% | 44.30\% | 9.77\% | 10.73\% | 22.72\% | 0.81\% | 0.09\% |
| 9 | 58.17\% | 41.83\% | 9.65\% | 6.05\% | 25.19\% | 0.51\% | 0.02\% |
| 10 | 62.24\% | 37.76\% | 6.79\% | 7.26\% | 22.49\% | 0.82\% | 0.18\% |
| 11 | 62.30\% | 37.70\% | 8.50\% | 9.66\% | 18.38\% | 0.76\% | 0.08\% |
| 12 | 65.41\% | 34.59\% | 8.45\% | 5.49\% | 19.75\% | 0.54\% | 0.00\% |
| 13 | 56.64\% | 43.36\% | 14.57\% | 8.07\% | 19.74\% | 0.62\% | 0.09\% |
| 14 | 50.74\% | 49.26\% | 14.38\% | 10.56\% | 23.69\% | 0.26\% | 0.14\% |
| 15 | 63.91\% | 36.09\% | 10.33\% | 6.82\% | 17.98\% | 0.98\% | 0.03\% |
| 16 | 63.30\% | 36.70\% | 11.75\% | 15.86\% | 8.09\% | 0.63\% | 0.06\% |
| 17 | 49.30\% | 50.70\% | 13.30\% | 23.28\% | 12.29\% | 0.76\% | 0.20\% |
| 18 | 60.03\% | 39.97\% | 9.97\% | 10.49\% | 18.59\% | 0.41\% | 0.07\% |
| 19 | 41.62\% | 58.38\% | 17.84\% | 28.88\% | 10.10\% | 0.58\% | 0.06\% |
| 20 | 52.33\% | 47.67\% | 21.50\% | 15.85\% | 9.19\% | 0.46\% | 0.03\% |
| 21 | 60.81\% | 39.19\% | 11.29\% | 15.43\% | 11.54\% | 0.31\% | 0.03\% |
| 22 | 69.31\% | 30.69\% | 9.35\% | 11.83\% | 8.25\% | 0.80\% | 0.04\% |
| 23 | 42.51\% | 57.49\% | 13.67\% | 34.76\% | 7.19\% | 0.77\% | 0.25\% |
| 24 | 45.24\% | 54.76\% | 16.37\% | 28.16\% | 8.72\% | 0.76\% | 0.19\% |
| 25 | 51.33\% | 48.67\% | 13.89\% | 24.54\% | 8.69\% | 0.90\% | 0.14\% |


| Evaluation of Racial Criteria, Draft Virginia House Districts 26-50 |  |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| 26 | 48.36\% | 51.64\% | 7.10\% | 11.31\% | 31.54\% | 0.62\% | 0.15\% |
| 27 | 56.70\% | 43.30\% | 13.45\% | 8.84\% | 20.07\% | 0.51\% | 0.15\% |
| 28 | 65.12\% | 34.88\% | 10.06\% | 8.62\% | 15.39\% | 0.34\% | 0.04\% |
| 29 | 69.52\% | 30.48\% | 8.44\% | 8.96\% | 12.27\% | 0.53\% | 0.10\% |
| 30 | 82.33\% | 17.67\% | 4.56\% | 6.01\% | 6.29\% | 0.52\% | 0.06\% |
| 31 | 89.33\% | 10.67\% | 3.28\% | 5.59\% | 1.09\% | 0.62\% | 0.02\% |
| 32 | 86.89\% | 13.11\% | 4.01\% | 6.89\% | 1.66\% | 0.62\% | 0.04\% |
| 33 | 93.91\% | 6.09\% | 2.95\% | 1.84\% | 0.51\% | 0.68\% | 0.04\% |
| 34 | 84.33\% | 15.67\% | 6.79\% | 5.53\% | 2.79\% | 0.38\% | 0.02\% |
| 35 | 91.76\% | 8.24\% | 2.45\% | 4.56\% | 0.44\% | 0.64\% | 0.08\% |
| 36 | 88.38\% | 11.62\% | 2.25\% | 7.83\% | 0.78\% | 0.58\% | 0.16\% |
| 37 | 91.84\% | 8.16\% | 1.45\% | 5.22\% | 0.90\% | 0.57\% | 0.02\% |
| 38 | 62.57\% | 37.43\% | 3.21\% | 30.87\% | 2.18\% | 0.65\% | 0.03\% |
| 39 | 89.75\% | 10.25\% | 1.38\% | 7.28\% | 1.10\% | 0.57\% | 0.00\% |
| 40 | 87.34\% | 12.66\% | 1.99\% | 7.63\% | 2.12\% | 0.51\% | 0.05\% |
| 41 | 88.23\% | 11.77\% | 2.38\% | 3.97\% | 4.63\% | 0.58\% | 0.02\% |
| 42 | 90.35\% | 9.65\% | 1.71\% | 6.11\% | 1.20\% | 0.28\% | 0.05\% |
| 43 | 95.49\% | 4.51\% | 0.86\% | 2.67\% | 0.32\% | 0.55\% | 0.04\% |
| 44 | 95.86\% | 4.14\% | 0.86\% | 2.34\% | 0.34\% | 0.58\% | 0.01\% |
| 45 | 93.51\% | 6.49\% | 0.91\% | 4.45\% | 0.46\% | 0.54\% | 0.03\% |
| 46 | 94.05\% | 5.95\% | 1.05\% | 3.90\% | 0.39\% | 0.54\% | 0.12\% |
| 47 | 91.92\% | 8.08\% | 1.79\% | 5.51\% | 0.30\% | 0.50\% | 0.00\% |
| 48 | 68.58\% | 31.42\% | 2.08\% | 27.86\% | 0.46\% | 0.96\% | 0.05\% |
| 49 | 57.93\% | 42.07\% | 1.63\% | 38.87\% | 0.50\% | 1.01\% | 0.03\% |
| 50 | 64.74\% | 35.26\% | 1.32\% | 32.74\% | 0.74\% | 0.47\% | 0.03\% |


| Evaluation of Racial Criteria, Draft Virginia House Districts 51-75 |  |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| 51 | 85.85\% | 14.15\% | 1.26\% | 11.66\% | 0.62\% | 0.78\% | 0.03\% |
| 52 | 69.33\% | 30.67\% | 3.10\% | 25.14\% | 1.64\% | 0.70\% | 0.01\% |
| 53 | 82.50\% | 17.50\% | 1.78\% | 13.95\% | 0.76\% | 0.98\% | 0.03\% |
| 54 | 72.39\% | 27.61\% | 3.48\% | 17.35\% | 5.95\% | 0.55\% | 0.01\% |
| 55 | 86.87\% | 13.13\% | 1.84\% | 8.78\% | 1.95\% | 0.55\% | 0.07\% |
| 56 | 73.07\% | 26.93\% | 1.43\% | 24.09\% | 0.60\% | 0.81\% | 0.04\% |
| 57 | 75.48\% | 24.52\% | 3.05\% | 10.09\% | 10.58\% | 0.54\% | 0.01\% |
| 58 | 79.57\% | 20.43\% | 3.29\% | 11.27\% | 5.35\% | 0.49\% | 0.03\% |
| 59 | 78.34\% | 21.66\% | 1.95\% | 15.91\% | 2.52\% | 0.88\% | 0.00\% |
| 60 | 86.34\% | 13.66\% | 1.56\% | 9.36\% | 1.61\% | 0.93\% | 0.03\% |
| 61 | 85.50\% | 14.50\% | 3.66\% | 8.03\% | 1.82\% | 0.90\% | 0.05\% |
| 62 | 79.62\% | 20.38\% | 3.67\% | 14.78\% | 0.88\% | 0.87\% | 0.09\% |
| 63 | 77.88\% | 22.12\% | 5.30\% | 13.63\% | 2.05\% | 0.64\% | 0.07\% |
| 64 | 65.65\% | 34.35\% | 9.47\% | 18.70\% | 4.59\% | 0.97\% | 0.11\% |
| 65 | 70.39\% | 29.61\% | 5.81\% | 20.27\% | 2.30\% | 0.94\% | 0.02\% |
| 66 | 68.67\% | 31.33\% | 4.89\% | 23.02\% | 2.12\% | 0.91\% | 0.13\% |
| 67 | 70.91\% | 29.09\% | 3.31\% | 24.22\% | 0.77\% | 0.70\% | 0.01\% |
| 68 | 78.15\% | 21.85\% | 2.71\% | 17.14\% | 0.70\% | 1.08\% | 0.04\% |
| 69 | 74.17\% | 25.83\% | 5.67\% | 15.93\% | 2.93\% | 0.72\% | 0.26\% |
| 70 | 53.70\% | 46.30\% | 6.79\% | 34.05\% | 3.83\% | 1.10\% | 0.13\% |
| 71 | 78.06\% | 21.94\% | 4.01\% | 13.93\% | 2.80\% | 1.20\% | 0.00\% |
| 72 | 77.78\% | 22.22\% | 1.77\% | 18.21\% | 1.84\% | 0.29\% | 0.07\% |
| 73 | 80.11\% | 19.89\% | 2.90\% | 11.45\% | 5.00\% | 0.58\% | 0.00\% |
| 74 | 68.26\% | 31.74\% | 3.38\% | 25.13\% | 2.11\% | 0.72\% | 0.06\% |
| 75 | 56.49\% | 43.51\% | 6.15\% | 32.88\% | 3.23\% | 0.90\% | 0.16\% |


| Evaluation of Racial Criteria, Draft Virginia House Districts 26-50 |  |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| District | Non-Hispanic White | Total Minority | Hispanic | Black | Asian | Native | API |
| 76 | 51.96\% | 48.04\% | 6.89\% | 37.31\% | 2.96\% | 0.84\% | 0.11\% |
| 77 | 44.52\% | 55.48\% | 3.47\% | 48.84\% | 1.83\% | 1.60\% | 0.07\% |
| 78 | 74.48\% | 25.52\% | 2.44\% | 18.50\% | 3.48\% | 0.60\% | 0.01\% |
| 79 | 26.12\% | 73.88\% | 1.90\% | 69.35\% | 1.53\% | 1.12\% | 0.01\% |
| 80 | 39.43\% | 60.57\% | 4.11\% | 52.10\% | 3.01\% | 0.82\% | 0.12\% |
| 81 | 42.72\% | 57.28\% | 2.81\% | 52.00\% | 0.77\% | 1.66\% | 0.00\% |
| 82 | 46.10\% | 53.90\% | 2.51\% | 49.74\% | 1.11\% | 0.47\% | 0.04\% |
| 83 | 53.00\% | 47.00\% | 1.59\% | 43.69\% | 0.59\% | 1.37\% | 0.01\% |
| 84 | 53.12\% | 46.88\% | 2.74\% | 41.55\% | 1.67\% | 1.22\% | 0.04\% |
| 85 | 43.06\% | 56.94\% | 4.37\% | 49.08\% | 2.45\% | 0.59\% | 0.07\% |
| 86 | 64.64\% | 35.36\% | 4.78\% | 25.04\% | 4.29\% | 0.82\% | 0.18\% |
| 87 | 32.35\% | 67.65\% | 4.38\% | 59.67\% | 2.21\% | 1.11\% | 0.10\% |
| 88 | 43.00\% | 57.00\% | 3.78\% | 50.10\% | 1.61\% | 1.14\% | 0.19\% |
| 89 | 61.84\% | 38.16\% | 3.71\% | 30.23\% | 3.43\% | 0.73\% | 0.02\% |
| 90 | 73.51\% | 26.49\% | 4.11\% | 17.20\% | 3.97\% | 0.73\% | 0.15\% |
| 91 | 43.20\% | 56.80\% | 3.82\% | 48.94\% | 2.78\% | 1.01\% | 0.05\% |
| 92 | 39.69\% | 60.31\% | 3.93\% | 52.78\% | 2.18\% | 1.41\% | 0.02\% |
| 93 | 38.54\% | 61.46\% | 5.46\% | 50.88\% | 3.62\% | 1.11\% | 0.04\% |
| 94 | 63.53\% | 36.47\% | 8.19\% | 22.77\% | 3.79\% | 1.06\% | 0.08\% |
| 95 | 52.21\% | 47.79\% | 7.44\% | 33.08\% | 5.92\% | 0.60\% | 0.03\% |
| 96 | 48.56\% | 51.44\% | 8.30\% | 28.67\% | 12.77\% | 0.88\% | 0.01\% |
| 97 | 63.29\% | 36.71\% | 6.73\% | 21.54\% | 6.80\% | 1.09\% | 0.12\% |
| 98 | 75.78\% | 24.22\% | 5.95\% | 11.73\% | 5.38\% | 0.87\% | 0.17\% |
| 99 | 80.43\% | 19.57\% | 3.94\% | 10.83\% | 3.68\% | 0.63\% | 0.16\% |
| 100 | 71.45\% | 28.55\% | 4.12\% | 20.61\% | 2.77\% | 0.73\% | 0.04\% |

Contiguity: The districts are all contiguous under the census standard for contiguity (described above). To our knowledge, they are contiguous under functional contiguity as well. Compactness: Below are the Reock and Polsby-Popper scores for the districts. Only a handful of districts perform poorly under the Reock metric, while all perform well under the Polsby-Popper metric. Looking at the map as a whole using the metric in Dave's Redistricting App the Special Masters' ("SMs") House map is more compact than the current House map, a value of 50 for the SMs map as compared to a value of 34 for the current House map. In other words, compactness in the proposed map is nearly 1.5 times that of the current House map.

Evaluation of Compactness Criteria, Draft Virginia House Districts 1-25

| District | Reock | Polsby-Popper |
| :---: | :---: | :---: |
| 1 | 0.3532 | 0.3944 |
| 2 | 0.2987 | 0.3636 |
| 3 | 0.3258 | 0.4172 |
| 4 | 0.5920 | 0.4342 |
| 5 | 0.4773 | 0.4299 |
| 6 | 0.3002 | 0.3190 |
| 7 | 0.4644 | 0.4180 |
| 8 | 0.3985 | 0.2730 |
| 9 | 0.4258 | 0.2892 |
| 10 | 0.4282 | 0.3087 |
| 11 | 0.5047 | 0.2864 |
| 12 | 0.4651 | 0.4225 |
| 13 | 0.4055 | 0.3700 |
| 14 | 0.3088 | 0.3625 |
| 15 | 0.5496 | 0.2912 |
| 16 | 0.5991 | 0.3435 |
| 17 | 0.4008 | 0.3424 |
| 18 | 0.2401 | 0.1828 |
| 19 | 0.3333 | 0.3030 |
| 20 | 0.4053 | 0.2472 |
| 21 | 0.4546 | 0.3548 |
| 22 | 0.4097 | 0.2424 |
| 23 | 0.2937 | 0.2150 |
| 24 | 0.3646 | 0.3240 |
| 25 | 0.3215 | 0.2372 |

Evaluation of Compactness Criteria, Draft Virginia House Districts 26-50

| District | Reock | Polsby-Popper |
| :---: | :---: | :---: |
| 26 | 0.3565 | 0.2649 |
| 27 | 0.2201 | 0.2795 |
| 28 | 0.4628 | 0.3288 |
| 29 | 0.4388 | 0.3025 |
| 30 | 0.3872 | 0.2941 |
| 31 | 0.4249 | 0.3050 |
| 32 | 0.3951 | 0.2975 |
| 33 | 0.4441 | 0.2838 |
| 34 | 0.3476 | 0.2749 |
| 35 | 0.3534 | 0.2405 |
| 36 | 0.3706 | 0.2259 |
| 37 | 0.3585 | 0.2932 |
| 38 | 0.5652 | 0.2847 |
| 39 | 0.5604 | 0.3187 |
| 40 | 0.3254 | 0.1642 |
| 41 | 0.3242 | 0.1652 |
| 42 | 0.4278 | 0.1939 |
| 43 | 0.2108 | 0.2210 |
| 44 | 0.4157 | 0.5079 |
| 45 | 0.2414 | 0.2815 |
| 46 | 0.3541 | 0.3031 |
| 47 | 0.4170 | 0.2797 |
| 48 | 0.3287 | 0.2489 |
| 49 | 0.2936 | 0.2619 |
| 50 | 0.5403 | 0.3644 |

Evaluation of Compactness Criteria, Draft Virginia House Districts 51-75

| District | Reock | Polsby-Popper |
| :---: | :---: | :---: |
| 51 | 0.2930 | 0.2405 |
| 52 | 0.4074 | 0.3101 |
| 53 | 0.2978 | 0.2068 |
| 54 | 0.4827 | 0.3124 |
| 55 | 0.3641 | 0.2827 |
| 56 | 0.3319 | 0.2743 |
| 57 | 0.2877 | 0.2656 |
| 58 | 0.4107 | 0.3229 |
| 59 | 0.3156 | 0.2503 |
| 60 | 0.2959 | 0.1781 |
| 61 | 0.3927 | 0.3311 |
| 62 | 0.2850 | 0.2468 |
| 63 | 0.4321 | 0.3886 |
| 64 | 0.3499 | 0.3106 |
| 65 | 0.4605 | 0.2728 |
| 66 | 0.4118 | 0.2028 |
| 67 | 0.2321 | 0.1991 |
| 68 | 0.3129 | 0.2365 |
| 69 | 0.2061 | 0.1396 |
| 70 | 0.3304 | 0.2576 |
| 71 | 0.3202 | 0.1584 |
| 72 | 0.5226 | 0.2916 |
| 73 | 0.5351 | 0.3079 |
| 74 | 0.4351 | 0.3665 |
| 75 | 0.3916 | 0.1766 |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 51 of 56

Evaluation of Compactness Criteria, Draft Virginia House Districts 76-100

| District | Reock | Polsby-Popper |
| :---: | :---: | :---: |
| 76 | 0.4152 | 0.3846 |
| 77 | 0.3409 | 0.2858 |
| $78$ | 0.2761 | 0.2205 |
| 79 | 0.3078 | 0.2349 |
| 80 | 0.2617 | 0.2236 |
| 81 | 0.3001 | 0.2181 |
| 82 | 0.2051 | 0.2037 |
| 83 | 0.2805 | 0.2561 |
| 84 | 0.2388 | 0.1770 |
| 85 | 0.2800 | 0.3213 |
| 86 | 0.5226 | 0.5063 |
| 87 | 0.3463 | 0.3023 |
| 88 | 0.4524 | 0.4121 |
| 89 | 0.2984 | 0.2447 |
| 90 | 0.5333 | 0.4835 |
| 91 | 0.2538 | 0.1600 |
| 92 | 0.3579 | 0.2764 |
| 93 | 0.4740 | 0.2882 |
| 94 | 0.3017 | 0.3996 |
| 95 | 0.3990 | 0.3057 |
| 96 | 0.3406 | 0.4120 |
| 97 | 0.2774 | 0.2391 |
| 98 | 0.5686 | 0.5319 |
| 99 | 0.5905 | 0.5286 |
| 100 | 0.3046 | 0.4166 |

Partisanship: Because state races occur in the off-years, we determined that it was important not to use elections from presidential or midterm elections to evaluate partisanship. Instead, we used data from Virginia Attorney General elections. A summary of the Democratic performance in the 2017 Attorney General election is provided below. The results are sorted by Democratic vote share. The average Democratic performance in this race was $53.3 \%$ to the Republican's 46.6\%. As you can see below, the median districts, 97 and 65, gave the Democrat $52.6 \%$ and $51.2 \%$, respectively, in that race. This gives Republicans a slight advantage. However, it is difficult to eliminate this advantage given Virginia's political geography. Moreover, there are nine districts within five points of the statewide average on the Republican side, compared to only five on the Democratic side. In other words, although Republicans may find it slightly easier to win a majority, Democrats will have a tendency to enjoy larger majorities when they win. But overall, this map is well-balanced, does not unduly favor any party and did not need to be adjusted.

2017 Attorney General Election Results, Draft Virginia House Districts 1-25
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 79 | 91.6\% | 8.2\% |
| 4 | 81.2\% | 18.7\% |
| 3 | 81.1\% | 18.7\% |
| 2 | 79.6\% | 20.3\% |
| 54 | 79.3\% | 20.6\% |
| 92 | 78.6\% | 21.3\% |
| 87 | 77.8\% | 22.0\% |
| 1 | 77.5\% | 22.4\% |
| 80 | 76.8\% | 23.1\% |
| 93 | 76.7\% | 23.2\% |
| 5 | 76.0\% | 23.9\% |
| 13 | 73.9\% | 26.1\% |
| 77 | 72.6\% | 27.3\% |
| 78 | 72.6\% | 27.3\% |
| 17 | 72.0\% | 27.9\% |
| 91 | 71.7\% | 28.2\% |
| 12 | 71.4\% | 28.5\% |
| 7 | 71.0\% | 28.8\% |
| 23 | 69.7\% | 30.2\% |
| 14 | 69.4\% | 30.5\% |
| 85 | 69.0\% | 30.9\% |
| 8 | 68.9\% | 30.9\% |
| 16 | 68.6\% | 31.3\% |
| 19 | 68.3\% | 31.6\% |
| 88 | 68.0\% | 31.8\% |

2017 Attorney General Election Results, Draft Virginia House Districts 26-50
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 11 | 67.8\% | 32.1\% |
| 81 | 67.0\% | 32.9\% |
| 24 | 65.3\% | 34.5\% |
| 26 | 65.2\% | 34.8\% |
| 15 | 64.3\% | 35.5\% |
| 27 | 64.2\% | 35.7\% |
| 25 | 63.8\% | 36.1\% |
| 18 | 63.3\% | 36.7\% |
| 38 | 63.2\% | 36.8\% |
| 9 | 62.6\% | 37.3\% |
| 28 | 61.9\% | 38.0\% |
| 10 | 61.6\% | 38.4\% |
| 6 | 61.3\% | 38.6\% |
| 95 | 61.2\% | 38.7\% |
| 76 | 60.8\% | 39.2\% |
| 29 | 59.5\% | 40.5\% |
| 96 | 59.1\% | 40.8\% |
| 70 | 58.6\% | 41.2\% |
| 20 | 58.1\% | 41.8\% |
| 55 | 57.4\% | 42.5\% |
| 94 | 56.5\% | 43.4\% |
| 82 | 55.8\% | 44.1\% |
| 84 | 55.8\% | 44.2\% |
| 21 | 52.9\% | 47.0\% |
| 97 | 52.6\% | 47.3\% |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 55 of 56

2017 Attorney General Election Results, Draft Virginia House Districts 51-75
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 65 | 51.2\% | 48.7\% |
| 89 | 51.1\% | 48.8\% |
| 41 | 51.1\% | 48.9\% |
| 58 | 49.6\% | 50.3\% |
| 86 | 48.8\% | 51.0\% |
| 71 | 48.6\% | 51.3\% |
| 83 | 48.3\% | 51.6\% |
| 22 | 48.2\% | 51.6\% |
| 66 | 47.8\% | 52.1\% |
| 30 | 47.7\% | 52.2\% |
| 75 | 47.4\% | 52.5\% |
| 57 | 47.3\% | 52.7\% |
| 34 | 46.1\% | 53.8\% |
| 100 | 45.8\% | 54.1\% |
| 64 | 45.6\% | 54.3\% |
| 69 | 45.4\% | 54.4\% |
| 49 | 44.6\% | 55.3\% |
| 52 | 44.2\% | 55.7\% |
| 99 | 44.2\% | 55.7\% |
| 40 | 42.5\% | 57.4\% |
| 73 | 42.4\% | 57.5\% |
| 74 | 41.6\% | 58.3\% |
| 50 | 41.2\% | 58.7\% |
| 59 | 41.2\% | 58.7\% |
| 98 | 41.1\% | 58.8\% |

Case 3:22-cv-00022-PDW-ARS Document 98-5 Filed 05/22/23 Page 56 of 56

2017 Attorney General Election Results, Draft Virginia House Districts 76-100
Average Dem Performance $=53.33 \%$

| District | Democratic | Republican |
| :---: | :---: | :---: |
| 32 | 39.7\% | 60.2\% |
| 67 | 39.7\% | 60.2\% |
| 36 | 39.5\% | 60.4\% |
| 56 | 39.4\% | 60.5\% |
| 42 | 39.1\% | 60.8\% |
| 63 | 38.8\% | 61.1\% |
| 62 | 38.2\% | 61.7\% |
| 90 | 38.2\% | 61.7\% |
| 31 | 37.4\% | 62.5\% |
| 61 | 37.4\% | 62.5\% |
| 48 | 37.1\% | 62.8\% |
| 68 | 35.6\% | 64.3\% |
| 72 | 34.7\% | 65.2\% |
| 37 | 32.9\% | 67.0\% |
| 39 | 31.4\% | 68.5\% |
| 60 | 31.3\% | 68.5\% |
| 53 | 31.1\% | 68.8\% |
| 33 | 27.7\% | 72.2\% |
| 47 | 26.8\% | 73.1\% |
| 35 | 26.5\% | 73.4\% |
| 44 | 24.6\% | 75.3\% |
| 51 | 24.5\% | 75.4\% |
| 46 | 24.2\% | 75.7\% |
| 43 | 22.0\% | 77.9\% |
| 45 | 20.8\% | 79.1\% |

## EXHIBIT 5

# Special Master Report For <br> Latasha Holloway, et. al. vs City of Virginia Beach, et. al. Case No: 2:18cv69 

I. Introduction and Overview ..... 1
II. Review of Methodology for Doing Racial Polarized Voting Analyses ..... 8
II. Racially polarized voting in the City of Virginia Beach, 2010-2018 ..... 11
IV. Political cohesion. ..... 16
V. Evidence for regular loss of minority candidates of choice in voting in city council elections in Virginia Beach ..... 19
VI. Summary of fact-based conclusions about polarization, cohesion, and usual minority loss ..... 22
VII. REMEDY PHASE: Identifying minority opportunity districts ..... 23
VIII. REMEDY PHASE: Evaluating the suitability of the three proposed remedial maps submitted by Defendants or Plaintiffs as remedies for the vote dilution identified in the Court Opinion of March 31, 2021. ..... 25
IX. REMEDY PHASE: The special master illustrative map ..... 34
X. REMEDY PHASE: Recommendations to the Court. ..... 58
APPENDIX A: ..... 59
Interpreting the Results in Table 2 in "Vote for Two" Elections ..... 59
APPENDIX B: ..... 62
Estimability of racially polarized voting (RPV) patterns for individual minorities viewed separately from one another ..... 62
APPENDIX C: Griggy Resume ..... 65

## I. Introduction and Overview

A. My name is Bernard Grofman. I am Jack W. Peltason Chair of Democracy Studies and Distinguished Professor of Political Science at the University of California, Irvine. My research deals primarily with issues of representation, including minority voting rights and party competition. I am a Fellow of the American Academy of Arts and Sciences. I have an honorary Ph.D. from the University of Copenhagen for my work on the cross-national study of elections and voting rules. I am the recipient of a lifetime achievement award from the American Political Science Association for my work on elections and voting rights. I am co-author of five books with major university presses (Cambridge (4), Yale (1), and co-editor of 26 other books, (including books with Oxford (3), U. Michigan (4), and Princeton) with over 300 research articles and book chapters. I have served as an expert witness or consultant in redistricting cases in nearly a dozen states over a 40+ year career. Over the past six years I have served as a special master to draw remedial maps for four different federal courts, including redrawing a Virginia congressional district and eleven districts in the Virginia House of Delegates, and districts in local elections in Georgia and Utah. My work has been cited in a dozen different U.S. Supreme Court cases, perhaps most notably in Thornburg v. Gingles 478 U.S. 30 (1986).
B. In early August of 2021, I was selected by Judge Raymond A. Jackson to serve as a special master at the remedy phase of the litigation in Holloway. I was nominated for that position by both the Plaintiffs and the Defendants. Given the relatively tight deadlines under which the Court needs to operate in order to allow an election to go forward, I began my preliminary analyses the day after I was informed of my selection as special master.

C1. The task assigned to me by Judge Jackson role is to evaluate, from a social science perspective, the three remedial plans presented to the court (one by plaintiffs and two by the City of Virginia Beach) to assist the Court in deciding which, if any, of those plans remedy the voting rights violation found by the Court; and if none were satisfactory, to assist the Court in preparing a narrowly tailored plan that did fully remedy the voting rights violation found by the Court based on 2020 population data and drawn in compliance with standard "one person, one vote" guidelines.

C2. A critical aspect of that task involves the review, from a social science perspective, of the conditions needed to create minority opportunity districts. By a minority opportunity district I mean one that, realistically, provides an equal opportunity for the minority group to participate in the political process and to elect candidates of choice. Note that I do not take a minority opportunity district to be one that provides a "safe seat" for minority candidates of choice. Rather, as I define it, a minority opportunity district is one where, in the light of the district's demographic composition and evidence of the past voting behavior of minority and White/Anglo voters, there are realistic prospects for the minority to be able to elect a minority candidate of choice, even when that minority candidate of choice is one who herself or himself comes from the minority community
D. I take as given by the Court's opinion that the relevant voting rights pertain to the combined minority community of three groups given special recognition under Section 2 of the Voting Rights Act because of each's history of having been the victim of discrimination: AfricanAmericans, those of Spanish heritage (commonly referred to as Hispanics), and AsianAmericans.
E. As part of the Court Order, I was given authority to hire a research assistant. I have hired Zachary Griggy, an undergraduate political science major at the University of California, Irvine to serve in this capacity. Mr. Griggy is experienced with Geographic Information Systems (GIS), having previously used both ArcGIS software (made available to UCI students through the university's IT department) and Dave's Redistricting App (DRA), a free user-friendly mapping program that is becoming widely used in redistricting map-drawing. In two instances, acting solely as a concerned citizen, Mr. Griggy has drawn nonpartisan redistricting plans that he presented to local jurisdictions in California that subsequently were enacted by the jurisdiction into law. I have attached his resume to this report as Appendix C.
F. In reaching conclusions for my evaluations of these three proposed remedial plans:

F1. I reviewed all the materials provided me by the Court in hard copy format. These included the Court Opinion of March 31, 2021, with its finding of a statutory violation, recent briefs filed by Plaintiffs and by the Defendants in the remedy phase of the case, expert witness reports filed
by both sides in the remedy phase of the case (including those by Kimball Brace, Lisa Handley and Quentin Kidd, for the Defendants; and Anthony Fairfax, Allan Lichtman, and Douglas Spencer for the Plaintiffs), and some earlier expert witness reports dealing with illustrative maps and with evaluation of racial bloc voting.

F2. I reviewed basic demographic facts about the City of Virginia Beach provided in these documents, as well as the population and demographic information about the districts in the three proposed maps.

F3. I examined how demographic patterns in the city were linked to geography using Dave's Redistricting App, which includes estimates of population, voting age population (VAP), and citizen voting age population (CVAP) taken from the Census's American Community Survey (ACS). I updated my understanding of the demographic data and updated some of my analyses once 2020 Census data for the City became available in useable form on Dave's Redistricting App. This data became available on August 19, 2021. Initially I worked with that 2020 data. However, an adjusted data set became available for the State of Virginia on September 21, 2021, and it is the Census population numbers that incorporate these adjustments of which I now make use. ${ }^{1}$

F4. Acting pursuant to my specific instructions, and making use of materials provided in electronic or spreadsheet form by the parties, my research assistant, Mr. Griggy entered information about the two remedial plans proposed by Defendants, the remedial plan proposed by Plaintiffs, and about the enacted (now invalidated) map, so that I could review these plans online and not just in hard copy.

F5. In complying with the Court's order, I have done independent reanalyses of information provided by experts for Plaintiffs or Defendants in the form of documents provided to the court or requested by me in electronic form. In addition to the data provided me by the Court, I have also examined publicly accessible census data from the 2020 Census and publicly accessible data on raw vote tallies in City elections found on the City of Virginia Beach web site. ${ }^{2}$ I have examined factors that are important in assessing minority opportunity to elect, including the extent of racial bloc voting in the City of Virginia Beach, levels of minority and non-minority political cohesion in elections, and the frequency of minority electoral loss. In this Report, I focus on my own empirical conclusions on these topics for elections in the years 2010-2018. ${ }^{3}$

[^11]${ }^{2}$ Election data drawn directly from the City's website allowed me to better understand how data on voting in "vote for two" at-large elections was being presented by experts in the case. In Appendix A to this Report I discuss an alternative way to present election results from the "vote for two" contests identified in Table 2 below that can also be informative, especially in the context of the legal issues in this case.
${ }^{3}$ Additional information about data sources and methodology in work by other experts that I cite can be found in the original cited source.

The Court Opinion of March 31, 2021 provides an assessment of previous expert witness testimony in the case.
G. Census data from 2020 allowed me to consider the extent to which plans submitted to the Court drawn on the basis of earlier census data might need to be modified in the light of "one person, one vote" concern.
H. The most important summary conclusions in my Report are highlighted in bold.
I. Below are a set of demographic and election facts that provide the framework for my evaluations.

I1. The minority population in the City of Virginia Beach is geographically concentrated on the western edge of the city. The areas of the City that are nearer the ocean are disproportionately non-minority. This geographic pattern of minority concentration is illustrated in Figure 1. It shows two color-codings of voting tabulation districts (VTD), also known as precincts, with the shaded VTDs having an above mean minority CVAP population and the unshaded VTDs having a below median minority CVAP population.

Figure 1. Map of VTDs in the City of Virginia Beach with Shaded VTDs with above median minority CVAP and unshaded VTDs with below median minority CVAP.


I2. In the areas of higher than median minority population, at the VTD level, there is a mix of African-Americans, Hispanics, and Asian-Americans, with no one minority group a population majority except inn two VTDs where African-Americans are a CVAP majority At the VTD level, and looking at CVAP, the minority communities tend to be intermingled, with a positive correlation between any pair of minorities, but with black CVAP, Hispanic CVAP, and Asian-American CVAP, taken individually, each negatively correlated with White CVAP.

Table 1. CVAP Correlations in the Locations of Different Groups at the VTD Level

| CVAP | White share | Hisp share | Black share | AA <br> share |
| :--- | ---: | ---: | ---: | ---: |
| white |  |  |  |  |
| share | 1 |  |  |  |
| Hisp share | -0.66 | 1 |  |  |
| Black share | -0.94 | 0.51 | 1 |  |
| AA share | -0.63 | 0.31 | 0.40 | 1 |

I3. Based on the most recent (corrected as of September 21, 2021) 2020 Census population estimates reported in Dave's Redistricting App, the combined Black plus Hispanic plus AsianAmerican group is $40.5 \%$. Based on the ACS estimates reported in Dave's Redistricting App, in the City of Virginia Beach, the share of CVAP of the combined Black plus Hispanic plus Asian-American group is $32.8 \%$. As reported in Dave's Redistricting App, 2020 voting age population data shows the minority proportion of the voting age population in Virginia Beach to as $37.2 \%$.

J1. Ten-district maps for the City Council that draw geographically compact districts can "naturally" create reasonably compact contiguous districts with high minority population even with no attention to race simply because of the pattern of geographic concentrations of minorities in the City.

J2. The map presented as a remedy map by Plaintiffs demonstrates that it is possible to draw three contiguous and geographically compact districts in a ten-district plan such that each of the three contains a combined minority CVAP in excess of $\mathbf{5 0 \%}$. Indeed, the minority population in Virginia Beach is sufficiently concentrated that drawing three $50 \%+$ minority CVAP districts in the area of heaviest minority population can readily be done. Thus, the stricture of Bartlett v. Strickland, 556 U.S. 1 (2009) that CVAP is the most appropriate metric in considering Section 2 Voting Rights Act claims is satisfied, and the Plaintiffs' map demonstrates the initial basis of a claim under Bartlett that the City of Virginia Beach should draw three minority opportunity districts as part of any ten-district plan. ${ }^{4}$

[^12]J3 Within the set of VTDs shown in Figure 1, there are three sets of VTDs and census blocks that have especially high minority populations. These were used as the cores of the three minority $50 \%+$ CVAP districts in the Plaintiffs' map.
K. The expert witness reports in this case ended with analysis of election in 2018, and I have only reported data on elections through 2018 in this Report. In my Report, I focus on the most recent elections considered by experts in the case, those from 2010-2018.

K1. Over the period, 2010-2018 (including the 2011 special election) there were ten different minority candidates who contested city council elections. Three ran more than once (three times for Mr. Furman, twice for Ms. Ross-Hammond, and twice for Mr. Cabiness). ${ }^{5}$

K2. Over the period, 2010-2018 (including the 2011 special election), three different minority candidates of choice won city council elections

L1. The only Virginia Beach City Council elections over the period 2010-2018 in which there are two minority candidates are the "elect two" election in 2018 and the "elect two" election in 2010 and the 2018 contest with Ms. Sabrina Wooten and Mr. Eric Wray (See Dr. Douglas M. Spencer "Expert Report: Racially Polarized Voting in Virginia Beach, P-0077, July 15, 2019).

L2. In contests where there are one or more minority candidates, the average total number of candidates is much higher in the at-large elections where voters can select two candidates than in at-large elections where voters can select only one candidate (see Table 2 later in the Report).

M1. In examining proposed remedial maps, I take notice of the fact that an incumbent, Ms. Jessica Abbott, has now retired from office for health reasons and that she has been replaced in 2021 by the appointment of Mr. Rocky Holcomb. Along with those of six other incumbents, Mr . Holcomb's term is presently set to expire in 2022, with a special election to fill the balance of Ms. Abbott's term in office, which would have ended in 2024. Under the staggered election rules presently in place in the City of Virginia Beach for its City Council elections, in addition to an election in 2024 when the tenure of the winner of the 2022 special election to fill out the remainder of Ms. Abbott's term will have required, there would be three other City Council elections in 2024.

M2. I also take notice of the fact Mr. Wood, a White incumbent, has resigned, thus creating an open seat (as of the date of this writing, September 19, 2021)

N . The map I provide later below, which illustrates one way to fully deal with voting rights issues in the City of Virginia Beach while simultaneously avoiding gratuitous pairings of incumbents and the placement of White incumbents in heavily minority districts, uses 2020

[^13]population adjusted Census data. That illustrative 10-district map satisfies one person, one vote, maintains the three $50 \%+$ CVAP districts found in the Plaintiffs' map, and eliminates all incumbent pairings found in either or both Defendants' and Plaintiffs' Map. It also places the two minority incumbents in heavily minority districts with no White incumbent in place, and places no White incumbent's residence in a majority-minority district.

## II. Review of Methodology for Doing Racial Polarized Voting Analyses

A1. There are multiple ways to do racially polarized voting analyses (RPV, a.k.a. racial bloc voting analyses, RBV).

A2. The simplest methodology for RPV analysis is to identify racially/ethnically homogeneous VTDs (precincts) where we have both voting behavior and demographic attributes identified either from matching census blocks to VTD boundaries or in some other fashion (e.g., from racial data on voter registration in the few states where such data is available, or from surname matching date based on voter rolls). This method is generally referred to as homogeneous precinct analysis. When we can find precincts with very high levels of minority population, with the usual standard being blocks or VTDs with at least 90 percent of their population or voting age population or citizen voting age population coming from the given group/grouping, then voting outcomes in such racially/ethnically homogenous precincts can be taken as a lower bound on the degree of non-minority support for minority candidates, because the vote in the precinct is a weighted average of the votes of the minority voters and the votes of the non-minority voters, and even in a nearly perfectly homogenous minority precinct some of the votes in the precinct in the precinct will come from White voters whose support for the minority candidate is likely to be lower than the support for the minority candidate coming from minority voters. In doing homogenous precinct analysis it is preferable to report results using a measure such as voting age population (or citizen voting age population) that is close to reflecting the size of the actual voting electorate. However, there may also be differences in turnout as a share of CVAP between the minority and non-minority communities such that the minority CVAP percentage overstates the share of minority voters in the actual electorate. Thus, homogeneous precinct analysis normally provides a lower bound on the extent of racially polarized voting and political cohesion in the minority community. On the other hand, If we are looking at homogenous White precincts, the homogeneous precinct estimate of White support for the minority candidate is an upper bound because some of the support for the minority candidate is likely to be coming from the relatively few minority voters in the otherwise overwhelmingly White VTD, and these are likely to be giving more support to the minority candidate than the White voters in the precinct. Nonetheless, the more racially/ethnically homogeneous the precinct, the closer the result in the precinct comes to telling us exactly how members of the dominant group in that precinct voted.

A3. In the earliest cases involving allegations of vote dilution, the most common way for experts to do RPV analyses using aggregate election data matched to census data on demography of the VTDs (or census blocks) was to use the Goodman (single equation) method of ecological
regression. ${ }^{6}$ Several scholars (the historian, Morgan Kousser, the sociologist, James Loewen, and myself, a political scientist) independently derived an extension of that method to also take into account different levels of minority and non-minority turnout. This double equation ecological regression ${ }^{7}$ was the methodology I used in my testimony in Gingles $v$ Edmisten 590 F.Supp. 345, subsequently heard as Thornburg $v$ Gingles 478 U.S. 30 (1986), and it was accepted as reliable by both the trial court and the U.S. Supreme Court.

A4. Today, virtually all experts who present data on RPV patterns complement ecological regression with ecological inference methods of the kind introduced by the Harvard political scientist, Gary King, and made user-friendly by free software available through Dr. King's website. ${ }^{8}$ Subsequent to my testimony in Gingles, I have written a short non-technical introduction to King's approach to ecological inference for the Brennan Center associated with NYU Law School, and I wrote a co-authored article and a co-authored book chapter about this method, including comparison of its results to those of other methods for doing RPV analysis. I generally view ecological inference tools as superior to standard ecological regression tools. Their chief advantage over traditional ecological regression is that they guarantees that projected shares of the minority vote going to minority candidates will neither be negative estimates nor estimates above $100 \%$. However, ecological regression methodology is still used by experts since (a) it allows for the presentation of graphs that visually show how support for minority candidates varies with the level of minority population in the precinct, and (b) it tends to produce results that are, for all practical purposes, identical with those produced by more complex methods, but can be explained far more simply.

A5. Another method of RPV analysis is known as the method of projection, or as the method of reconstituted elections. The latter term is the label used by Dr. Spencer in his expert witness reports for his work using this method in Virginia Beach. The method of projection is very straightforward. It involves projecting the results of relevant past elections in a larger political unit into the new districts. Normally such projections involve recent bi-racial/bi-ethnic contests with one or more viable minority candidates. Best practices require that, where possible, they be in elections of a type comparable to the elections. In the City of Virginia Beach, these would primarily be projections of results in one or more of the previous at-large elections to the city council, since these involve elections to the same political body, and with the some of the same candidates as are likely to contest single seat contests in a court-sanctioned or court-ordered

[^14]${ }^{7}$ See Grofman, Bernard N., Michael Migalski, and Nicholas Noviello. 1985. "The 'totality of circumstances' test in Section 2 of the 1982 extension of the Voting Rights Act: A social science perspective." Law and Policy, 7(2):209-223.
${ }^{8}$ King, Gary. 1997. A Solution to the Ecological Inference Problem. Princeton, NJ: Princeton University Press.
remedial map. The method of projection may also be used with exogenous elections which are of comparable type to the city council elections but which take place in a geographic unit in which the proposed district is wholly embedded. Exogenous elections must be selected with care if we use them for probative purposes.

A6. Relative to eligible voters, minority turnout may be lower than non-minority turnout, and thus the eligible voter population may be less heavily minority than the actual electorate. As noted above, ecological inference techniques have been developed to generate estimates that take this fact into account. The method of projection also takes differential minority turnout into account since it is based on data from actual elections and thus reflects actual turnout. That property is one of its strengths. In order to consider the realistic opportunity to elect potential in hypothetical districts whose configurations are quite different from current districts it can be highly informative to examine outcomes in recompiled (city-wide) elections with votes for both minority and non-minority candidates projected into proposed districts. ${ }^{9}$

A7. The level of support given to the minority candidate of choice in a past election by White/Anglo voters and/or by minority voters may vary across different parts of a jurisdiction, which can affect the viability of that candidate in districts drawn in the different parts of the City. The method of projection takes into account the past vote choices of the voters (both minority and non-minority) who are actually resident within the new district boundaries. In this way, it can yield estimates of expected outcomes in new districts that are more accurate than results from ecological inference techniques used to estimate minority and non-minority voting choices in a jurisdiction as a whole, or in past districts with different boundaries than the new district. That property of automatically adjusting results to changed district configurations is another one of the projection methods strengths.

A8. Nonetheless, care must be taken interpreting projections into new single seat districts of past at-large election results. At-large elections make it harder for minority candidates to win, since minority candidates generally have access to fewer resources than their White opponents and must spread these resources over a much larger geographic area in an at-large contest, and those resources also need to be stretched over a much larger electorate in an at-large election as compared to a district election. Moreover, in an at-large election, minority candidates may be faced with slates of White candidates who share resources (See March 31, 2021 Court Opinion at pp. 103-104). On the other side of the coin, district elections allow for minority candidates to make use of tools for neighborhood campaigning (door to door, yard signs) which can partly compensate for limited resources. Thus, I expect that, in general, a minority candidate running in a single seat district election can be expected to perform as well or better than that same minority candidate performed in an at-large single seat election in that same geographic area.

[^15]B1. The method of projection was relied upon by me in my Special Master Report in Personhuballah v. Alcorn ${ }^{10}$ and in my Special Master Report in Bethune-Hill. ${ }^{11}$

B2. The reliability of my conclusions based in large part on the method of projection was accepted by both the Personhuballah v. Alcorn court ${ }^{12}$ and the Bethune-Hill court. ${ }^{13}$

B3. In post-election analyses of the elections held under the court-ordered redrawn districts in Personhuballah v. Alcorn and in Bethune-Hill, my assessments derived from the projection method as to which new districts would be minority opportunity districts were perfectly borne out by the subsequent elections after the imposition of a court-ordered map (in 2016, 2018 and 2020 for the redrawn congressional map in Virginia CD3 and CD4; and in 2019 for the redrawn Virginia House of Delegates map in the twelve most heavily minority districts). Of course, my projections reflected probabilistic assessments, not certainties.

## II. Racially polarized voting in the City of Virginia Beach, 2010-2018

A. Table 2 below, with estimates taken from Douglas M. Spencer, "Expert Report: Racially Polarized Voting in Virginia Beach," July 15, 2019, summarizes the data on elections in 20012018 with viable minority candidates. The three minority candidates of choice shown in bold were elected to office. The estimates reported are those derived from Ecological Inference (EI). All the candidates shown in this table are members of the minority community. ${ }^{14}$ The data

[^16]${ }^{11}$ Bernard Grofman, "Report of the Special Master in Golden Bethune-Hill v. Virginia State Board of Elections" Civil Action No 3: 14cv852 E.D. Virginia (Report filed December 7, 2018)

12 "After a thorough evaluation of Dr. Grofman's qualifications, report, and testimony, we find that Dr. Grofman was a credible witness and that he used an appropriate methodology" Golden Bethune-Hill v. Virginia State Board of Elections" Civil Action No 3: 14cv852 E.D. Virginia (filed February 14, 2019), slip op at p. 14.
${ }^{13}$ In its Opinion, the Personhuballah trial court, Personhuballah v. Alcorn." Civil Action No 3: 13 cv678 E.D. Virginia (filed January 7, 2016) relied on my calculations as to the likely effects of the redrawn districts on minority opportunity to elect candidates of choice (see slip op. at p. 7). On February 10, 2016, I received a kind note from Judge Robert Payne on behalf of the three judge Court extending appreciation for my "fine service in this case. Your careful and thorough work was a great help for which the Court is grateful. With appreciation and respect, sincerely yours, Robert E Payne."
${ }^{14}$ Even within the set of contests in which there is a viable minority candidate, non-minority members can be the minority community's candidates of choice. Nonetheless, in seeking to
reported in this table is about the estimated voting behavior of the minority community and the White community. Here the minority community consists of the grouping that is not White. It consists almost entirely of African-Americans plus Hispanic plus Asian-Americans, with a
compile the most relevant evidence of how difficult it will be to create minority opportunity districts I limit myself in Table 2 to contests involving minority candidates, since an equal opportunity to elect candidates of choice would not be meaningful if the only candidates of choice of the minority community who could be elected were non-minority candidates. Because the minority community is, on average, less wealthy and less well-educated than the nonminority community, and because at-large elections do not allow minority candidates the potential for success in a district-based election within a limited geography where door to door campaigning, street signs, and mailers to a limited set of mailboxes, and friends and neighbors word of mouth could at least partially compensate for discrepancies in resources between minority and non-minority candidates, I am also cautious about treating non-minority winners of at-large elections as ones who would be a minority candidate of choice in a district-based election within a heavily minority district. Thus, I am highly reluctant to project the results for such candidates in seeking to assess minority opportunity to elect within possible new remedial districts. Moreover, within the set of contests in which there is a minority candidate, I will focus on those contests in which there is a minority member who is himself or herself a minority candidate of choice, since data about such candidates will be more reliable in projecting possible outcomes in potential remedial districts than data about minority candidates in general. Thus, I do not include in this table the non-minority winner in the contest in the single seat two candidate contest in 2014 which Mr. Burton lost, nor the non-minority winner in the single seat contest in 2010 which Mr. Furman lost, nor the non-minority winner in the contest in the twoseat contest in 2018 which Mr. Bright lost., nor the non-minority winner in the two-seat at-large election of 2018 which Mr. Cabiness lost. I also do not include data on the Mayor's contest in 2016 since the minority candidate in that contest, Mr. Furman, was not the minority candidate of choice and his vote total, only in single digits, suggested that he was not a viable candidate in that election. Similarly I have excluded the candidacy of Mr. Furman in the 2014 at-large election, since he was not a minority candidate of choice in the election and his vote total, only in single digits, suggested that he was not a viable candidate in that election.
minuscule proportion of "other" minorities. ${ }^{15}$ The numbers shown in the table are given are as proportion of total votes cast. ${ }^{16}$

[^17]Table 2.
Minority Candidates: Data Identifying Minority Candidate of Choice and Showing Estimated Level of Polarized Voting Patterns in City of Virginia Beach City Council Elections, 2010-2018

| year | Minority <br> candidate | Number <br> to be <br> elected | Minority <br> candidate <br> of choice | White <br> candidate <br> of choice | Minority <br> candidate <br> rank <br> among <br> Minority <br> Voters <br> (and vote <br> share of <br> total votes <br> cast) | Minority <br> candidate <br> rank <br> among <br> Non- <br> Minority <br> Voters (and <br> vote share <br> of total <br> votes cast | Overall <br> Election <br> Rank of <br> Minority <br> candidate <br> (and vote <br> share of <br> total votes <br> cast) | Number <br> of <br> candidates |
| :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- |
|  |  | SNGLE- <br> SEAT |  |  |  |  |  |  |
| 2018 | Wooten |  | 1 | YES | YES | $1(85.5 \%)$ | $1(51.1 \%)$ | $1(62.1 \%)$ |
| 2016 | Ross- <br> Hammond | 1 | YES | NO | $1(59.9 \%)$ | $2(30.3 \%)$ | $2(40.6 \%)$ | 2 |
| 2014 | Cabiness | 1 | YES | NO | $1(37.0 \%)$ | $4(6.4 \%)$ | $4(16.8 \%)$ | 4 |
| 2014 | Burton | 1 | NO | NO | $2(34.3 \%)$ | $2(18.9 \%)$ | $2(23.3 \%)$ | 2 |
| 2012 | Ross - <br> Hammond | 1 | YES | NO | $1(65.7 \%)$ | $4(17.0 \%)$ | $1(32.2 \%)$ | 4 |
| 2011 | Sherrod | 1 | YES | NO | $1(64.8 \%)$ | $3(11.5 \%)$ | $3(25.9 \%)$ | 3 |
| 2010 | Furman | 1 | NO | NO | $2(43.7 \%)$ | $2(32.8 \%)$ | $2(35.3 \%)$ | 2 |
| 2010 | Bullock | 1 | YES | NO | $1(79.9 \%)$ | $2(32.9 \%)$ | $2(45.6 \%)$ | 2 |
|  |  |  |  |  |  |  |  |  |
|  |  | TWO- |  |  |  |  |  |  |
| 2018 | Rouse | 2 | YES | NO | $1(31.8 \%)$ | $3(24.4 \%)$ | $1(26.7 \%)$ | 6 |
| 2018 | Bright | 2 | NO | NO | $3(16.5 \%)$ | $6(5.7 \%)$ | $5(8.8 \%)$ | 6 |
| 2010 | Jackson | 2 | YES | NO | $1(58.2 \%)$ | $6(7.5 \%)$ | $6(20.3 \%)$ | 7 |
| 2010 | Cabiness | 2 | NO | NO | $3(26.7 \%)$ | $7(4.5 \%$ | $7(11.3 \%$ | 7 |

[^18]B. Of the eight elections shown in Table 2 where there is a minority candidate of choice, voting is polarized along racial lines in seven of the eight, i.e. the minority candidate of choice is not a candidate of choice of the non-minority community. And in the one single seat contest which not polarized along racial lines, the election of Ms. Wooten in 2018, there are still dramatic differences between her estimated support among minority voters ( $85.5 \%$ ) and her bare majority ( $51.1 \%$ ) support among White voters. ${ }^{18}$ Thus, I conclude that voting in City Council elections between 2010 and 2018 is clearly polarized minority and the non-minority community in terms of willingness to vote for the minority candidate of choice. (See Table 2)

C 1 (a). In the City of Virginia Beach, even the VTDs with the highest minority proportions do not have sufficiently large minority populations to allow us to use the results in those precincts as reliable indicators of how the minority community (and only the minority community) in those precincts voted. Thus, we cannot directly make use of the method of homogeneous precincts in the City of Virginia Beach to assess the voting behavior of the separate minority communities. There are no such sufficiently racially/ethnically homogenous precincts in Virginia Beach in terms of the minority community, and this is true whether we focus on African-Americans, Hispanics, or Asian-Americans, or even when we look at the three groups combined. The largest concentration of African-Americans at the VTD level is $59 \%$; the largest concentration of Hispanics at the VTD level is 33\%; the largest concentration of Asian-Americans at the VTD level is $20 \%$ and even the largest concentration of the combined group at the VTD level is only 72\%.

C1(b). While the oldest method of RPV analysis, the use of homogeneous precincts, is not directly applicable in Virginia Beach for the minority group (see above), it is available for use to study the voting behavior of non-minority voters. In the City of Virginia Beach, there are some VTDs with high enough non-minority population to qualify as homogenous precincts for the white/Anglo group in the City. There are 11 VTDS with above $90 \%$ or above White CVAP, two of which have a $95 \%$ or above White CVAP.
$\mathrm{C} 1(\mathrm{c})$. Moreover, while the limited minority share(s) of even the most heavily minority VTDs does not allow us to draw reliable inference about the separate voting behavior of individual minority groups in those VTDs, because there are eleven VTDs which are overwhelmingly White ( $90 \%+$, with two above $95 \%$ ), a simple comparison of the voting behavior in the overwhelmingly White districts and the voting behavior in the most heavily minority districts can be conducted. If the overwhelmingly White VTDs give almost no support to minority candidates, while the heavily minority VTDs give substantial support to minority candidates this is probative of a pattern of racially polarized voting. Support for a finding of racially polarized voting would be further increased if, as the proportion of minority population in the VTD increases, the level of support for the minority candidate also increased. Dr. Spencer, "Expert Report: Racially Polarized Voting in Virginia Beach, July 15, 2019" (Exhibit P-0077) has done analyses of exactly this sort and finds the pattern to be such that, in general, the more heavily

[^19]minority VTDs give considerably greater support to minority candidates, with the overwhelmingly white precincts generally quite low on support for the minority candidate (s). Thus, despite the absence of homogeneous minority precincts, the existence of homogeneous non-minority precincts, and a general pattern of higher support for the minority candidate the higher the minority population, allows inferences about racially polarized voting patterns vis-avis the minority group as a whole, both by visual inspection of scatterplots showing support for minority candidates versus proportion minority in the district and by making use of ecological regression and ecological inference tools of analysis.

C1(d) However, care must be taken in making inferences from plots of support for the minority candidate(s) versus share of the minority in the precinct. First, since even the most heavily minority VTDs are not overwhelmingly minority, the observed votes for minority candidates in even the most heavily minority VTDs in such plots understates the actual level of support of minority voters for minority candidates in those VTDs if we assume that minority voters are, on average, giving more support to minority candidates than White voters are giving to minority candidates. But we have clear evidence about White voting from the homogeneous White districts and, indeed, these precincts give very low support to minority candidates. Second, Dr. Handley, "Affidavit of Lisa R. Handley" July 1, 2021, at pp. 2-3, has called attention to likely turnout differences between the minority and Whites in the City of Virginia Beach, even among the citizen voting age population in each group -- with turnout relative to eligible population likely to be lower among minority voters. When minority turnout is lower than White turnout, the support level of minorities for minority candidates in even the most heavily minority VTDs will be further understated in such plots because the minority proportion of the actual electorate in the VTD will be lower than the minority portion of the eligible to vote population in that VTD. In other words, even the most heavily minority VTDs in Virginia Beach are not overwhelmingly minority in eligible population and will be even less so when we consider actual voters.
D. In situations where there are multiple minority candidates, in both a "vote for one" election and a "vote for two" election it is informative for analysis of racially polarized voting to consider the estimated combined share of the votes given to the set of minority candidates by the minority community, as compared to the estimated combined share of the votes given to the set of minority candidates by the non-minority community; and it is also informative to compare the ranking among all candidates given by the minority and non-minority communities to each member of this set of minority candidates (as determined by relative vote shares for each candidate from each group). However, in situations where there is more than one candidate of a given race in the contest, even in "vote for two" situations, it is common for both minority voters and non-minority voters to split their vote among multiple candidates.

## IV. Political cohesion.

A. From a social sciences perspective there are two basic approaches that might be used to measure cohesion of racial/ethnic groups bringing a Section 2 claim: (1) socio-economic similarities and other similarities in life circumstances, and evidence of political coalition building on (local) issues; (2) evidence of voting cohesively for or against minority candidates.

A1(a). Socioeconomic approaches to political cohesion look at whether groups share common points of view, common life situations, and act together for collective purposes of the whole. Of particular relevance for commonality of minority group interests is whether or not the groups each have experienced a history of discrimination. As the Court noted (at p. 68): Plaintiffs can show that the Minority Community is politically cohesive by "providing evidence that Hispanic Black and Asian Communities in Virginia Beach have a history of voting, advocating, or organizing together around similar, social, political, economic, or legal issues in the community." Judge Jackson's Opinion then devotes twenty pages (pp. 66-86) to the extensive evidence of sociologically and politically rooted commonality among Black, Hispanic, and Asian populations in Virginia Beach, which lead him to a finding that this aspect of political cohesion is found among Black, Hispanic, and Asian populations in the City, with pages 66-71 devoted to social and economic commonalities.

Al(b). I will not comment further on the sociological and economic perspective on cohesion. Instead, I will focus on the voting patterns that I am already examining in the context of determining whether particular proposed districts in alternative plans create genuine equal opportunity for the minority community to participate in the political process and to elect candidates of choice. I will present this election data under a different and more specific rubric, namely that of "electoral cohesion."

A2(a) Electoral cohesion in the context of a Section 2 case can be understood from a political science point of view as being found when the minority community and the non-minority community generally line up on opposite sides in contests when there is a minority candidate of choice. To establish electoral cohesion, I look at the evidence for political cohesion derived from analysis of election returns where reliable inference of minority and non-minority patterns of voting can be done. My analysis parallels that in Judge Jackson's Opinion pp. 72-86 and reaches, from a political science point of view, exactly the same conclusion, namely that, in terms of electoral cohesion, the minority community in Virginia Beach (African-American plus Hispanic, plus Asian-American) is, as a group, unquestionably politically cohesive in its support of minority candidates, while the White community in Virginia Beach is unquestionably politically cohesive in its opposition to minority candidates. Moreover, this analysis does not change significantly when we examine voting patterns not for all minority candidates but just for those who are also minority candidates of choice.

A2(b) Table 2 allows for straightforward calculation of metrics of minority political cohesion in terms of electoral cohesion.
i. In the twelve contests in Table 2 where there is a viable minority candidate, the average rank of the minority candidate among minority voters is 1.5 . In contrast the average rank of those minority candidates among White voters is 3.33 .
ii. In the eight contests in Table 2 where there is a viable minority candidate who is also the candidate of choice of the minority community, the average rank of the minority candidate among minority voters is, not surprisingly, 1.0. In contrast the average rank of those eight minority candidates of choice among White voters is 2.9 .
iii. Single seat contests are more dispositive of patterns of political cohesion for individual candidates than two-seat contests. Of the eight single seat contests in Table 2 where there is a viable minority candidate ( six elections), the average vote share of the minority candidate among minority voters is $58.9 \%$. In contrast, the average vote share for the minority candidates among non-minority voters is only $25.1 \%$.
iv. For reasons discussed earlier and also partly in Appendix A, vote share results in single seat contests are more dispositive of patterns of political cohesion for individual candidates than those in two-seat contests, and elections with minority candidates of choice are more dispositive of minority political cohesion than elections without minority candidates of choice. Combining these two factors, we find that, in the six single seat contests in Table 2 where there is a viable minority candidate who is also the candidate of choice of the minority community, the average vote share of the minority candidate among minority voters is $\mathbf{6 5 . 5 \%}$. In contrast the average vote share for the minority candidates of choice among non-minority voters is only $\mathbf{2 4 . 9 \%}$

A3(a) The evidence in the paragraphs above shows, on average, the minority community as a whole is politically cohesive in supporting minority candidates and, as might be expected, this is especially true when we restrict ourselves to the candidates of choice of the minority community shown in Table 2

A3(b) The evidence in the paragraphs above shows that White voters are highly politically cohesive in opposing minority candidates and this is true whether those minority candidates are or are not running in single seat election, and whether or not they are or are not they are minority candidates in choice. Other than Ms. Wooten in 2018, White voters never have an estimated level of support for an individual minority candidate above $32.9 \%$ and, even including Ms. Wooten, ${ }^{19}$ the average level of White support for minority candidates is around $25 \%$.

A2(e) The most compelling evidence for White political cohesion is the fact that in 11 of the 12 contests in which there were minority candidates, the White community ranked a White candidate first.
B. In sum, when we look at the combined minority community, the evidence in the case clearly shows that white/Anglo voters almost never give first place support to any minority candidate for City Council and give such paltry support to minority candidates on average that we can conclude that the White community is politically cohesive in opposition to minority candidates, with some minority candidates ranked sixth or seventh among White voters. In contrast, the minority group as a whole gives clear support to the set of minority candidates, never ranking any below $3^{\text {rd }}$ place, with eight of the twelve being minority candidates of choice who are ranked first by the minority community. In sum, I find

[^20]essentially indisputable evidence of political cohesive patterns of voting for both White voters and for minority voters in terms of electoral cohesion.
C. While the evidence above taken from Table 2 focuses on contests where the minority candidate of choice is a minority candidate, as is shown on pages 78-79 in the Court Opinion of March 31, 2021, there is also evidence of minority cohesion where a White candidate is the candidate of choice. The Court also finds evidence that where a White candidate is the minority candidate of choice, it is much more likely that this candidate is also a White candidate of choice. This is exactly what we would expect if White support for minority candidates of choice varied with the race/ethnicity of the minority candidate of choice, with Whites and minorities sometimes agreeing on the same candidate of choice when the minority candidate of choice was White, but almost never agreeing when the minority candidate of choice was himself or herself a minority member.

D1. For the minority community as a whole, high levels of demonstrated socio-economic cohesion and very high levels of minority electoral cohesion have been shown in the evidence reviewed in the Court Opinion and in my discussion above. Given the limits on election analyses placed by the demographic and geographic facts in this case, to further require that a finding of minority political cohesion must be supported by evidence of voting patterns for each minority group separately is simply, in my view, to ask the mathematically impossible (see Appendix B.).
E. I do not regard it as demonstrating lack of political cohesion of the minority community, if, when there is more than one minority candidate in an election, the minority community does not support each minority candidate at the same level. Similarly, I do not regard it as lack of political cohesion of the White community if, when there is more than one White candidate in an election, it does not support each White candidate at the same level. Instead, where there is a Section 2 (or $14^{\text {th }}$ Amendment) voting rights claim, I define political cohesion in the election context as above, namely electoral cohesion such that, in general, the minority community supports minority candidates and the White/Anglo community supports White candidates.

## V. Evidence for regular loss of minority candidates of choice in voting in city council

 elections in Virginia BeachA2 In the election years from 2010-2018 (including a special election in 2011) there are twelve contests where there is a viable minority candidate and there have been a total of ten separate minority candidates of choice who have run for City Council. Two have run twice. One of these, Ms. Ross-Hammond, won in 2012 but lost in 2016 (see details below). The other, Mr. Cabiness, lost both times. (See Table 2.)

A3. Another minority candidate, Mr. Furman ran three times. However, in two of the three contests in which Mr. Furman ran in during this period he was neither a minority candidate of choice nor do I consider him a viable minority candidate in that contest, and I exclude data on
these two contests from Table 2 below, but I do include data on voting patterns in one of the contests in which Mr. Furman ran (see discussion of Table 2 above). ${ }^{20}$

B1. There only three victories of minority candidates in City Council Elections over the period 2010-2018 among the twelve contests in Table 2 where there is a viable minority candidate. Of these twelve contests, eight involve a minority candidate of choice, and minority candidates of choice win in three the contests. Of these victories, one was found in an "elect two" contest, and two were found in single seat elections.

B2(a). In the election years from 2010-2018, in regularly scheduled city council elections in the City of Virginia Beach, the number of successful minority candidacies has been zero in three of five election years, one in one election year, and two in one election year.

B2(b). The only election year in which more than one minority candidate was elected, 2018, involved special circumstances

C1. Based on my independent review, I conclude that, in the plan struck down by the Court, in the period 2010-2018, minority candidates of choice regularly lose in the at-large single seat districts. In such districts minority candidates of choice won in only two of five instances, and both of those two instances could be attributed to special circumstances. The election of Ms. Sabrina Wooten in 2018 occurs in an election year after the filing of this lawsuit (see March 31, 2021 Court Opinion at pp. 88-89, see also Ibid at pp. 103-104) in an election with two minority candidates. The election of Ms. Ross-Hammond, who won in a single-seat election in 2012 I also attribute to special circumstances, namely the fact that there were three White candidate splitting the vote. She won in 2012 with only $32.2 \%$ of the vote. The conclusion that her win in 2012 can be attributed to White votes being split among three candidates is strongly buttressed by the fact that, even though she was running as an incumbent in 2016, she still lost. In 2016, unlike 2012, she had only a single White opponent. That opponent received nearly $60 \%$ of the total vote. In neither 2012 nor 2016 did White voters give Ms. Ross-Hammond more than one-third of their support. (See Table 2 below).

C2(a). Based on my independent review, I conclude that, in the plan struck down by the Court, in the period 2010-2018, absent special circumstances, minority candidates of choice regularly lose in the at-large two seat districts. Of the four minority candidates shown in Table 2 in two-seat elections, the only minority victor in elections in "two-seat" elections is Mr . Rouse in 2018. As noted previously, his victory occurs after the filing of this lawsuit. Mr. Rouse is one of the two minority candidate of choice to win without also being a candidate of choice of White voters. ${ }^{21}$ In a multi-candidate field, Mr., Rouse is a third choice among non-

[^21]${ }^{21}$ The other is Ms. Ross-Hammond, the special circumstances of whose 2012 victory we discussed in the paragraph above.
minority voters but a first choice among minority voters. Mr. Rouse was able to win in an overwhelmingly White electorate despite this lack of White support because, in 2018, there were four White candidates and two Black candidates in this "vote for two" contest. Mr. Rouse was overall the highest finisher in the contest, but he won with only $26.7 \%$ of the total votes cast. Having only come in third among White voters in the election in the "vote for two" election in 2018 that he won, it is very likely that Mr. Rouse, had he been running in a "vote for one" atlarge election (or one with similar demography) would, like almost all of his fellow minority candidates running in single seat elections with at-large voting, almost certainly not been the candidate of choice of White voters, and would likely have lost such an election. As can be seen from Table 2 , in single seat elections, there is a substantial likelihood that a minority candidate will be facing a single White opponent.

C2(b). Another reason to be skeptical about any claim that Mr. Rouse's victory in 2018 can be interpreted as showing that Mr. Rouse could win in a future single seat at large contest (or one with similar demographic characteristics to the City as a whole) is that in a "two-seat contest" his total vote came from two kinds of voters: voters who ranked him first and voters who ranked him second. While voters in the first category would presumably vote his first again in a single seat contest against one or more of the same set of candidates whom he defeated in 2018, that voters who voted for him as their second choice would vote for him as their first choice in a single seat election is much more dubious. Thus, we might expect that Mr. Rouse might do less well in a single-seat competition than his overall first place rank in the two-seat contest, based on plurality vote shares, might suggest. Projecting two seat contests, such as those won by Mr. Rouse, into single seat elections is very difficult, since we do not how much of Mr. Rouse's support in the "vote for two" situation came from voters who placed his first in their ranking as opposed to voters who placed him second in their ranking. Also we might reasonably expect that some of the voters who voted for Mr. Rouse used their second vote to vote for the other minority candidate in the race, Mr. Bright, so we cannot simply add up the votes for Mr. Rouse and Mr. Bright to assess likely future voting support for Mr. Rouse. ${ }^{22}$

C2(c). The expectation that Mr. Rouse in 2018 would have lost had he been running against a less-divided opposition in a single seat at-large contest is strongly reinforced by a comparison of the outcome and vote share in the two contests (2012 and 2016) involving minority candidate Ms. Ross-Hammond in a single-seat district. In 2012 she won against a divided White field, and in 2016 she lost, against a single White candidate. Ms. Ross-Hammond was the minority

[^22]community's clear candidate of choice in both years, and the non-minority community's candidate of choice in neither year. Thus, two of the three victories of minority candidates of choice over this period (Mr. Rouse in at-large two-seat district, in 2018, and Ms. RossHammond in a single seat contest, in 2012) can largely be explained by the contest which they won being one with many White candidates splitting the White vote, thus allowing a minority candidate to win with only a plurality of the vote ( $26.7 \%$ in 2018 in the two-seat contest, and $32.2 \%$ in 2012 in the single-seat contest) .

D1. In sum, in looking at the three City Council elections in 2010-2018 where there is a minority victory, a plausible expectation for two of these three instances of minority success is that the minority candidate who won that election would have lost had there been fewer White candidates splitting the White vote. I conclude that there is a pattern of minority loss in five of eight elections with a minority candidate, and an expected pattern of minority loss in an additional two future single seat elections that would be head-onhead contests or nearly head -on-head contests that might be conducted in districts whose racial demography matches that of the City as a whole. Thus, I find a pattern of actual or expected future minority loss in seven of eight of the elections shown in Table 2 where there is a minority candidate of choice.

D2. However, even the "seven of eight" expected minority loss calculation understates the degree to which the present electoral system has foreclosed minority opportunity to succeed in the electoral arena. Because minority candidates are deterred from running for at-large elections in the city by their low chance of electoral success, counting the number of minority candidates who ran and lost substantially understates the actual dilutive effect of the at-large plan struck down by the Court in terms of that plan's effects on minority opportunity to participate in the political process and elect candidates of choice.

D3. Moreover, the level of success of minority candidates under the present at-large election rules is far below that which could be expected in a ten-district single seat plan that is based on the electoral geography of the City. In particular, it is substantially below what can be expected in the Plaintiffs' proposed remedial map, and in the "one person, one vote" population-compliant illustrative map that I introduce later in this Report. Under the current (and now invalidated) City Council election rules, in no year have there been three minority candidates of choice on the city council who are themselves member of the minority community.
VI. Summary of fact-based conclusions about polarization, cohesion, and usual minority loss
A. As the Court previously concluded, and based on my own independent review of the evidence, voting in the City of Virginia Beach in its non-partisan city council elections is clearly polarized along racial/ethnic lines.
B. As the Court previously concluded, and based on my own independent review of the evidence, the minority community is politically cohesive in its support for the set of minority candidates and the non-minority community is politically cohesive in its support for non-minority candidates.


#### Abstract

C. As the Court previously concluded, and based on my own independent review of the evidence, minority candidates of choices regularly lost in at-large elections under the previous map. Minority candidates would have won far more often had only minority voters been voting, i.e., minority candidates regularly lost due to white bloc voting. Two of the three apparent exceptions are ones where a large number of White candidates split the White vote and/or in a "vote for two" situation that will not be found in the remedial single seat maps.


## VII. REMEDY PHASE: Identifying minority opportunity districts

A1. That the voting behavior of the three groups (African-Americans, Hispanics, AsianAmericans) cannot be reliably separately estimated is not in any way a barrier to a factual finding that it is possible to create districts in which the three groups, taken collectively, have a realistic opportunity to elect a candidate of choice. ${ }^{23}$ More particularly, in the City of Virginia Beach, that a given district in some proposed plan is a minority opportunity district can be directly demonstrated by a showing that, in a recent bi-racial/bi-ethnic contest with one or more viable minority candidates in one or more of the previous at-large elections to the city council, a minority candidate of choice has a realistic opportunity to win in the proposed district were there to be a single viable minority candidate ${ }^{24}$

A2. The clause, "were there to be a single viable minority candidate," was added in the sentence in the paragraph above specifying the applicability of the method of projection for reasons of precision. Common sense tells us that, for any group, even one constituting a majority of the citizen vote age population in a district, given the nature of plurality voting rules in a single seats contest, when a group split its vote among multiple candidates, such vote splitting will reduce the likelihood that the most favored candidate or candidates of the group will be elected. This observation is true both for the set of white/Anglo voters and for the minority group.

B1. The projection method, which has become one of the now standard statistical methods for racially polarized voting analysis - with its reliability sustained by multiple courts - can be applied in Virginia Beach to assess whether a proposed remedial single member district can be characterized as a minority opportunity district were there be a minority candidate of choice in the contest. In the next section I use this method, to evaluate minority opportunity in the four most heavily minority districts in the Plaintiffs' proposed ten-district remedial map (including the three $50 \%+$ CVAP districts in that map) and the four most heavily minority districts in the Defendants' two proposed remedial maps. And I have also applied this method to the four most

[^23]heavily minority districts in the illustrative remedial map I present to the Court that is based on 2020 population data.

B3. To assess minority opportunity to elect I relied on six single seat elections over the period 2010-2018 where there are minority candidates of choice. Five of these are ones where the minority candidate of choice lost. Projections for four of these elections, ones for City Council where a minority candidate lost, are found in Table 1 of the "Declaration of Dr. Douglas M. Spencer," in the remedial phase of the litigation, July 30, 2021, at p. 4 (Ms. Ross-Hammond in 2016, ${ }^{25}$ Mr. Cabiness in 2014, Mr. Sherrod in 2011 and Ms. Bullock in 2010). Projections for the fifth contest, the Sheriff's race in 2017, with Mr. Bell the minority candidate, ${ }^{26}$ are found in Table 2 of the "Declaration of Dr. Douglas M. Spencer," in the remedial phase of the litigation, July 30,2021 , at p. $7 .{ }^{27}$ The sixth election I use for projection is the 2018 contest won by Ms. Wooten. For this contest I have done my own calculations using the same methodology as Dr. Spencer, which is the standard methodology for projections

B4. In assessing overall minority opportunity to elect using these six elections I looked at how many of those elections were ones in which the minority candidate won in the newly configured proposed remedial district. For four of these contests (Ms. Wooten, Mr. Bell, Ms. RossHammond, and Ms. Bullock), I look to see whether the minority candidate is projected to receive a majority of the vote. For two of these (Mr. Cabiness, and Mr. Sherrod) I look to see whether the minority candidate is projected to win a plurality of the vote.

B5. As discussed in Appendix A, estimates for "vote for two" contests need to be interpreted with great care, and I do not rely on the projections of the election results in two-seat elections in 2010 and 2018 shown in Table 1 of the "Declaration of Dr. Douglas M. Spencer," in the remedial phase of the litigation, July 30,2021 , at p. 4. Projecting results from two-seat contests into a single seat contest can raise complications vis-à-vis reliable estimation. Rather than seeking ways to improve estimations based on projecting results from two-seat contest into single seat contests, I have avoided this problem by confining myself to projecting results from

[^24]single seat contests into future single seat contests. Without making use of the more uncertain projections from two-seat contests into single seat contests, there are enough single seat contests over the period 2010-2018 for me to reach reliable conclusions about minority opportunity to elect in the most heavily minority districts in Plaintiffs' plan and Defendants' plan(s), and in an illustrative plan that I present to the Court intended to cure defects that I found in each of the two ten-district plans submitted to the Court.

## VIII. REMEDY PHASE: Evaluating the suitability of the three proposed remedial maps

 submitted by Defendants or Plaintiffs as remedies for the vote dilution identified in the Court Opinion of March 31, 2021.
## A. The Defendants' seven -district map

A1. The seven single member district and three at-large district plan submitted by the City of Virginia Beach can be rejected on multiple grounds. First, it retains an at-large feature for some of its districts. But the degree to which an at-large district diluted minority voting in Virginia Beach was a central element of the Court's finding that the previous map (with three at-large districts and seven districts voting at-large but with a residency requirement for candidates). violated the Voting Rights Act. Second, the combined single seat and at-large map creates at most two minority opportunity districts whereas, given the racial geography (and the legal conclusions of the Court as to Section 2 violation conditions having been met) the creation of three minority opportunity districts appears to be mandated. ${ }^{28}$

A2. But most importantly, this seven single seat district and three at-large districts plan can be rejected because it is no longer legal. As the Court notes in its March 31, 2021 Opinion, on March 22, 2021, Defendants filed a Notice of New Authority indicating that on March 18, 2021, the Governor of the Commonwealth of Virginia signed House Bill 2198 into law. ECF No. 204 at Exhibit 1. The law amends Section 24.2-222 of the Virginia Code to prohibit at-large voting for candidates "in a city or town that imposes district based or ward-based residency requirements for members of the city or town council." Id. The law will take effect on January 1, 2022, before the next City Council election on November 8, 2022. Because this law makes the $7-$ 3 plan an illegal one, and thus one which must be rejected, I give it no further mention in the Report.
B. Table 3 below shows the minority CVAP estimates for the Plaintiffs' initially submitted 10district map, the Defendants' initially submitted 10 -district map, and for an illustrative 10 -
${ }^{28}$ While the minority community possesses no right to proportional representation, with $40.5 \%$ of the total population (using 2020 census data) and $32.8 \%$ of the CVAP as estimated in 2019, and with that population geographically concentrated in the western area of the city, with singleseat remedies readily available, there is no valid reason for the minority community to have its voting strength diluted by voting rules that submerge minority population concentrations with the votes of the overwhelmingly white/Anglo voting population in the City at-large.
district map I have prepared that satisfies one person, one vote, maintains the three $50 \%+$ CVAP districts found in the Plaintiffs' map, and eliminates all incumbent pairings found in either or both Defendants' and Plaintiffs' Map and, in particular, places the two minority incumbents in heavily minority districts with no White incumbent in place. These estimates are taken from Dave's Redistricting App or from a report by Plaintiffs.

Table 3.
Minority CVAP in Plaintiffs' 10-District Map and the Defendants' 10-District Map (Plaintiff map data for H+B+AA taken from "Plaintiffs' Proposed Remedial Plan and Recommendations for Court-Appointed Expert," July 1, 2021, at p.12); Defendant map data for $\mathrm{H}+\mathrm{B}+\mathrm{AA}$ taken from Dave's Redistricting App using the block equivalency files provided to me in electronic form). ${ }^{29}$.

|  | (a) Defendants' <br> Proposed <br> Remedial Map |  | (b) Plaintiffs' <br> Proposed <br> Remedial Map |
| :--- | :--- | :--- | :--- |
|  | initial Map <br> (not population <br> adjusted) | initial Map <br> (not population <br> adjusted) |  |
| 1 | $47.8 \%$ | 1 | $30.3 \%$ |
| 2 | $44.5 \%$ | 2 | $24.5 \%$ |
| 3 | $47.5 \%$ | 3 | $31.9 \%$ |
| 4 | $34.4 \%$ | 4 | $51.1 \%$ |
| 5 | $46.3 \%$ | 5 | $20.3 \%$ |
| 6 | $23.4 \%$ | 6 | $22.3 \%$ |
| 7 | $8.8 \%$ | 7 | $52.8 \%$ |
| 8 | $25.7 \%$ | 8 | $12.8 \%$ |
| 9 | $31.9 \%$ | 9 | $21.4 \%$ |
| 10 | $20.3 \%$ | 10 | $52.3 \%$ |

[^25]C. Table 4 below shows projected results of the six single seat contests identified in the previous section for the Plaintiffs' initially submitted 10 -district map and the Defendants' initially submitted 10 -district map. These estimates are primarily taken from Table 1 (p. 4) and Table 2 (p.7) of the Declaration of Dr. Douglas M. Spencer, July 30. 2021. ${ }^{30}$ Cells with black bolding represent elections projected to be won by a minority candidate with a majority of the vote. Cells with blue bolding represent elections projected to be won by a minority candidate with a plurality of the vote.

[^26]Table 4.
Projections into Four Most Heavily Minority Districts in Plaintiffs' 10-District Map and Defendants' 10-District Map
Plaintiffs' Map

| Candidate | 4 | 10 | 7 | 3 |
| :--- | ---: | ---: | ---: | ---: |
| 2018 Wooten | $70.5 \%$ | $69.9 \%$ | $67.1 \%$ | $64.4 \%$ |
| 2017 Bell (Sheriff) | $59.1 \%$ | $53.7 \%$ | $50.9 \%$ | $43.8 \%$ |
| 2016 Ross-Hammond | $55.4 \%$ | $47.3 \%$ | $45.3 \%$ | $42.4 \%$ |
| 2014 Cabiness | $33.2 \%$ | $26.0 \%$ | $25.0 \%$ | $18.5 \%$ |
| 2011 Sherrod | $43.5 \%$ | $39.2 \%$ | $37.6 \%$ | $27.7 \%$ |
| 2010 Bullock | $55.5 \%$ | $56.8 \%$ | $57.9 \%$ | $47.2 \%$ |

Defendants' Map

| Candidate | 1 | 5 | 3 | 2 |
| :--- | ---: | ---: | ---: | ---: |
| 2018 Wooten | $70.1 \%$ | $67.8 \%$ | $68.5 \%$ | $64.3 \%$ |
| 2017 Bell (Sheriff) | $57.8 \%$ | $51.4 \%$ | $47.0 \%$ | $45.7 \%$ |
| 2016 Ross-Hammond | $53.7 \%$ | $47.3 \%$ | $43.3 \%$ | $42.8 \%$ |
| 2014 Cabiness | $31.3 \%$ | $27.0 \%$ | $22.1 \%$ | $20.0 \%$ |
| 2011 Sherrod | $42.3 \%$ | $37.0 \%$ | $36.7 \%$ | $30.2 \%$ |
| 2010 Bullock | $54.7 \%$ | $53.6 \%$ | $55.2 \%$ | $50.6 \%$ |

D. The ten-district plan proposed by the City of Virginia Beach is not suitable as a voting rights remedy.

D1(a). The Plaintiffs have proposed a map with three districts that, based on past elections will, with high probability, each select the minority candidate of choice, but where there are no additional districts in which minorities are expected to have a substantial chance to elect candidate of choice. The Defendants have opted for a plan that more evenly allocates minority population across four districts.

D1(b). Unlike the Plaintiffs' map, the Defendants' remedial plan contains exactly zero majorityminority districts in terms of citizen vote age population, even though the Plaintiffs' remedial map demonstrates that three majority minority districts can be drawn in terms of citizen vote age population based on geographically contiguous minority populations.

D2(a). The fact that there are no majority minority CVAP districts in the City's proposed remedial map is, on its face, an apparent violation of Section 2 of the Voting Rights Act as the Supreme Court has interpreted preconditions for a Section 2 lawsuit in Bartlett v. Strickland . 556 U.S. 1 (2009).

D2(b). However, despite the language of Bartlett v. Strickland as to the preconditions for bringing a Section 2 lawsuit, in Alabama Black Caucus, 135 S. Ct. 1257 (2015), involving a challenge to a plan in a jurisdiction then covered under Section 5 of the Voting Right Act that was drawn before the Shelby v. Holder 570 U.S. 529 (2013) decision striking down the trigger clause of Section 5 of the Voting Rights Act, the Supreme Court has now made clear that Section 5 "does not require a covered jurisdiction to maintain a particular numerical minority percentage," but instead "requires the jurisdiction to maintain a minority's ability to elect a preferred candidate of choice" The Court concluded that, in "rel[ying] heavily upon a mechanically numerical view as to what counts as forbidden retrogression," the district court failed to ask the question critical to the narrow tailoring analysis: To what extent was the legislature required to "preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?" By analogy, a district without a minority CVAP majority could, I believe, nonetheless be defended against a Section 2 challenge if it could be shown that each of the three most heavily minority districts in the Defendants' plan was still a minority opportunity district. ${ }^{3 l}$ However, as discussed below, from a social science perspective, the Defendants' map clearly fails this test.

[^27]D2 Let me first note that the three best performing minority districts in the Defendants' map are not as suitable as voting rights remedies as the three best performing minority districts in Plaintiffs' map.

D2(a) Comparing the number of elections with minority victories out of the six single seat elections in the three strongest performance districts in each map, the Plaintiffs' map has one district with 5 of 6 wins, and two with 4 of six wins, while the Defendants' map has one district with 5 wins, one with 4 wins, and one with 3 wins, so that the third highest performance district in Plaintiffs' map is, ceteris paribus, more likely to perform as a minority opportunity district than the third highest performance district in Defendants' map.

D3(b) Moreover, there are 18 projected percentages for the three most likely to elect districts for each map in Table 3 (districts 4, 10, and 7 in Plaintiffs' map versus districts1, 5 and 3 in Defendants' map) If we compare the Plaintiffs remedial map with the Defendant remedial map, we find higher numbers for the projected election values in the Plaintiffs map in 16 of these 18 possible comparisons between the two maps.

D3(c) The Plaintiffs' map has its third best performing district with a stronger claim to be a minority opportunity district than the corresponding third best performing district in the Defendants' map; and also that expected vote shares for minority candidates are nearly uniformly higher in the Plaintiffs' map than in the Defendants' map when we compare the first, second and third best performing district in Plaintiffs' plan to the corresponding districts in Defendant's plan. Thus, while the differences between the two plans are not that large, they are consistently in favor of the Plaintifis plan vis-à-vis providing an effective remedy for the vote dilution found.

D7. In a choice between plans, the weight to be given the considerations about minority opportunity to elect identified above (and shown in Table 3) can only be determined by the Court.

E1. But results from projections are not only reason, or perhaps even the most important reason, to strongly prefer Plaintiffs Plan to Defendant' Plan from the standpoint of effective voting rights remedy. While the results in Table 3 show that, on their face, both the Defendants' map and the Plaintiffs' map have three opportunity districts, though with the third such district in Defendants' plan inferior to the third such district in Plaintiffs plan, once we look in more detail at the two maps, we would no longer characterize Defendants' map as having three minority opportunity districts. Because the Defendant's map places White incumbents in two of the most heavily minority districts in its map, indeed pairing one of them with a minority incumbent, this severely reduces the equal

[^28]opportunity of the minority community to elect candidates in those districts. ${ }^{32}$ And there was no need, given the geography, to place the second minority incumbent in a nonminority district, as is done in Defendant's map. This, too, operates to reduce minority opportunity to elect candidates of choice. In sum, Defendants' map cannot be considered a remedy for the voting rights violations found by the Court. It does not actually have three districts in which minorities have, realistically, an equal opportunity to elect candidates of choice. In contrast, the districts drawn in the Plaintiffs' proposed remedial map do not pair any White incumbents with a Black incumbent (using either the 2020 or the 2021 locations of incumbents), and they locate both Black incumbents in heavily minority districts, and they avoid the placement of White incumbents in heavily minority districts. Below I provide details in support of the statements above. Also see Table 6 later in the Report.

E1(a). The configuration of the districts in the defendant's proposed ten-district map places the home of a White incumbent, Mr. Michael Berlucchi, inside one of the districts identified by the City as a minority opportunity district, District 5. ("Declaration of Dr. Douglas M. Spencer" in the remedial phase of Holloway, July 21, 2021, numbered paragraph 15 at p. 5)

E1(b). The placement of a White incumbent, Mr. Berlucchi, in a heavily minority district in the Defendants' map will make it less likely that a minority candidate of choice will be able to prevail in elections in the district, despite the district's racial demography.

E2(a) The configuration of the districts in the Defendant's proposed ten-district map places the home of a black incumbent, Mr. Aaron Rouse, outside any of the most heavily minority districts in the map and places him in a district (District 4 in the Defendants' map) with $39.2 \%$ minority CVAP.

E2(b).The placement in Defendants map of Mr. Rouse, who is one of only two Black City Council members, in a heavily White district, will make unlikely that this minority candidate of choice, who has shown strong support from the minority community, but not from the White community, will be able to continue to represent the minority community.

E2(c) When I project the six bi-racial/bi-ethnic contests identified in Table 2 into District 4 in the Defendants' map, only one of the six elections is a win for the minority candidate.

E2(d). As can be shown by Plaintiffs' plan (and also the map I prepared), placing Mr. Rouse in a White majority area was mot compelled by the geography despite the proximity of the homes of Mr. Rouse and the appointed incumbent Mr. Holcomb. In the Plaintiffs' map, rather than being placed in an overwhelmingly White district, Mr. Rouse is placed in a district, District 10, which is a $50 \%+$ minority CVAP (district).

[^29]E3(a) In the appointment by the City Council in August of 2021 of Mr. Rocky Holcomb to fill the unexpired term of Ms. Jessica Abbot, they have appointed to office someone whose residence is in the same district, District 3 in Defendant's map, as minority incumbent Sabrina Wooten. Thus, in the Defendants' map there will also be a White incumbent in place if Ms. Wooten choose to run for office again. Moreover, this White incumbent has been located in a heavily minority district. While no incumbent has a right to re-election, appointing to office a new White incumbent who lives in the same district in the Defendants' map as one of the only two minority incumbents was not necessitated by the geography of the City. And there is also an issue of having two incumbents in the same district whose terms expire at different times, one in 2022 (Mr. Holcomb), with a Special Election required, and one in 2024 (Ms. Wooten).

E1(b). The placement of a White incumbent, Mr. Holcomb, in a heavily minority district in Defendants' map will make it less likely that a minority candidate of choice will be able to prevail in elections in the district, despite the district's racial demography.

F1(a) In sum, Defendants' mapping and incumbent replacement choices will operate to substantially and unnecessarily reduce minority opportunity in the map configuration chosen by Defendants as a supposed voting rights remedy. The geographic placement in Defendants' 10-district map of a Black incumbent (Mr. Rouse) in a non-minority area, of a White incumbent (Mr. Berlucchi) in a heavily minority area, and of a second White incumbent (Mr. Holcolmb) in a heavily minority area in which there is also a minority incumbent (Ms. Wooten), forcing a pairing, seems especially problematic given the history of this litigation and the long period in which minority voting strength in the City of Virginia Beach was diluted by the electoral structure of the city's elections for city council.

F1(b) These placements will act as barriers to the ability of the minority community in the City to elect candidates of choice. In a choice between plans, the differences in incumbent placement choice between the two plans strongly argues for Defendants' map being an inappropriate remedy in terms of the expected equal opportunity of the minority community to elect candidates of choice. Despite being offered as a remedy for a voting rights violation, and despite an apparent concern to create four heavily minority districts in the area of greatest minority population concentration, the City Council Map would operate in a dilutive fashion and not provide an effective remedy for the Section 2 voting right violation found. Not only are its three minority opportunity districts inferior to those in the Plaintiffs' map, but there are grave defects in how Defendants have reduced minority opportunity by its choices of where to locate incumbents.

G1(a). The Defendants' map deals with both of the minority incumbencies and two of the White incumbencies in an unacceptable way, unnecessarily placing a Black incumbent in a heavily White district and also unnecessarily placing each of two White incumbents in a heavily minority district, in one of which there is also a pairing with a minority incumbent. In my view it does not provide a satisfactory remedy for the voting rights violations found by the Court.

G1(b). Plaintiffs' map avoids all of these problems. Overall, the Plaintiffs' map provides three strong minority opportunity districts, which are, on balance, stronger than those in the Defendants' map.
H. Because of the defects in the Defendants' map with respect to its suitability as a voting rights remedy, I do not discuss it any further in the remainder of this Report.

## IX. REMEDY PHASE: The special master illustrative map

A. Neither the Defendants' map nor the Plaintiffs map in their present incarnations satisfy "one person, one vote." Using the most recent census data, the population deviation in the Defendants' map is $17.5 \%$ and it is $14.2 \%$ in the Plaintiffs' map. Thus, a new constitutional map still remains to be created.
B. While there are many positive features in the Plaintiffs map, there are special responsibilities for courts in ordering a remedial map. Thus, rather than simply recommending that the Court adopt Plaintiffs' map after its population has been adjusted to be in "one person, one vote" compliance, I have instead opted for providing the Court an alternative equipopulous map. Key features of that map are shown in Table 5, Table 6, and Table 7 (with Table 7 also showing a comparison to the Plaintiffs' map).

Table 5.
Key Features of the Special Master Illustrative Equipopulous Remedial Map with Incumbency Unpairings

|  | (a) Minority <br> CVAP <br> percentages <br> (minority $=$ <br> 100-Non- <br> Hispanic <br> White) |
| :--- | :--- |
|  |  |
| 1 | $35.1 \%$ |
| 2 | $27.6 \%$ |
| 3 | $36.4 \%$ |
| 4 | $52.3 \%$ |
| 5 | $22.5 \%$ |
| 6 | $24.7 \%$ |
| 7 | $53.2 \%$ |
| 8 | $16.0 \%$ |
| 9 | $24.4 \%$ |
| 10 | $54.6 \%$ |

(b) projected estimated votes

| Candidate | 4 | 10 | 7 | 3 |
| :--- | ---: | ---: | ---: | ---: |
| 2018 Wooten | $71.2 \%$ | $69.5 \%$ | $67.3 \%$ | $64.8 \%$ |
| 2017 Bell (Sheriff) | $59.8 \%$ | $54.5 \%$ | $50.4 \%$ | $45.7 \%$ |
| 2016 Ross-Hammond | $56.8 \%$ | $47.2 \%$ | $44.9 \%$ | $43.3 \%$ |
| 2014 Cabiness | $34.6 \%$ | $27.1 \%$ | $25.0 \%$ | $18.5 \%$ |
| 2011 Sherrod | $43.6 \%$ | $39.0 \%$ | $36.8 \%$ | $29.1 \%$ |
| 2010 Bullock | $55.9 \%$ | $56.8 \%$ | $57.8 \%$ | $47.8 \%$ |

Table 6.
Population, Voting Age Population, and Citizen Voting Age Populations for Districts in the Special Master Illustrative Map

Citywide

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 460,224 | $58.7 \%$ | $8.8 \%$ | $21.8 \%$ | $10.0 \%$ | $40.5 \%$ | $41.3 \%$ |
| 2020 VAP | 358,086 | $61.5 \%$ | $7.6 \%$ | $20.1 \%$ | $9.4 \%$ | $37.2 \%$ | $38.5 \%$ |
| 2019 CVAP | 335,265 | $65.8 \%$ | $6.4 \%$ | $19.7 \%$ | $6.8 \%$ | $32.8 \%$ | $34.2 \%$ |

District 1

|  | NH |  | NH |  |  | NH |  |
| :--- | :--- | :--- | ---: | :--- | :--- | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 47,583 | $58.6 \%$ | $7.3 \%$ | $21.7 \%$ | $11.4 \%$ | $40.4 \%$ | $41.4 \%$ |
| 2020 VAP | 37,160 | $61.3 \%$ | $5.9 \%$ | $20.1 \%$ | $11.1 \%$ | $37.2 \%$ | $38.7 \%$ |
| 2019 CVAP | 37,126 | $64.9 \%$ | $4.6 \%$ | $21.2 \%$ | $8.0 \%$ | $33.8 \%$ | $35.1 \%$ |

District 2

|  | NH |  | NH |  |  | NH |  |
| :--- | :--- | :--- | ---: | :--- | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 45,624 | $68.5 \%$ | $6.7 \%$ | $12.7 \%$ | $10.8 \%$ | $30.2 \%$ | $31.5 \%$ |
| 2020 VAP | 34,603 | $70.1 \%$ | $5.7 \%$ | $12.8 \%$ | $9.8 \%$ | $28.3 \%$ | $29.9 \%$ |
| 2019 CVAP | 30,675 | $72.4 \%$ | $4.6 \%$ | $14.3 \%$ | $7.5 \%$ | $26.5 \%$ | $27.6 \%$ |

District 3

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | :--- | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 47,230 | $55.2 \%$ | $10.0 \%$ | $24.9 \%$ | $9.2 \%$ | $44.0 \%$ | $44.8 \%$ |
| 2020 VAP | 37,042 | $58.3 \%$ | $8.7 \%$ | $23.0 \%$ | $8.7 \%$ | $40.4 \%$ | $41.7 \%$ |
| 2019 CVAP | 34,927 | $63.6 \%$ | $7.9 \%$ | $21.5 \%$ | $5.6 \%$ | $35.0 \%$ | $36.4 \%$ |

Table 6.
Population, Voting Age Population, and Citizen Voting Age Populations for Districts in the Special Master Illustrative Map (cont.)

District 4

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 43,810 | $37.1 \%$ | $12.3 \%$ | $42.3 \%$ | $8.5 \%$ | $63.1 \%$ | $62.9 \%$ |
| 2020 VAP | 34,389 | $40.8 \%$ | $11.0 \%$ | $39.2 \%$ | $8.5 \%$ | $58.7 \%$ | $59.2 \%$ |
| 2019 CVAP | 30,440 | $47.7 \%$ | $8.7 \%$ | $34.8 \%$ | $6.8 \%$ | $50.3 \%$ | $52.3 \%$ |

District 5

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :---: | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 45,062 | $70.5 \%$ | $8.9 \%$ | $12.1 \%$ | $6.8 \%$ | $27.8 \%$ | $29.5 \%$ |
| 2020 VAP | 34,610 | $72.8 \%$ | $8.0 \%$ | $11.2 \%$ | $6.0 \%$ | $25.1 \%$ | $27.2 \%$ |
| 2019 CVAP | 34,461 | $77.5 \%$ | $7.2 \%$ | $10.2 \%$ | $3.9 \%$ | $21.3 \%$ | $22.5 \%$ |

District 6

|  | NH |  | NH |  |  | NH |  |
| :--- | :--- | :--- | ---: | :--- | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 43,686 | $68.1 \%$ | $9.1 \%$ | $17.3 \%$ | $4.4 \%$ | $30.7 \%$ | $31.9 \%$ |
| 2020 VAP | 35,577 | $71.3 \%$ | $7.8 \%$ | $15.2 \%$ | $4.1 \%$ | $27.0 \%$ | $28.7 \%$ |
| 2019 CVAP | 33,316 | $75.3 \%$ | $4.4 \%$ | $16.5 \%$ | $2.5 \%$ | $23.4 \%$ | $24.7 \%$ |

Table 6.
Population, Voting Age Population, and Citizen Voting Age Populations for Districts in the Special Master Illustrative Map (cont.)

District 7

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | :--- | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 45,773 | $42.8 \%$ | $8.9 \%$ | $31.0 \%$ | $17.7 \%$ | $57.6 \%$ | $57.2 \%$ |
| 2020 VAP | 34,514 | $44.9 \%$ | $7.6 \%$ | $29.7 \%$ | $17.4 \%$ | $54.6 \%$ | $55.1 \%$ |
| 2019 CVAP | 33,828 | $46.8 \%$ | $8.6 \%$ | $30.5 \%$ | $12.5 \%$ | $51.6 \%$ | $53.2 \%$ |

District 8

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 46,779 | $79.4 \%$ | $5.4 \%$ | $7.7 \%$ | $5.7 \%$ | $18.9 \%$ | $20.6 \%$ |
| 2020 VAP | 37,177 | $82.0 \%$ | $4.5 \%$ | $6.7 \%$ | $4.9 \%$ | $16.1 \%$ | $18.0 \%$ |
| 2019 CVAP | 34,810 | $84.0 \%$ | $3.4 \%$ | $6.8 \%$ | $4.9 \%$ | $15.0 \%$ | $16.0 \%$ |

District 9

|  | NH |  |  | NH | NH |  |  |
| :--- | :---: | :--- | ---: | :---: | ---: | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 48,102 | $66.5 \%$ | $8.8 \%$ | $15.0 \%$ | $8.4 \%$ | $32.2 \%$ | $33.5 \%$ |
| 2020 VAP | 38,324 | $69.2 \%$ | $7.4 \%$ | $13.8 \%$ | $7.8 \%$ | $29.0 \%$ | $30.8 \%$ |
| 2019 CVAP | 35,693 | $75.6 \%$ | $5.8 \%$ | $12.0 \%$ | $5.1 \%$ | $22.9 \%$ | $24.4 \%$ |

District 10

|  | NH |  |  | NH | NH |  |  |
| :--- | :--- | :--- | ---: | :--- | :--- | ---: | ---: |
|  | Total | White | Hispanic | Black | Asian | B+H+AA | combined |
| 2020 Pop. | 45,821 | $38.8 \%$ | $10.8 \%$ | $34.0 \%$ | $16.8 \%$ | $61.6 \%$ | $61.2 \%$ |
| 2020 VAP | 34,690 | $41.5 \%$ | $9.5 \%$ | $31.5 \%$ | $16.7 \%$ | $57.8 \%$ | $58.5 \%$ |
| 2019 CVAP | 29,989 | $45.4 \%$ | $9.0 \%$ | $32.5 \%$ | $11.4 \%$ | $52.8 \%$ | $54.6 \%$ |

Table 7.
Incumbency Pairings in Plaintiffs' Map and the Special Master Illustrative Map, Along with (expected) Date of Next Election in the District
**Rocky Holcomb is an appointed incumbent and will be up for election in a November 2022 special election to fill out a term that expires in 2024.
**The current vacancy for the Lynnhaven District (2022) is not included in the SM Map list of incumbents; if that vacancy is filled before the Court adopts a new map the residence of that appointed incumbent may create an additional pairing.
Plaintiffs' Map

| District | Incumbent (s) |
| :--- | :--- |
| 1 OPEN SEAT | Sequence |
| 2 Barbara Henley (2022) | 2024 |
| 3 Rocky Hol comb* (2024) / Michael Berlucchi (2024) | 2022 |
| 4 OPEN SEAT | 2024 |
| 5 Rosemary Wilson (2024) | 2022 |
| 6 Guy Tower (2022) | 2024 |
| 7 Sabrina Wooten (2024) | 2022 |
| 8 VACANT (2022) | 2024 |
| 9 John Moss (2022) / Louis Jones (2022) | 2022 |
| 10 Aaron Rouse (2022) | 2022 |

SM Map

| District Incumbent (s)** | Sequence |
| :---: | ---: |
| 1 Rocky Holcomb (2024) | $2022 / 2024$ |
| 2 Barbara Henley (2022) | 2022 |
| 3 Michael Berlucchi (2024) | 2024 |
| 4 OPEN SEAT | 2022 |
| 5 Rosemary Wilson (2024) | 2024 |
| 6 Guy Tower (2022) | 2022 |
| 7 Sabrina Wooten (2024) | 2024 |
| 8 Louis Jones (2022) | 2022 |
| 9 John Moss (2022) | 2022 |
| 10 Aaron Rouse (2022) | 2022 |

C1. Most importantly, my illustrative map incorporates the most important features of a remedial map from a voting rights perspective:
i. no pairing of White and minority incumbents, or of the two Black incumbents (see Table 7, cf. Table 6),
ii. no placement of a minority incumbent in a majority White district (see Table 7, cf. Table 6), and
iii. no placement of a White incumbent in a majority-minority district or a very heavily minority district (see Table 7 cf . Table 6)
iv. three $50 \%+$ CVAP districts (see Table 6)
v. three minority opportunity to elect districts (see Table 5).

C2. As we can see from comparing Table 3 and Table 6, the three $50 \%+$ CVAP districts in the Special Master Map are comparable in minority CVAP totheir counterparts in the Plaintiffs' map. However, since both maps not only have three $50 \%+$ CVAP districts but each also deals appropriately with items i. through iii. above, more important than the CVAP percentages themselves, are the estimates for each of these districts re minority opportunity to elect. As we can see from comparing Table 4 with Table 5, the two maps are virtual twins: of 18 direct pairwise comparisons in the $50 \%+$ CVAP districts, 9 marginally favor the SM map, as opposed to 7 of 18 marginally favoring the Plaintiffs map, and 2 of 18 being ties.
D. The new SM map, in addition to providing an equipopulous remedial map, and preserving features essential in any map intended to fully remedy the voting rights violations found by the Court, is intended to address three relatively minor issues that do not raise constitutional questions but which better satisfy other desiderata:
i. reducing incumbency pairings of White incumbents, and in the process facilitating implementation of the City Council's scheme for staggered elections,
ii. slightly improving compactness, and
iii. slightly reducing VTD splits.

D1. Incumbency pairings and (expected) date of next election in the district for the Plaintiffs' map, the Defendants' map and the Special Master Illustrative map are provided in Table 6.

D1 (a). Incumbency pairings, unless they involve minority incumbents, do not raise constitutional/voting rights issues and incumbents have no right to re-election. ${ }^{33}$ I would not seek to deal with incumbency issues if doing so interfered with the creation of the minority opportunity districts that are needed to resolve the voting rights violations found by the Court. I believe that I was able to deal with incumbency in a satisfactory fashion by creating a map which placed the White incumbents paired in the Plaintiffs' map outside any of the heavily minority concentrations in the City of Virginia Beach, and which placed the two minority incumbents inside the majority- minority districts. As can be seen from Table 6, Plaintiffs' map has two districts with incumbent pairings. These are pairings of White incumbents. As also can be seen from Table 6, the illustrative special master map has unpaired (vis-a-vis the set of incumbents in place ca. September 19, 2021) each of these pairings. In the SM map Mr. Berlucchi, Mr. Holcomb, Mr. Moss, and Mr. Jones each have their own district. These unpairings were done with only minor consequences for other features of the plan. Making them did, however, require slightly decreasing mean district compactness, and did require a handful of additional VTD splits.

D1(b). The pairing of Mr. Moss and Mr. Jones in Plaintiffs' map does not raise problems for election staggering since each term expires in 2022. However, the pairing of Mr. Holcomb and Berlucchi in the same district might be seen as problematic. If we were to go by the residential location of Mr. Holcomb, then this district would be up for a special election in 2022. If we were to go by the residential location of Mr. Berlucchi, the next election in the district would not be until 2024. ${ }^{34}$

[^30]Defendants' Map

| District | Incumbent (s) | Sequence |
| :--- | :--- | :--- |
| 1 OPEN SEAT | $2022 ?$ |  |
| 2 OPEN SEAT | $2024 ?$ |  |
| 3 Sabrina Wooten (2024) / Rocky Holcomb* (2024) | 2024 |  |
| 4 Aaron Rouse (2022) | 2022 |  |
| 5 Michael Berlucchi (2024) | 2024 |  |
| 6 John Moss (2022) / Louis Jones (2022) | 2022 |  |
| 7 Guy Tower (2022) / VACANT (2022) | 2022 |  |
| 8 Rosemary Wilson (2024) | 2024 |  |
| 9 OPEN SEAT | $2022 ?$ |  |
| 10 Barbara Henley (2022) | 2022 |  |

${ }^{34}$ Of course, the Court could simply order the 2022 special election cancelled, in which case Mr . Holcomb's term would have expired in 2022 and he would have the option of running in 2024, while Mr. Berlucchi would hold the seat until 2024.

D2 (a). While compactness is a traditional good government criterion, there are (a) multiple measures of compactness (e.g., perimeter-oriented vs. area oriented) which may point in opposite directions, ${ }^{35}$ and (b) there are no clear standards as to when there is a violation of an explicit (or implicit) requirement of compactness. Moreover, it is obviously inappropriate to simply make compactness the sole standard since compliance with the Voting Rights Act is more important, and there are other factors that come into play when we are looking at legislative or congressional districts, e.g., non-fragmentation of political subunits such as counties or cities.

D2(b) My own approach to compactness has been to compare compactness in any remedial map to compactness in the enacted map that has been challenged, either for the map as a whole or the particular set of districts found to be statutory or constitutional violations. I would note that, using the composite compactness score in Dave's Redistricting App, with higher numbers indicating more compactness, the enacted map has a score of 57; the Plaintiffs' map has a score of 56 , and the SM map has a score of 62 . Thus, I would not see compactness issues as problematic for the Plaintiffs' map, but since it was possible to increase the compactness of my illustrative map over that of the Plaintiffs' map without any negative consequences for voting rights in terms of minority opportunity, I have chosen to do so.

D2(c) For comparison purposes re compactness I show in Figure 2, the current map, Plaintiffs' map, and the SM illustrative map. The VTD shapes are taken from Dave's Redistricting App, but the shapes of the districts are created using census block equivalency assignments.

[^31]Figure 2.
Enacted Map (7 District, but with at-large election in each district), Plaintiffs' 10-District Map and SM 10-District Equipopulous Map
(a) enacted map (only showing the seven single seat districts)

(b) Plaintiffs' map

(c) Special Master equipopulous illustrative map with no incumbent pairings


D3. VTDs (precincts) are units of administrative convenience and have no special status. Some VTDs are normally redrawn after any decennial redistricting to better reflect the new district boundaries. The Plaintiffs' map had, according to calculations based on data in Dave's Redistricting App, 14 population-relevant VTD splits and 6 VTD splits involving areas of zero population. The SM map has 10 population-relevant VTD splits. By my visual count, even though only a seven district map, the enacted map had at least two dozen VTD splits.
E. In choosing between the Plaintiffs map and the SM map, there is little difference between the two maps in the features that directly bear on minority opportunity to elect. The differences between the two maps, such as reduced incumbent pairings, improved compactness, and reduced VTD splits in the SM map as compared to the Plaintiffs' map, are simply ones intended to address the special concerns in a court-ordered map that the map be narrowly tailored to fix the constitutional or statutory violations that have been found, while maintaining the necessary features of the map required for it to serve as a full voting rights remedy.
F. Figure 3 (a)-(j) is a slightly larger scale map of each of the ten individual districts in the equipopulous Special Master plan, with the location of incumbents shown.

Figure 3. Individual Districts in the Special Master Map, with Incumbent Locations Shown (a) SM District 1 (Holcomb)

(b) SM District 2 (Henley)

(c) SM District 3 (Berlucchi)

(d) SM District 4 (open seat)

(e) SM District 5 (Wilson)

(f) SM District 6 (Tower)

(g) SM District 7 (Wooten)

(h) SM District 8 (Jones)

(i) SM District 9 (Moss)


(asnoy) 0I pouns!a WS (!)

For African-Americans, Hispanics, and Asian Americans and for the combined minority group, I show in Table 7 the population, voting age population, and citizen voting age populations for each of the ten districts in the Special Master Illustrative Map. ${ }^{36}$

[^32]
## X. REMEDY PHASE: Recommendations to the Court.

## A. I recommend to the Court that it

1. rejects both maps proposed by Defendants and also rejects the previously proposed Plaintiffs' map.
2. accept my map for use in the City of Virginia Beach and send it for comment to the parties (with a short deadline for responses). ${ }^{38}$
B. I will be happy to assist the Court in whatever revisions may be needed in the final version of the plan the Court chooses to adopt.
C. I am transmitting to the Court, under separate cover, the block equivalency file and the shape file for the SM illustrative 10-district map.
[^33]
## APPENDIX A:

## Interpreting the Results in Table 2 in "Vote for Two" Elections

A1(a). There are several notes of caution that must be expressed re interpreting the data in Table 2 in the case of "vote for two" elections.

A1(b). One important note of caution about the interpretation of the percentages shown in Table 2 for the "two-seat "contests in 2018 and 2010 is that in multi-seat elections, where voters may cast more than one ballot because more than one winner in the district will be chosen, there can be more than one (plurality or majority) candidate of choice of the group. Thus, care must be taken in assessing the level of racial bloc voting in multi-seat contests. I have been sensitive to this point in my discussion of such contests in the text of this Report.

A1(c) Another important note of caution about the interpretation of the percentages shown in Table 2 for the "two-seat "contests in 2018 and 2010 is that inferences about racially polarized voting, minority political cohesion and usual minority loss need to be adapted to deal with situations where there is more than one minority candidate. ${ }^{38}$ I have also been sensitive to this point in my discussion of such contests in the text of this Report.

A1(d). What is arguably the most important note of caution about the interpretation of the percentages shown in Table 2 for the "two-seat "contests in 2018 and 2010 is to remind readers that the usual way of reporting percentages for these elections is based on dividing the candidate support by the total number of votes cast, rather than by the total number of voters casting ballots in the election. The actual candidate share of the vote in the election as a whole as a proportion of all votes cast, and the overall ranking of that candidate in the election is correctly stated in Table 2. Similarly, the estimated rank of the candidate among minority voters, and the estimated rank of the candidate among Whites voters shown in Table 2 accurately reflects Dr. Spencer's findings for the 2018 City Council election (Douglas M. Spencer, "Expert Report: Racially Polarized Voting in Virginia Beach," July 15, 2019,

[^34]at p. 14). And Table 2 accurately reports Dr. Spencer's 2019 finding with respect to the estimated vote share of the minority candidate from minority and White voters, respectively, in terms of total votes cast. However, although the data in Table 2 is correctly reported, care must be taken in interpreting the percentages shown for the minority candidates in the "vote for two" contest in the table.

B1(a) We can illustrate the problem with data on the 2018 votes for the plurality victory of Mr. Rouse in the two-seat at large election.

B1(b). There were 251,286 ballots cast in this 2018 contest, and we see that Mr. Rouse won 67,089 (27\%) and Mr. Moss won 56,835 (23\%). Elections \& Results :: VBgov.com - City of Virginia Beach The 27\% percentage in reported in Table 2 in this Report, based on data in Douglas M. Spencer, "Expert Report: Racially Polarized Voting in Virginia Beach," July 15, 2019, at p. 14). That data, on total votes cast, is taken from the city's website. That percentage is correct as a percentage of all votes cast. But, if we compare the votes cast figure of 251,629 to that in votes cast in city council single seat contests in the same election year, we see that there were under 150,000 actual voters in that election year in other city council elections,

Bayside District- 141,909
Beach District- 145,557
Centerville District- 133,642
Lynnhaven District - 136,357
Princess Anne District - 142,322,
with 158,683 voting in the Mayor's race. So arguably Mr. Rouse has support from somewhere between $46 \%$ of the voters $(67,089 / 145,557)$ and $50 \%(67,089 / 133,642)$ not $27 \%$. Even if we compare to the 2018 U.S. Senate contest, with a considerably higher turnout, 169, 415 votes cast in Virginia Beach (see https://www.vbgov.com/government/departments/voterregistrar/Documents/ELECTION\ RESULTS/2018/November 2018/November 2018 Offici al Results.pdf ) we see that Mr. Rouse is winning support from considerably more than $27 \%$ of the voters; here this low end estimate ${ }^{39}$ would be $67,089 / 169,415=40 \%$.

Bl (c) I could not find on the state website the actual number of voters who cast ballots in the 2018 "vote for two" contest. We cannot simply take our estimate of the total voters in the 2018 "vote for two contest" in 2018 as two times the ratio ( $67,089 / 251,286$ ) $=53.4 \%$ (as Dr. Spencer may have done in a later report of his, "Declaration of Dr. Douglas M. Spencer" July 30, 2021, Table 1 at p. 4.). ${ }^{40}$ The reason for caution is that not all voters in the "vote for two" situation actually cast two votes; some "bullet-voted," i.e., voted for a single candidate. We believe this to be true because the total number of votes cast for all candidates in the 2018 "vote for two

[^35]contest" is less than 267,284 which is twice the number of votes cast in the single seat election in 2018 in which the fewest votes were cast.

B1(c). But we also cannot simply take the estimate of the votes given above for Mr. Rouse in 2018, namely support from an estimated $40 \%-54.5 \%$ of the voters, and project those results from the two-seat contest into a single-seat contest! Some of those votes are second place votes and such "second" votes will not exist in a "vote for one" contest. But we do not know what proportion of Mr. Rouse's votes in 2018 came from voters who ranked him second in their ranking and thus used their "second" vote to vote for him, as opposed to voters who ranked him first in their ranking in this multi-seat multi-candidate contest and might still rank him first in a subsequent single-seat election against a White candidate. And this problem of interpretation would still be present even if we did know exactly how many voters cast a ballot in the 2018 "vote for two" contest. Moreover, recall that, when we project votes from biracial/bi-ethnic single seat contests into Mr. Rouse's District 4 in the Defendant's map, a district with a higher minority CVAP than the City of Virginia Beach as a whole, in only one election in six is the projected minority candidate victorious in that district.
C. Because of the complexities required to interpret the projection of results in multi-seat contests with multiple minority candidates into single-seat contests, I will not make use of information from such two-seat contests when I identify minority opportunity districts in proposed remedy plans, though I do make use of data from them in assessing racial polarized patterns of voting in these elections, and minority and White political cohesion in these elections.
D. For example, despite the problems of projecting "vote for two" contest results into single seats, we can readily look at the election results in such elections to examine features such as racial polarization. In particular, combining the data for the 2010 and 2018 "vote for two" contests, each with two minority candidates, taken from Dr. Spencer's estimates of vote shares from minority and non-minority voters (reported by me in Table 4 of this Report), we can immediately see that the minority is far more supportive of minority candidates than is the case for White voters, with minority voters ranking the minority candidates, on average, in $2^{\text {nd }}$ place, while White voters, on average, ranked the minority candidates in $5^{\text {th }}$ place. Note that these rankings are levels of relative support and thus do not depend upon having the exact vote percentages.

# APPENDIX B: <br> Estimability of racially polarized voting (RPV) patterns for individual minorities viewed separately from one another 

A1(a). While there are statistical methods that have been developed to allow for analysis of racial voting patterns in situations where there are multiple groups whose voting behavior is to be assessed, I share the initially expressed view of both the Plaintiffs expert (Dr. Spencer) and the Defendants' experts (Mr. Brace) that, given the specific case facts in Holloway vis-à-vis the racial demography and geography of the City of Virginia Beach, despite the sophistication of recent work on statistical models to estimate RPV, separating out the voting behavior of each individual group in the composite minority grouping is, for all practical purposes, impossible. I would note, however, that my support of this conclusion is intended to apply only for the very specific case demographic and geographic facts in the City of Virginia Beach, namely the small populations for some minority groups and the geographic commingling of the three minority groups reported in the text of the Report and attested to by experts for both sides.

A1(b). There can be no dispute that the minority populations of African-Americans, Hispanics, or Asian-Americans are very highly intertwined geographically at the level of VTDs, and that the latter two groups are quite small in size. Experts for both sides (Mr. Brace and Dr. Spencer) are in agreement that, in the absence of reliable survey data on the voting behavior of members of the three groups in city council elections or some elections that are directly comparable - data which is simply not available in this case-separating out the voting behavior of each individual group in the composite minority grouping is virtually impossible using standard methods of ecological inference. Dr. Spencer says "the population of Hispanic and Asian voters is not large enough to generate precise estimates of candidate preferences using traditional statistical methods. (Report of Dr. Spencer, August 26, 2019, at p.6). Similarly, Mr. Kimball Brace, an expert for Defendants, is mentioned on p. 13 of the Court Opinion as having expressed the view that "statistical estimation techniques could not provide information on Asian and Hispanic voting patterns because these groups are small and dispersed throughout the City."

## B. In the process of reaching conclusions about the degree of polarization between and cohesion of the minority community as a whole, experts for both sides offer some (sometimes parenthetic) comments in which they state inferences/beliefs about differences in the voting behavior of African-Americans, Hispanics, and Asian-Americans. I do not regard any inferences about how the three minority groups voted as individual groups, whether made by an expert for Plaintiffs or an expert for Defendants, to be sufficiently well supported for me to make any use of them in my own analyses. ${ }^{41}$ I regard it as essentially

${ }^{41}$ Various experts made assumptions that seemed to allow them to derive intuitions about the voting behavior of each of the separate minority groups, but the inferences are flawed. For example, experts for both sides in this case provided comparisons of ecological regression-based or ecological inference-based estimates of voting patterns in the Black community and voting patterns in the combined minority community. However, there are problems in drawing reliable
mathematically impossible, given the data limitations in this case, to reliably estimate voting behavior for each group separately.

C1. The fact that, given the particular demographic geography of the City of Virginia Beach, it may be impossible to separate out the voting behavior of each individual group in the composite minority grouping does not, in any way, foreclose correctly identifying the voting behavior of the composite minority group as a whole, nor does it foreclose reliable identification of the level of racially polarized voting of the combined minority community vis-à-vis the majority White and non-Hispanic bloc of voters. And, as shown in the body of this report, there is clear and compelling evidence for racially polarized voting in Virginia Beach City Council elections between White (non-Hispanic) and non-White voters and for political cohesion on the part of both the minority group and White voters in support for or opposition to minority candidates.
conclusions from such comparisons. In common sense terms, we are trying to estimate minority votes for the minority candidate divided by minority (eligible) population. But if we are trying to compare, say, Black votes for the minority candidate divided by Black (eligible) pop with minority votes for the minority candidate divided by minority (eligible) population then we are comparing two numbers the differences between which are found primarily in the denominator. In particular, we expect that the denominator for the second ratio is higher than the denominator for the first ratio, since minorities other than Blacks are giving some (perhaps even equal) support to the minority candidate; but if we are dealing with a fixed geographic area, the numerator will be the same numerator in the two ratios. In other words, when we use Black as the racial group, some of the votes we attribute to Black voters will be coming from non-Black voters who are members of other minority groups. Thus, purely as a statistical artifact, we expect our estimates of the Black population voting for minority candidates to be higher than our estimates of the minority population voting for minority candidates even if Black voters, Hispanic voters, and Asian-American voters are equally likely to support minority candidates. In principle, there are statistical tools to take this confounding into account but. in my view, that high level of geographic commingling of the three minority groups and the absence of truly homogeneous precincts for any of the three minority groups (or even for the minority group as a whole), vitiates the applicability of such methods. A similar problem arise if we seek to estimate the voting behavior of the combined minority community by first assessing the voting behavior of the majority white/Anglo group in an election, for whom we do have homogenous precincts and good ecological inference estimates, and then use simple high school algebra to calculate the vote of minority voters as an unknown in an equation where the known values are the proportions of non-minority and combined minority voters in the district, and also known is the share of the vote in the district that went to the minority candidate (or candidates) of choice, and also known is a reliable estimate of White voting behavior. This method can work to estimate the voting behavior of the combined minority group, since this group is, for all practical purposes, the complement of the White group. But this method of triangulation is not possible when we are trying to separately estimate the behavior of four groups, rather than just two groups. The problem is analogous to the problem, pointed out by teachers in algebra classes, of having more unknowns than you have equations from which to estimate the values of these unknowns.

## Bernard Grofman



September 26, 2021

## APPENDIX C

Zachary R. Griggy<br>11 Balboa Ct, Novato, CA 94949<br>(415)-940-5384<br>zgriggy@uci.edu<br>MAPPING CONSULTANT

## Summary:

I am a UC Irvine political science and urban studies undergraduate. I have made use of my computer skills and my knowledge of Geographic Information Systems (GIS) to prepare redistricting maps in local (school board, city, and county) redistricting in my home county of Marin, California.

## Redistricting plans I drew that have been implemented in subsequent elections

- 2019 - San Rafael City Schools Board of Education (Marin County, California; used in 2020)
- 2019 - Novato Unified School District Board of Education (Marin County, California; used in 2020)


## Current Involvement with Redistricting

- 2021- Member, Marin County Ad Hoc Redistricting Commission
- 2021- Mapping consultant, Task Force on redistricting in the City of Irvine, Associated Student Government University of California, Irvine
- 2021- Using 2020 Census Data, acting as a private citizen, I prepared draft district plans for Marin County local units of government and met with elected officials and community leaders to discuss districts that best represent communities of interest
- Novato City Council
- Novato Unified School District Board of Education
- North Marin Water District Board of Directors


## Other Public Service Involvement

- 2020-2021 - Legislative Affairs Staffer, Associated Students of UC Irvine,
- Planned town halls with community leaders including U.S. Rep. Katie Porter and debates featuring candidates for Irvine Mayor and City Council
- Tracked and analyzed bills proposed in the California State Legislature


## GIS and Computer Skills:

- GIS
- Dave's Redistricting App
- Esri Redistricting Online
- ArcGIS Districting Extension
- EXCEL, PowerPoint, WORD


## Education:

- University of California, Irvine, 2019-Present. 3.978 GPA
- San Marin High School, 2015-2019. 4.2 weighted GPA


## Honors and Educational Awards:

- Pi Sigma Alpha Honor Society
- Dean's Honor List, University of California, Irvine, 2019, 2020, 2021


## EXHIBIT 6

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021


Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 2

| 1 | CHAIRMAN DEVLIN: Committee members, we will call |
| :---: | :---: |
| 2 | the Redistricting Committee to order. Uh, Emily, I |
| 3 | believe you're going to take role? |
| 4 | MS. THOMPSON: Thank you. And, uh, Chairman |
| 5 | Devlin? |
| 6 | CHAIRMAN DEVLIN: Here. |
| 7 | MS. THOMPSON: Representative Bellew? |
| 8 | MR. BELLEW: Here. |
| 9 | MS. THOMPSON: Representative Boschee? |
| 10 | MR. BOSCHEE: Here. |
| 11 | MS. THOMPSON: Representative Headland? |
| 12 | MR. HEADLAND: Here. |
| 13 | MS. THOMPSON: Representative Lefor? |
| 14 | MR. LEFOR: Here. |
| 15 | MS. THOMPSON: Representative Monson? |
| 16 | MR. MONSON: Here. |
| 17 | MS. THOMPSON: Representative Nathe? |
| 18 | MR. NATHE: Here. |
| 19 | MS. THOMPSON: Representative Schauer? |
| 20 | MR. SCHAUER: Here. |
| 21 | MS. THOMPSON: Senator Holmberg? |
| 22 | MR. HOLMBERG: Here. |
| 23 | MS. THOMPSON: Senator Bekkedahl? |
| 24 | MR. BEKKEDAHL: Here. |
| 25 | MS. THOMPSON: Senator Burckhard? |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

| 1 | MR. BURCKHARD? Here. |
| :---: | :---: |
| 2 | MS. THOMPSON: Senator Erbele? |
| 3 | MR. ERBELE: Here. |
| 4 | MS. THOMPSON: Senator Klein? |
| 5 | MR. KLEIN? |
| 6 | MS. THOMPSON: Senator Oban? |
| 7 | MS. OBAN: Here. |
| 8 | MS. THOMPSON: Senator Poolman? |
| 9 | MS. POOLMAN: [inaudible] |
| 10 | MS. THOMPSON: And Senator Sorvaag? |
| 11 | MR. SORVAAG: Here. |
| 12 | MS. THOMPSON: And Mr. Chairman, we have a |
| 13 | quorum. |
| 14 | CHAIRMAN DEVLIN: Thank you. Um, what are your |
| 15 | wishes for the minutes of the July 29 th meeting? |
| 16 | Somebody want to move them? |
| 17 | MR. LEFOR: So moved. |
| 18 | MR. BEKKEDAHL: Second. |
| 19 | CHAIRMAN DEVLIN: The minutes motion has been |
| 20 | made and seconded [inaudible] discussion. Seeing none, |
| 21 | all those in favor signify by saying aye. |
| 22 | ALL: Aye. |
| 23 | CHAIRMAN DEVLIN: Opposed nay. Motion carried. |
| 24 | Um, before we go into the first agenda item, uh, |
| 25 | traditionally we normally introduce members of |

Legislative Management that are attending today. I know Representative Schmidt is here. And Representative Koppelman and Senator Schaible.

Um, and then on the committee itself,
Representative Boschee, Representative Lefor, Senator Burckhard, Senator Holmberg, Senator Klein. Did I miss anyone?

MALE: [inaudible]
CHAIRMAN DEVLIN: Okay. And Senator Elkin. I apologize. Thank you. Um, Emily, I believe you're going to present the review of the [inaudible]. Thank you.

MS. THOMPSON: Thank you, Mr. Chairman. Again this is the, uh, Supplementary Rules of Operation and Procedure for, uh, North Dakota Legislative Management. This is just the, uh, procedural rules that we review at the beginning of each interim.

Uh, I'll just kind of hit the highlights. You have all mostly heard this before. Again, uh, as you all know, meetings are held at the call of the chairman. Uh, the rules of the assembly govern the conduct of our interim meetings.

Um, a committee member's attendance via Teams, uh, must be approved by the committee chairman. And this should be used sparingly, such as you're sick or
something like that. Uh, members that are attending remotely, uh, are required to keep their video on for the duration of the meeting. So just be aware of that if you are attending remotely.

Um, as far as attending via phone, generally we do not, um, have the committees attend via phone unless the entire committee will be calling in, say there's a big snowstorm or something, there's some kind of extenuating circumstance.

Uh, Legislative Management members, as, uh, you just heard the chairman announce, they may attend, uh, meetings of the committee for which they are not a member. Um, however, uh, since we now have this remote, uh, and in person option for attendance, uh, compensation will not be provided if individuals of the Legislative Management are sitting in on committees for which they are not a member, and they are attending those remotely. So if there -- sitting in on the meeting remotely, uh, no compensation.

Uh, any bill draft recommended by Legislative Management, uh, just a reminder, it must be considered at least, um, two days, whether that's two separate meetings or a two day meeting at each day of that meeting.

Uh, each committee, as you all know, uh, has to
submit their final report and any recommended
legislation to Legislative Management. Um, and then the Legislative Management can accept or reject that committee report.

Generally we're all used to this being done, uh, the November before the regular legislative session. Uh, this committee is, uh, a little bit different. We only -- we only meet every, you know, 10 years for the purpose of redistricting. So obviously we won't be having our Legislative Management report with the all the other committees in November of next year.

That will actually, uh, be a little bit of a different schedule. Um, you'll see in 5B it is, um, at such other times as the Legislative Management or as chairman may direct. So that's kind of at the call of the Legislative Management or the chairman.

Um, just a quick note, um, as I mentioned it'll be delivered at a separate meeting. And so if you're kind of wanting a little bit of a reminder of the timelines or, you know, what was done, or our last redistricting cycle, um, during that last redistricting cycle, um, the redistricting committee had, uh, seven meetings. Its first one was on June 16th. It got a much earlier start than we did.

Uh, and their last meeting was held on October

11th and 12th of 2011. It was a two day meeting. Uh, the Legislative Management approved, um, a portion of the committee's final report relating to the redistricting bill.

And that was at, uh, kind of that special Legislative Management meeting, uh, that was called to deliver that report. That was held November 13th. So you're kind of doing the math there, that was about 17 days after the redistricting committee had their last meeting, the Legislative Management report was delivered.

The legislative assembly then convened for a special session. And that was on November 7, 2011. So it was a five day special session to deal with redistricting issues. And that was -- so we begin doing the math, four days after the Legislative Management report was delivered, a special session commenced.

So I just thought that'd be some helpful additional background since it's a little -- a little different when we have this every 10 year committee. And I'd be happy to take any questions.

CHAIRMAN DEVLIN: Senator Holmberg?
MR. HOLMBERG: Uh, Emily, you might want to mention that, uh, we don't have anything put down yet.

But, uh, plans that come in, any plan, uh, it takes up to two weeks for Legislative Council to put a plan together that they did not prepare.

Because they have to, if you have a plan that -that you put in yourself, um, they have to do the -they're still operating out of the Metes and Bounds, which means they have to describe everything. So it takes quite a while.

So, uh, if, uh, folks are thinking of another plan besides what this committee might have or you might have a secret plan in your pocket, uh, you're going to have -- there will be a date by which it has to be, uh, sent to Legislative Council so they can prepare it.

Otherwise, you know, we can't meet whatever the date is that we meet, and, uh, be sitting there with a bill that isn't complete. So it has to be checked out. So, and that information will come later. But it is -it is important to keep in mind that, uh, just walking in with a new plan in November is going to be pretty tough because it -- it isn't ready for us.

CHAIRMAN DEVLIN: Anything else from the committee before we start on the first presentation? Um, today we have Ben Williams from NCSL to speak to us with an overview of redistricting. Uh, obviously
we're the national experts on this subject.
And just on a personal item, I just want to -they had a great meeting on this in Salt -- Salt Lake City, I believe it was, that the, uh, several members of this committee got to attend. I couldn't attend for a health reason.

And I certainly I wanted to recognize and appreciate the work that Representative Schauer did to take my place there. He did -- you can tell he's a member of the media because he did a fantastic job with some notes and so on of all the meetings. So Ben, go ahead.

MR. WILLIAMS: Thank you, Mr. Chairman and, uh, Vice Chair Holmberg, and members of the committee. It's an honor to be here in North Dakota. And, um, I've been told that $I$ have roughly an hour for this.

I'm going to try to keep it to around 30 to 40 minutes so that if you have questions there's plenty of time for that. And then if you don't have questions, then you're ahead of schedule. And I don't think anyone on the committee will complain about being a little bit ahead of schedule.

So, uh, with that, uh, as, uh, Chairman Devlin said, NCSL, uh, we just had a meeting in Salt Lake City, so I'm sure some of you were -- were there. Uh,

Representative Schauer, you were there. But, uh, just for those of you who haven't been as connected with NCSL in the past, we are the nation's, uh, preeminent organization that is bipartisan and serves the needs of state legislators.

And by bipartisan, I mean that our structure is exactly divided between democrats and republicans. However my work as a staffer is nonpartisan. So NCSL will not come into a state and will not provide any recommendations on policy advice for what members should do. But we do provide 50 state information that may be helpful in the decisions that you ultimately choose to make.

So for today's outline, uh, I was asked to do a very general overview of redistricting, with touching on a few specific subject matters. So I'm going to go over some really, uh, basic fundamentals and some information about the 2020 census. And then I'm going to go over some of the main legal doctrines that govern redistricting.

And then I'm going to go into, uh, redistricting criteria. I know that some states refer to them as redistricting principles. I will probably refer to those as criteria, uh, that relate to redistricting and, uh, nationwide, but tailored with a greater focus

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

to North Dakota.
So the first question is, why do we redistrict at all. And the reason is because of the one person one vote cases from the US Supreme Court in the 1960s. And prior to that point there was no federal requirement that legislatures redistrict at all. Legislatures did occasionally, uh, redistrict themselves to account for population shifts, but it wasn't commonplace. Many states went decades and decades without doing it, North Dakota being one of them and not being an outlier in that.

Uh, but in 1960s, uh, the US Supreme Court established that, uh, redistricting had to occur to make sure that roughly an equal number of people were in each district, um, so that there would be roughly equal weight between the voters and those districts. So the real question then becomes, who is a person, right. So who counts as a person for one person one vote.

And ever since the 1960 s, all 50 states have followed the idea that a person is any, uh, resident of the state, regardless of citizenship status, and regardless of whether or not they are of the age of majority, so 18 or older, and eligible to vote.

Uh, in the 2010s, this was challenged by a group
of plaintiffs in the state of Texas. Texas, like all states, redistricted using total population numbers reported to them by the US Census Bureau. And the plaintiffs in that case argued that there's a difference between equalizing based on persons and equalizing based on voters.

And the difference is that if you had an area with a high non-citizen population, for example in south Texas, you could have a district where you had voters who had roughly one and a half to two times the strength of a vote within that district relative to voters in a part of the state that had a relatively high citizen population.

Uh, the Supreme Court did not answer the question of whether or not other methods of, besides total population, were acceptable for redistricting. What they said was that total population is an acceptable method of redistricting.

So there is still this open question about whether or not other methodologies, uh, using citizen voting age population for example will be acceptable. Uh, there may be some litigation about this in the coming years. But, uh, just note that this is something that you might hear from your constituents and might bubble up, um, in other states. Although I

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 13
haven't, uh, heard anything about North Dakota's plans.

So the fundamentals of who draws legislative districts. In the vast majority of states it's the state legislature as a normal bill that is passed, and then it's either signed or vetoed by the governor. And then the legislature has the chance to override that veto. Uh, that's in the 35 states. There are some ex--- uh, different elements within that.

So the states that you see in the dark blue, steel gray color, are the states where the legislature has sole control over the process. That is the predominant method in the United States. There are a handful of states that have a legislature, uh, handle redistricting, but there's an advisory commission that either presents a map to them that's an option, or presents a few, uh, optional maps to them. And then the legislature either has to take a vote on them first before considering their own maps, or they're welcome to ignore those maps and draw their own.

There are a handful of states, particularly in, uh, the south mostly, Oklahoma, Texas, and Mississippi are the ones where this comes up sometimes, are they have backup commissions. So if the legislature doesn't redistrict by a set deadline, then the legislature

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 14
1 loses the power to redistrict, and it shifts to this backup commission usually made up of legislative leadership, who then finishes redistricting.

And then there are the states that you see in the dark orange, where there is a commission that has the primary responsibility for, uh, redistricting. And you'll see that as we shift from legislative to congressional districts, those numbers drop. Uh, most states retain the ability to redraw congressional districts within the legislature wholly, without having an advisory commission, a backup commission, or any other kind of commission, in the process.

So some takeaways about the 2020 census. Um, just to note, I think the only thing that's really of interest here is that the growth rate, uh, nationwide was 7.4 percent, which was the lowest growth rate since the 1930s, the Great Depression. However North Dakota was a standout. It was one of the fastest growing states in the United States, over 15 percent population growth.

Uh, that put North Dakota in the top five states nationally in terms of, uh, population growth. So it's a real standout among other states. There are only three states that lost population this decade, uh, Illinois, Mississippi, and my home state of West

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

1 Virginia.

So 2020 census results, uh, population changes by states, you can see North Dakota is in that, once again, that blue steel gray color, fastest growing in the country. And, uh, that fits in with, uh, North Dakota, uh, having obviously the oil boom. And you -understandably there's lots of people moving in to work in these new industries.

Other than that though, that's a regional outlier. So most of the growth in the United States has continued to be in the, uh, western United States and in the south, particularly in the southeast. So the colors that you see in teal are also the states that had over 10 percent population growth, which we would consider to be fast.

So as you know, we're meeting in, uh, August. And as Emily pointed out in her presentation, that, uh, the first committee in 2011 met in June. And one of the reasons for the fact that we're meeting two months later is the census data was severely delayed coming out from the United States Census Bureau. It's supposed to come out, uh, according to federal statute by April 1st of the year ending in one. So it was due to the states by April 1, 2021.

It was released on August 12, 2021. And there are

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 16
several reasons for that. The -- by far the largest is the coronavirus pandemic. So if you think about how census information is gathered, according to federal law the census date upon which all census data is accurate is April 1st of the year ending in zero. So April 1, 2020 is census day.

And what was happening on April 1st of 2020. States were in lockdown. No one was going anywhere. And that created a lot of issues. And I'm just going to give you one example to highlight some of the issues that the Census Bureau had to deal with, which caused them to fall behind on their schedule.

Colleges and universities report what are known as group quarters numbers to the United States Census Bureau. So they report numbers, um, that are just in a -- a massive list, rather than having a census enumerator actually go around from dorm room to dorm room figuring out who lives where.

Those numbers are usually reported relative early in the process. They're reported in January, February of a year ending in zero, just for administrative purposes and to expedite the process. Normally no one would ever think anything of it.

But when, uh, dorms closed down in mid-March 2020, and students were sent home, some students were

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

at their homes on April 1, 2020. And when parents go the census form, they looked around and saw their student living in their house, and they checked them off and filled. So that meant that there were several people in the United States who were double counted in the 2020 census.

And the Census Bureau knew that this was going to be a problem. So they had to go through all of the records and try to find those duplicate records, and strike out the surplus number from the census to get the true accurate count. And that takes time. And that, uh, was one of the things that they normally wouldn't have to do, but they had to do this decade at a great scale.

There were also some natural disaster problems as well, uh, fires in the American west, floods particularly in the deep south, uh, related to hurricanes in 2020. 2020 was a very active hurricane season. And then there were also policy changes between the, uh, outgoing Trump administration and the incoming Biden administration that, uh, could have led to delays as well, but our indications are that it was mostly the pandemic was what led to the delays.

Just to give you some color on how delayed things are, this is how redistricting had progressed by

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 18

August 26 th of 2011,10 years ago today. As you can see, there's a lot of completed and some new maps out here. And then the states in the green had -- the legislature had released draft maps and was receiving comment on those.

Here's where we are now. You can see only three states have made any progress with redistricting at all. Illinois and Oklahoma, uh, did redistricting with alternative redistricting data. They used, uh, American community survey five year estimates, uh, because they had very early redistricting deadlines.

But in both states the legislature said at the fore -- at the outset of their redistricting, we know we're not using 2020 census data. We're going to come back in a special session and reconcile our lines to make sure they comply with one person one vote, whenever that information is in. And sure enough, Oklahoma and Illinois, both of the legislatures have announced that they're going back into special session in the coming weeks to reconcile the lines to make sure they are in compliance with federal law.

Colorado has a commission that has a lot of redistricting deadlines. Some of them go very early into the calendar. And one of the deadlines was called the first draft map. And so the legis- -- uh, the
commission drew the first draft map with the same alternative data that Oklahoma and Illinois did. But for all future maps they will be using 2020 census data.

So delays obviously has a significant problem. It means there's less time to redistrict. But it doesn't just mean the redistricting process that happens with this committee. It also means that your local election officials who have to reconcile precinct boundaries, and have to make sure that they have all the information about where voters are geolocated, so that voters are getting the correct ballots on the 2022 primaries. They have to have time to make sure that processing can occur.

In states that have residency requirements for the legislatures that say a legislator has to live in a district for a year before they're eligible to run for that office or to be elected to that office. Uh, those states obviously they have -- that means that they have a deadline in the fall of 2021 for redistricting to be completed so that people know what districts they're running in.

Uh, there's also the primary deadlines and states that have relatively early state primaries. Texas is an example of a state that has a relatively early

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

primary. There are bills in those states to move the primary back in the calendar, further into the spring or the summer, uh, to allow there to be a very, uh, sufficiently broad time in which candidates can file.

So it's just to show that there are a lot of other steps to redistricting beyond actually passing the map. There's something that local election officials and, uh, legislators, and state election officials have to deal with in addition.

And this is just another, uh, chart to give you an idea of how many redistricting deadlines there are by date. Uh, Illinois and Oklahoma are in that five that had redistricting deadlines prior to July 1st of this year. Uh, there are another 19 states that have to redistrict by the end of this year.

Uh, North Dakota is in the other and none category. Obviously you're an other for legislative redistricting because you just have it tied to your session. And then you have none, uh, for your, uh, congressional districting because you don't congressionally redistrict.

Um, so that brings me to the last part of the census presentation, which is disclosure avoidance, or as you may have heard it to referred to in the past, differential privacy. So as you know, the US Census

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Bureau has two mandates. It is required to report accurate numbers on the total population of the United States. And it's supposed to protect the privacy of the people who respond to the United States census.

Obviously we can understand the policy reasons for not wanting the exact information of every person who responds to the census to be published for all to see. Uh, over time the Census Bureau has adopted different methodologies for protecting privacy. Um, and this decade they have decided to use a new one called differential privacy.

And that's because the Census Bureau statisticians found that the previous systems could be broken. And by that I mean you could take a very sophisticated computer program or algorithm, apply it to census data that had had the previous, um, privacy protection measures applied. And then you could un- -unmask or unseal who those people were, and create, uh, post hoc a data set that actually had all of the, uh, respondents included in it.

So the very first method of privacy protection was called data suppression, which meant that the Census Bureau would just take, uh, certain sections of the reports that they would provide and they would suppress them. So you wouldn't get information about
certain census blocks. That information would just be left blank. And that was their suppression methodology.

It worked in the 1980 s, but obviously you can understand why just not including some information you could easily deduce what the, uh, absent information could be. So in the 1990s, and from 1990 to 2010, they used something called data swapping, which would mean that if you had two census blocks, and let's say you had two census blocks in this Bismarck. And -- and both of them you -- and you had then two blocks, you had one family of four, so you had, uh, parents and two children in both of these census blocks.

What the Census Bureau would do is it would just swap them. So the underlying demographic information, for example their race, their ethnicity, their exact age, if -- if the code were ever broken, you would actually have someone else's record in certain, uh, census blocks. You were swapped with someone else who had identical total information, so it was four people for four people, two adults, two children. But the exact records would have been moved somewhere else within the -- within those census blocks. And that was sufficient to protect privacy in the 1990 s through the 2010s.

This time the Census Bureau is using something called differential privacy, which involves using an algorithm to what the Census Bureau calls inject noise into the census data. What it means is the Census Bureau is intentionally, uh, creating error in their data set. They are providing slightly incorrect information on purpose, uh, to protect the privacy of respondents.

So as you can see, uh, on the left hand side of this chart we have the actual reported Census Bureau numbers. And on the right side of the chart we have the numbers after differential privacy has been applied. So you see a 14 turns into a 13, 52 turns into a 51, 53 turns into a 54, 47 turns into a 48. And this chart, I think it's important to note this -- this slide by the way comes from the US Census Bureau. I took this straight from one of their slide decks. But what's important to note is that the total population at the state level is correct. You're getting that number reported exactly as it was counted by the Census Bureau.

But the numbers that go down to the census block, the very granular information that states have used to redistrict for quite a long time, there will be some error in the -- in those numbers. And if you have

1 someone in your, uh, state, a data expert, or a demographer, or someone you can talk to, to get into the details exactly about this applies to North Dakota, that could be a really excellent resource for you to explain as it's applied to here.

I've asked other states, uh, who I know, people who work in demography to try to figure out how much error this really has introduced. And they just told me they don't know yet. And they're still trying to dig through to figure out how much error the Census Bureau has introduced into the numbers that you'll be getting. But no, the numbers will be, uh, not the same as the numbers that were actually reported to the Census Bureau by people filling out their forms.

So this is like a closing slide. Uh, only state total population will be reported without noise, as I said. There is some evidence that distortions are greater in rural areas than urban areas. And I think the best way to think about that is if you change the total population of a census block by one person in a very dense urban census block, it goes from 187 to 188. Obviously that's not as big of a difference. But if you change a rural census block that goes from four to five, that is a 25 percent increase in the total population of that block, or from four to

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 25
1 three, the reverse direction. So there can be impacts, uh, in rural areas that are greater. And obviously that's of concern to, uh, states like I'm from in Colorado, where you have just a couple of urban areas and a lot of rural area. Uh, same thing in North Dakota.

So, um, and there's also some evidence that the distortions in small racial and ethnic groups are likely to be larger than in other groups. That's again just a -- a product of the math, if you have a very discrete and small racial group. Uh, and you know that their population is only 1,000 , then, uh, the white population of a state that -- or a region that might be 50,000. Taking the numbers down 1 or 2 percent, uh, by adding 10 people could have a dramatically different impact on those two groups.

So that's it with the census. I'm going to move on to the legal doctrines now. Um, and I'm going to organize my remarks just in the supremacy clause. So I'm going to start with federal constitutional law and federal statutes, and then work my way down through state constitutional law and state statutes.

So I've already covered one person one vote. I think the only thing to add here is that the exact amount of deviation that's permissible with certain

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

types of districts varies depending on what type of district you're looking at. So for congressional districts it's exact numerical quality. That means the states that redistrict for congressional purposes, they have to get it down to almost an exact one person difference.

But in states with state legislative districting, uh, the census -- uh, the US Supreme Court has said that up to a 10 percent deviation can be permissible, uh, if it's justified by a sufficient state interest. And sufficient state interests that have been found by courts in the past are keeping counties together, keeping cities together, keeping subdivisions together.

You want to keep all the people who commute on this highway into a city together. So just to give you some examples of justifications that courts have found to be permissible in the past. Anything over 10 percent, uh, if a lawsuit were to be brought on equal population grounds, the burden shifts from the presumption of legality on behalf of the legislature's plan, to presumption of illegality. And then the legislature would have to affirmatively defend the greater deviation plan.

That's not to say that plans with greater

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

deviations don't succeed. Hawaii for example has greater deviations in their legislative districts because they try to keep all of the island groups together. So they don't try to split districts between the different islands. Because you can imagine island identity is very important there. And so that has been upheld by the US Supreme Court. So there are, uh, exceptions to that. But in general it's hard to win a case if the deviation is over 10 percent.

CHAIRMAN DEVLIN: [inaudible] Senator Burckhard [sic]. MR. SORVAAG: Uh, Mr. Chairman, uh, I -- I just had a question. At 10 percent, I think I'm clear, that's 5 percent, 5 percent, above 5 percent below. It isn't the deviation is -- you can't go 10 percent up; correct?

MR. WILLIAMS: Mr. Chairman, Senator Burckhard [sic], yes, that's correct. So the answer is, it could be if you had a bunch of districts at four. You could have fewer districts at six. It's just an overall 10 percent deviation. Sometimes states do put it at a plus or minus. But it's just overall 10 percent total deviation from the most populated to the least populated district from the ideal.

And the ideal is just calculated by total
population of the state divided by the number of districts you're drawing.

CHAIRMAN DEVLIN: And this was my fault. I
introduced Senator Sorvaag as Senator Burckhard. So just, you know --

MR. WILLIAMS: Okay. So it is Senator Sorvaag.
CHAIRMAN DEVLIN: It is.
MR. WILLIAMS: I -- I saw that and I was like, oh, they've switched seats on me. Okay. Good. Well thank you, Senator Sorvaag, for the question.

Um, the next major doctrine is racial
gerrymandering. Um, this comes from, uh, the 1990s, uh, primarily in the American south. This is the original racial gerrymander. You see on the slide this is the North Carolina 12th Congressional District. It could be the most litigated congressional district in the United States. I think there's been multiple lawsuits every decade on this district.

Um, this construction as it was drawn, uh, was, uh, ostensibly to comply with the Voting Rights Act because it's combining all of the black population of Charlotte, Winston-Salem, Greensboro, High Point, and Durham. And those very narrow points you see in between Charlotte and Winston-Salem are where the district is only as wide as Interstate 85. Uh, that's

1 the -- that's how they kept contiguity together in North Carolina when drawing this district.

Um, so the original case, Shaw v. Reno in 1993, this district was struck own for being an impermissible racial gerrymander. At that time they were mainly talking about the shape in the court opinion. They weren't really talking about the standard would possibly be. And over time it became clear that the standard the Supreme Court was actually getting at was predominance. And predominance means, was race the predominant factor in the construction of a particular district.

And I'm giving you on this slide a general overview of how these, uh, claims proceed. If you ask any of the, uh, legislative council, any of the attorneys with legislative council, uh, to give you a -- a better explanation, they would tell you that there's -- there are more layers to it than what you're seeing on this slide, but just to give you a general overview of how the process works.

The first question a court asks was did race predominate in the creation of a district. If the answer is yes, then it goes to the justification stage, which was, well, was the state required to draw the district that way because of the Voting Rights

# Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021 

1 Act, or because they were remedying some past racial discrimination that was well known and had been identified and vetted.

And if the answer is yes to both of those, then the district will be upheld, despite the fact that race was the predominant factor in the creation of the district. Anything short of that, it's invalid.

The next doctrine is partisan gerrymandering. And I've scratched it out for federal courts because it doesn't exist anymore. But I'm going to go ahead and mention it here briefly just because you've probably heard about it over the past decade, these partisan gerrymandering cases, particularly coming out of states like Wisconsin, and, uh, North Carolina, and, uh, Michigan, and Ohio.

They were a major focus of the Supreme Court. They were based on different theories under the first amendment's freedom of speech clause and the 14 th amendment's equal protection clause. And it's important to note they're no longer justiciable in federal courts. In 2019 the US Supreme Court said in a case called Rucho v. Common Cause, that these were questions outside the capacity of federal courts to decide.

They didn't say that these cases couldn't be
brought in state courts. They didn't decide that the legislatures couldn't do things on their own to pass regulations on partisanship and redistricting. What they said was that federal courts were not the appropriate venue for these cases.

There are theories that were developed in these cases that can be, uh, have been successfully applied in state courts. But I just wanted to highlight here that for the moment this doctrine is dead in federal courts.

So I was also talked -- I was asked to speak a little bit more fully on the Voting Rights Act. So I created a -- a few more slides here to give it a fuller sense. And, uh, the key sections of the Voting Rights Act that apply to redistricting are sections two, three, four, and five, with the most important one being section two. Um, and you can see the -- the titles of the, um, the brief descriptions of what each of these sections do.

So section two, uh, prohibits vote dilution in redistricting. Uh, what that means is that if there is a minority group that qualifies for protection under section two of the Voting Rights Act, the district -a district needs to be drawn in such a way that that minority group has the opportunity to elect its

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 candidate of choice.

This section applies nationwide. It requires litigation. Unlike section five of the Voting Rights Act it is not prophylactic, which means the states do not have to preclear their changes in their election codes, including their redistricting plans, before they are allowed to go into effect.

Um, the burden of proof in these cases is discriminatory effect. So the plaintiffs don't have to prove that the state had any discriminatory intent in passing the plan. They just have to prove that the effect of the plan, uh, had a -- was discriminatory on them.

And, uh, the district I've given you on the right is commonly referred to as the earmuffs district. It's in, uh, the city of Chicago. And, uh, this district is actually drawn in compliance with the Voting Rights Act. And it's combining two Latino populations that are, uh, surround a majority black Voting Rights Act district.

So sometimes this district you see it, uh, sort of out as an example of partisan gerrymandering. But actually, uh, the state of Illinois, uh, was required to draw this district this way.

CHAIRMAN DEVLIN: And Representative Nathe.

MR. NATHE: Thank you, Mr. Chairman. Thank, you, Ben. Uh, I did enjoy that, uh, conference out in Salt Lake and --

MR. WILLIAMS: Wonderful.
MR. NATHE: And one thing I -- I caught from, uh, for the four days was basically how do we stay out of court.

MR. WILLIAMS: Right.
MR. NATHE: And with this slide here that you're talking about, is there a certain percentage -- in this case was there a certain percentage of Latinos that had to be districted in there versus the black community? Or [inaudible]

MR. WILLIAMS: Right.
MR. NATHE: -- to grab all the Latinos, or some of them, or --

MR. WILLIAMS: Sure. Mr. Chairman, Representative Nathe, so the -- I don't know the exact Latino percentage for this district. I could certainly look that up for you and get a -- get that number to you. Uh --

MR. NATHE: Because any of -- any ethnic group in -- in general, $I$ mean is there a certain number we should be aware of to make sure --

MR. WILLIAMS: Sure. So I mean it's any minority
group that the test that's on the -- the next slide applies to. And $I$ can get to this in a moment. But, uh, there's no exact threshold requirement. It's -- it requires just some analysis of the political makeup of the -- of the region in particular that that district is going to be in. And whether or not there is what's known as white crossover voting, so are white voters crossing over to vote with the minority candidate. And the exact threshold can vary. And states that have very high racial polarization, where the minority group and the white majority do not vote like each other at all, then you might need a much higher minority threshold than you would in, for example, um, the Atlanta metro area, where evidence has shown that over this past decade, what used to be very richly polarized, now white voters are crossing over and voting for the -- the -- the -- the black candidate of choice in those districts.

So, uh, what's required by the Voting Rights Act in those districts to create opportunity to elect. Because keep in mind, opportunity to elect doesn't mean win every single time. It just means you can win. Um, might be significantly lower.

MR. NATHE: Thank you.
MR. WILLIAMS: Mm-hmm. Thank you, Mr. Chairman.

So these are the, uh, what are known as the Gingles preconditions. This comes from a case called Thornburg v. Gingles in the 1980s. And these are the three threshold, uh, conditions that a plaintiff has to prove before their section two vote dilution case can proceed in the redistricting context.

So the first one is that the minority group has to be sufficiently large and geographically compact to constitute a ma- -- a numerical majority in the district. And this is confusing because I just told Representative Nathe that there's no threshold level that is required. And that's because there's a difference between qualifying and remedy, which is a very confusing distinction that the Supreme Court has made.

But, um, in essence the minority group does have to count as a, uh, constitute a majority in the district. And for this you're not using total population. You are using citizen voting age population. So you would be using citizen native population, citizen black population, because it's a majority of voters for a Voting Rights Act case.

The second and third problems are commonly considered together. They're con- -- they're known as racial polarization. The minority group has to be

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021politically cohesive. So just to give you an example, there are -- there's a very diverse Latino community in south Florida. And a lot of the Latino community, they vary in how they vote. And there's a lot of different national identities within what we could call broadly Latino.

They don't necessarily vote together as a block in any meaningful way. So they might not qualify for section two protection, uh, because they don't satisfy the second prong of Gingles. But if they did, then the third question becomes, do the white voters that surround them act as a block to thwart their ability to elect their candidate of choice on a regular basis. If a plaintiff can prove all three of those preconditions, then the analysis the courts consider shifts to the senate factors. The senate factors are a totality of the circumstances analysis. This is not like a checklist that plaintiffs have to prove every single one of these elements. Just in general if they can prove some of the senate factors, the courts have found that sufficient.

And the thing to note is that if a plaintiff can prove the Gingles preconditions, they're almost certainly going to be able to prove the senate factors too. That's not always the case. But in general the

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Gingles preconditions are the only real hurdle to a section two claim being successful.

MR. NATHE: [inaudible] thank you, Mr. Chairman. So Ben, what if the minority doesn't have a candidate or can't find a candidate? So the -- would that make this district invalid then? I mean do we have to draw it to make sure that they do have a candidate or -MR. WILLIAMS: Chairman Devlin, Representative Nathe, so the district does -- the candidate of choice doesn't have to be a member of the minority community. For example there's a Voting Rights Act district in -in Memphis, Tennessee, that is represented by, um, a white man. But he's the minority candidate of choice according to the analyses that have been done.

These are racially polarized voting analyses are, um, regression analyses that are done on election results, as compared to demography from the Census Bureau. So, uh, the candidate of choice can be someone not of their ethnic or racial group. Uh, you're correct that it's common that it is. But it doesn't necessarily have to be.

So when the state, uh, or whoever is doing this analysis, conducts the analysis, and they -- they run through who it is, it usually comes to some evidence. I've -- I've been told -- I've never conducted one of
these analyses myself -- but I have been told that if the threshold is usually 0.7. So if 70 percent of the minority group is voting a certain way, that's sort of the minimum threshold that courts have found in the past, uh, to be permissible.

CHAIRMAN DEVLIN: Um, Representative Schauer.
MR. SCHAUER: Thank you, Mr. Chairman, uh, Mr. Williams.

MR. WILLIAMS: Mm-hmm.
MR. SCHAUER: In those districts where it's heavily minority, is there pressure from the courts to break those districts down into subdivisions to make sure those mino- -- that minority population is represented?

MR. WILLIAMS: Uh, Mr. Chairman, Representative Schauer, so the answer is it can depend. It depends on how big the district is. You're correct that sometimes, uh, the Voting Rights Act has been used to break up, uh, multimember districting plans in the past and create smaller subdivisions. And that has occurred.

However the most common application of the Voting Rights Act in multimember districting schemes is in city councils where all the seats are elected at large. It's not typically in legislative bodies.

States that have moved away from, uh, multimember districting to single member districting, that -- that can be one of the factors that they're considering.

But just to give you an example, West Virginia is shifting from multimember districting to single member districting in their state house this decade. That had absolutely nothing to do with, uh, race. It just had to do with, um, politics.

CHAIRMAN DEVLIN: Senator Holmberg has a question.

MR. WILLIAMS: Mm-hmm.
MR. HOLMBERG: We of course in North Dakota have, uh, a number of reservations.

MR. WILLIAMS: Sure.
MR. HOLMBERG: And, uh, our ideal district, uh, if we use the current, uh, system, is 16,500 people roughly.

MR. WILLIAMS: Mm-hmm.
MR. HOLMBERG: Uh, and we hear that the native populations, you know, want to have representation. But our -- our reservations go from -- I think it's, uh, 8,500 , uh, uh, which is a pretty substantial part of our legislative district, down to one reservation that has 206.

MR. WILLIAMS: Right.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

 observations about if we have districts that have a native population of 8,000 or 6,000 , uh, how thin does the ice get if we decide not to do any subdistricting in those areas, as South Dakota has in two reservations. They have subdistricts in two legislative districts.How thin, if you're at $8,000,9,000$ people of a -- of a 16,000 district, is the ice getting pretty thin? And I would suggest maybe the 206 you might agree that, eh, not a big --

MR. WILLIAMS: Sure. Uh, Vice Chairman Holmberg, I think that it just -- it depends on the exact analysis that's done on minority group political cohesion. Because you could imagine a situation for example where the, uh, the population of the reservation, maybe they're not as, uh, politically cohesive as you would expect.

And the only -- my only example for this is I know in Oklahoma, uh, that the -- the tribal governments there, they tend to have a little bit of diversity politically on which party they vote for. Um, in North Dakota, if that were the case, then obviously they might not qualify under the political cohesion.

Uh, in general through if the -- not breaking down into subdistricts, it would, uh, depend on what the potential outcome is. I mean I will show you that this next slide $I$ was going to show you is vote denial versus vote dilution for redistricting.

And it's -- because you may have heard of this case called Brnovich v. Democratic National Committee, this case in -- that came out this year from the US Supreme Court, that applied to section two in the elections context. That had nothing to do with section two in the redistricting context.

But there are commentators and people who believe that the Brnovich case, uh, which was favorable to the state legislature in Arizona, was a very favorable standard and, uh, presuming, uh, constitutionality and legality of Arizona's election law.

Maybe that has some future implications for how section two in the redistricting context would be interpreted in the future. So there might be something there. But as of this moment, the -- the favorable logic of, uh, logic of Brnovich hasn't been carried over to the redistricting context.

So this could be a thing where in 2025 the answer is very different. And the answer is, yes, you -- it doesn't actually do much to the ice at all. You're --

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021Page 42
you're on pretty solid ice, uh, with that decision. But as of this moment, this is -- this is the law as it stands.

And, um, if courts in other states that also have similar, uh, racial [inaudible] like South Dakota have gone to, that system as well. Um, and they were ordered to do so by a court. I presume you're in the same federal circuit here in North Dakota. I don't actually know that, um, that that could have some impact as well.

And I realize that that wasn't the most straightforward answer in the world. Um, and the reason for that is I don't want to -- I don't want to say anything that would imply that, uh, not drawing one would be, uh, very disadvantageous to your -- the legal prospects of your map. But just know that there -- there are these risks associated with any decision of redistricting, including race.

CHAIRMAN DEVLIN: Representative Nathe.
MR. NATHE: Thank you, Mr. Chairman. Ben, what, uh, what's the definition of politically cohesive? How do they determine that?

MR. WILLIAMS: So there's a couple of different methodologies that can be used. Uh, one of them is known as a racially, uh, racial block voting analysis.

Uh, this can be done by political scientists. Uh, there are consultants who do this service. There's not a ton of them, but they do exist.

And, uh, what they do is they run regressions on election results tied to voting precincts, cross compare that with the data on, uh, race in those precincts, and then try to figure out -- because obviously when election results are reported, they don't report, you know, who voted which way. But you can sort of get back to some top line demographic information about who most likely voted in a particular direction based on what precinct they voted in.

And so there -- there are these analyses that are conducted. And, um, some states choose to do this where they get this information and they have an exact data set, uh, that shows, okay, in this particular region of the state, um, roughly 90 percent of the minority population votes, uh, for one party, and the white population around them votes entirely for another party.

So and they could constitute a numerical majority in the district. So maybe we need to draw a section two district here. That's typically how the analysis would work.

CHAIRMAN DEVLIN: You may -- you may proceed. I don't see any other hands up, so.

MR. WILLIAMS: Great. Thank you, Mr. Chairman. So as $I$ was mentioning on this slide, this is just to show you the difference between vote denial and vote dilution. These are two different legal standards under section two of the Voting Rights Act. Vote denial applies to the elections context. Um, and, uh, vote dilution applies to the redistricting context.

Doctrinally they've been distinct in the federal courts, uh, since the Voting Rights Act was first enacted. And there was a lot of discussion about, uh, the Brnovich case. And I was getting it in some of my presentations to other states that I've been to, so I decided to include this slide, just to show that in the redistricting context it is different.

There could be some indication based on the way the Supreme Court decided Brnovich, that some of that logic and some of the favorability and presumption of constitutionality, upstate redistricting plans could shift into the redistricting context as well. But that hasn't happened yet. But just know that that is something that could be on the horizon.

The next section is section three. It's known as bail in. It's very rare that you'll see anything about

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 45
1 this at all. Uh, but $I$ just wanted to include it because $I$ was asked to cover the Voting Rights Act in full. And that is that this is a remedy, uh, available by courts who find that a state violated the 14 th of 15 th amendments to the US Constitution.

And the way that this would work is if a state lost a race discrimination case or a Voting Rights Act case. Uh, a plaintiff could say, judge, as the remedy in this case, I don't just want this law to be, uh, struck down, I also want the state to be subject to a preclearance under section three, so that they have to get approval any time they change their election laws in the future. Because they've been clearly found, uh, to be unable to pass nondiscriminatory laws.

Courts almost never buy that argument from plaintiffs. I mean $I$ think the total number of cases that this has come down to is only two states statewide have ever been bailed in in the 50 year history of the Voting Rights Act. And bail in is different than preclearance under section five. Because the judge can tailor it to a specific circumstance.

So I've given you the state of Arkansas on the screen for example. Arkansas was bailed in in 1991 for, uh, losing a case about redistricting. And the case was called Jeffers v. Clinton. Um, Because

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 46

Clinton was the governor of Arkansas at the time. And, uh, in that case the court found that the state would have to preclear its redistricting plan in 1991 only. And that was the scope of their section three bail in. So after they got their redistricting plan precleared by the Department of Justice in 1991, preclearance went away and they were not a -- in a preclearance state anymore. So it's much more limited in scope. It's very, very rare. But since section five of the Voting Rights Act was struck down in 2013, which is on my next slide, uh, this is becoming a more common remedy that plaintiffs ask for.

So don't be surprised if you see this, if you're following legal proceedings in other states related to the Voting Rights Act. If the state were ever to lose one of those cases, the plaintiffs will probably ask for this. Now whether they get it, I mean it's -- it's almost unheard of that plaintiffs succeed in asking for section three bail in. But they do ask.

So that brings me to the final two sections, section four and five. Um, section four of the Voting Rights Act was known as the coverage formula. And that was the, uh, formula that was passed by the US congress in 1965 to determine which jurisdictions within the United States would have to get permission

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 47
1 either from a three judge federal court in Washington, DC, or the US Department of Justice, for any changes to their election laws at all.

The Supreme Court clarified later over time that that also includes redistricting plans as well, as a type of election law. The US Supreme Court in 2013 struck down the -- that coverage formula for being not tailored to present circumstances. The Supreme Court said that the formula as it existed was drafted in 1965. It had not been changed since 1965. And while section four is in theory a permissible, uh, federal exercise of power, uh, congress needs to keep that formula updated for present circumstances on a fairly regular basis because it's a very intrusive invasion of the principles of federalism that are present in the United States Constitution.

And so as of this point, section five, the preclearance regime is the law of the land. And section four says it applies to absolutely no one. So section four and section five don't apply anywhere in the United States. Uh, but they are still there on the books. And there is a law that the United States House of Representatives passed a couple days ago, I think, um, that would reauthorize the Voting Rights Act. And

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 that includes a reauthorization of section four.

I -- I -- my recollection is I looked at the coverage formula. And I looked at analyses of who would be covered. And North Dakota's not covered under that new one. So I don't think this applies to you. But just know that this is something that is percolating in the United States congress. And we'll have to follow this and -- and see what comes.

I always say that I work for state legislatures because legislatures actually things, unlike congress. But, um, you know, I, uh, so I'll leave it up to you to decide whether or not, uh, anything's going to get through the US Senate. But just know that it's there.

Um, these were the states that were subject to section five in 2013. There were a couple of, uh, counties, uh, in South Dakota that were subject to it. Uh, and then the states that you see in the, uh, tan color were subject to statewide preclearance. So any state law passed by the legislature had to be precleared by DOJ.

Uh, and obviously you can see it's predominant in the American south. Also the city of New York, certain counties in New York City were subject to preclearance, as were, um, some counties in Michigan around Detroit as well. And, uh, as was Los Angeles

1 County in California, and Orange County.

So the last section of the law or the state constitutions, these free and equal election clauses. And I'm only bringing this up because you will see this in the news and you will see this coming up in other states as redistricting progresses. North Dakota actually doesn't contain one of these free and equal election clauses, or free and fair election clauses. But these clauses exist in 30 state constitutions.

And for a long time people didn't really think anything of it. They're like, oh, cool, our constitution says elections should be free and fair. That's nice. That has no legal meaning to it whatsoever. I don't know what $I$ would do with that.

Well the League of Women Voters in Pennsylvania in 2017, uh, brought a lawsuit claiming that that state's free and equal election clause included within it a prohibition on partisan gerrymandering. And the Pennsylvania Supreme Court agreed and struck down the entire state's congressional plan for being an unconstitutional partisan gerrymander under state law. And the entire plan was redrawn by a special master that the court hired.

And then in North Carolina late in 2018, a similar lawsuit under exact same legal principles was

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

brought under that state's free elections clause. And a three judge panel at the trial level, uh, unanimously held that that state's congressional redistricting plan also violated state law. And the -both plans were drawn ultimately. In North Carolina the legislature actually was given the opportunity to redraw the lines.

Um, this is interesting because now that partisan gerrymandering cases are not justiciable in federal courts, we may be seeing more of this in the coming years. I expect -- in NCSL we expect that we're going to see more of these lawsuits in some states. Not talking a ton, but maybe five to ten states see these free and fair election clauses come up as well.

And unlike in federal courts where you have some standardization, in 30 different state constitutions, with 30 different state supreme courts, interpreting 30 different state founding documents differently, it's very reasonable to presume that the two states that happened to rule this way, rule -- ruled this way and the others.

And so maybe it'll be, oh, Pennsylvania and North Carolina are the outlier states that found that there's a prohibition on partisan gerrymandering. And other states found that there was no such prohibition

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 51
1 in their state constitutions. Because state con- -- state supreme courts are the final arbiters of their own laws. But just know this is a doctrine that could be percolating up. And don't be surprised if you see it on the news and your neighbors are getting sued under these clauses.

So that's it for law. Last section is criteria and principles. Um, the only federal statute that is at play is for single member districts for congress. But, uh, that is not relevant to here. So the first criterion is compactness. And if you see the star on the top left, that means that it is in the North Dakota constitution. So this is a required criterion in North Dakota.

And it's a common traditional principle. It's in 40 of the 50 states. I've given you two of the most common ways to measure it. There are actually over 40 peer reviewed different compactness measures that you could in theory use. But that seems like way too many. And most redistricting software, uh, only includes a handful, including these two, Reock and Polsby-Popper.

And those are the two most commonly used. If you look at court records, they're the most commonly cited in compactness lawsuits. And I've given you a district on the right hand side of the screen in yellow. It's a

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021Page 52
yellow rectangular district. And it has two different scores listed, one under Polsby-Popper and one under Reock.

Under both scales, zero is least compact, one is most compact. And you can see the Polsby-Popper says that this is a 0.589 . That's pretty good. Reock says that it's a 0.382. That's not as good as a 0.589. And there's a over 20 percent difference between those two measures.

So it's just -- I only bring that up to highlight that the exact measure that you use in your redistricting software can give you a very different outcome. So it sometimes can be helpful to look at all of the measures that are included in the software that the state is -- is using to redistrict.

The next principle is contiguity. Um, it's the most common principle. All 50 states have a contiguity rule. And you have to be able to go to every part of the district without leaving it for a district to be contiguous. That doesn't mean that a donut district is not contiguous. So if you had a district that was a donut hole, and then you had another district surrounding it that was a donut, both of those districts would satisfy contiguity.

Because you could walk from all parts of the

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 53
donut hole to all the other parts of the donut hole. And you could walk the entire perimeter of the donut without ever leaving the district. So both of those would actually satisfy contiguity.

The issues tend to arise in two situations. One of them is if the state is trying to follow a principle to keep cities whole, for example. But the city has annexed neighborhoods that are not contiguous with the rest of the city. They've annexed like one subdivision out there. They've annexed one shopping mall way 10 miles west of town.

Obviously you have to either split the county or the city then to, um, keep the district contiguous. Another issue is water. So I've given you an example from Kentucky. This is the far western portion of the state of Kentucky. And because of a surveying error back in the 1800s, there's actually this little section called the Big Bend that is not connected to the rest of Kentucky at all. It's completely surrounded by Missouri and Tennessee.

And the Kentucky Supreme Court has said, we'll consider a district to be contiguous if that part of Kentucky is connected to the other part of Kentucky you see on the screen. So you can't attach that random part to Louisville or Lexington, but you can attach it
to the part of Kentucky that is most proximate. And that's in just another scenario where this can become an issue.

Another criterion, it's not in the North Dakota constitution, but, uh, Ms. Thompson sent me your guidelines very helpfully, and I saw that it was in 2001 and 2011 in your guidelines that the committees adopted then, which is preserving political subdivisions. And so, uh, you have the general application on the left hand side, which is it doesn't specify exactly what political subdivisions have to be kept together.

It could be cities, counties, school districts. 45 states have this. It's a stand in for communities of interest sometimes. If you think about it, there are parts of the country where county identity is really important. And that's the same thing as a community of interest. Like I'm -- I'm from Jefferson County. I'm from Jackson County. That's my county identity.

There are some specific applications, uh, to counties. I've given you two. One of them is from Idaho. The Idaho Supreme Court polices their whole county rule very forcefully. In fact the Idaho Supreme Court has struck down a legislative plan because a
plaintiff was able to prove that you could split one fewer county in redistricting. Uh, and so they -- it's very rigidly policed. So in Idaho they keep as many counties together as possible. And in North Carolina there are sometimes these judicial rules that pop up.

Uh, and in North Carolina, they actually have to redistrict regions of the state, so they have to redistrict the Tidewater region, they have to redistrict the Mountain region, the Piedmont, the Research Triangle. And then they combine four separate redistricting plans into one statewide plan. Because the state supreme court said a long time ago that's how you keep counties whole.

Um, just know that keeping these counties whole can sometimes, uh, conflict with the Voting Rights Act or one person one vote.

CHAIRMAN DEVLIN: I believe Senator Bekkedahl has a question.

MR. BEKKEDAHL: Thank you, Mr. Chairman. And Ben, thank you. Um, relative to the counties, one of the things we've talked about in the past is keeping them whole, as one of our mantras going forward. Um, as we move through this, if we find a county that has an ideal population plus or minus very little -MR. WILLIAMS: Mm-hmm.

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021MR. BEKKEDAHL: Uh --
[202108260956_Redistricting Committee_21573 pt2]
MR. BEKKEDAHL: -- your recommendation would be
to keep that whole if we can. And secondly, um, if we have a county that could be split into two districts, but stay with -- stay within the county, but some people want to split that up, what would be the case there?

MR. WILLIAMS: Sure. Chairman Devlin, Senator Bekkedahl, the answer is, uh, I mean it's up to you as the redistrictor. But if you have a county and you want to keep counties whole, and the county fits within the population deviation range, I mean maybe there's some consideration as to if you keep that county whole.

As you know, when you go through redistricting, there are sometimes cascading effects on what decision you make at one part of the state as you go across. But presuming that that's permissible and that's something that the state wanted to do, uh, and that was a criterion the state was following, then, uh, don't -- I see why it wouldn't make sense to keep it together.
And then in terms of two counties, two districts

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 57
within a county, or some other purpose, again $I$ think it just, um, I think that the answer is if the -- if it doesn't violate some other principle that the state is following, for example, if there was some, uh, rule about compactness and maybe -- I'm -- I don't think this applies to North Dakota, your -- your counties are pretty square.

But you can imagine in some states there are counties that just look absolutely ridiculous. Um, then in those cases maybe the answer is for compactness purposes, if that's the principle that's being most favored, then you have to keep it together. But I don't believe that North Dakota ranks its criteria at all. I think it's, uh -- no. I'm getting a -- I'm getting a head shake.

So the answer is North Dakota doesn't rank their criteria. So then it's, uh, whatever you wanted to do as the committee who's drawing the districts. If you decided that keeping two districts, um, in one county was the best way to comply with the whole county rule, uh, and there was no Voting Rights Act consideration or otherwise, then I -- I think you would be free to do so, absolutely.

Okay. Thank you, Mr. Chairman. So another principle is preserving cores of prior districts. You

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 58
have a variation of this in your old guidelines which is called keep -- not changing the districts as much as possible. It means essentially the same thing. NCSL uses this language on our redistricting criteria tracker website.

It's somewhat infrequent in terms of codification, although there are states like North Dakota that follow it in committee guidelines and not in their state constitution, uh, or have in the past. And the rationale is, uh, you don't want to unnecessarily break up people's relationships with their representatives.

It's -- in the states that codify it, it's usually permitted, but not required. There are a handful of states, for example Arizona, which explicitly reject this rule, and draw their districts anew every single decade.

So in Arizona there's actually a formula in the constitution that says you start in one corner of the state, and you draw equally populated squares going southeast across the state. And then that's your starting map from which you start redistricting. Which is, uh, an unusual method that is not used anywhere else. But North Dakota, um -- but Arizona does use that method.

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

Page 59

Uh, here's some other criteria that NCSL tracks, uh, that $I$ just mentioning here briefly. One of them is preserving communities of interest. I will say typically that there's a problem with definition of what a community of interest is whenever it comes up. There are a handful of states that try to define it. Alaska for example defines it as a cohesive socioeconomic group.

Which I asked someone in Alaska what that meant once, and they told me it means fishermen in the Aleutian Islands. That's a community of interest because they all share the same industry. Uh, just to give you an idea.

Um, and then 17 states have a prohibition on favoring or disfavoring an incumbent party or candidate in redistricting. Um, this is what NCSL calls an emerging criteria. Because it is relatively new. It wasn't something that you saw very often 30 or 40 years ago in redistricting. But it is becoming more common.

Uh, avoiding pairing incumbents is in 11 states. And then there are the what I call the partisanship and redistricting, uh, rules, which are competitiveness, proportionality, and symmetry. And those are unlike the prohibition on using partisan

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 60
1 data, which is right above it. Those explicitly require the state to use partisan data to achieve a political outcome.

So in competitiveness, the political outcome that the state has to try to achieve is to make as many districts close to 50/50 between the two major parties as possible. Five states follow that.

Proportionality is a requirement that the state try to draw districts that roughly reflect the political makeup of the state as a whole. I'm going to give you an example from, uh, Ohio, because Ohio is a state that is going to be following this method for the first time in 2020.

So in Ohio you have a state where if you look at the statewide, uh, political, uh, elections from the 2020s, it's about 54/46 republican democrat makeup in various statewide elections that you look at, uh, with republicans having a roughly eight point advantage statewide. Under this rule, the state of Ohio would be required to draw in a 100 member chamber, a chamber that elected roughly 54 republicans and 46 democrats. Um, and that's the proportionality provision.

There is another provision called symmetry, which is somewhat similar, except it doesn't actually require you to draw the districts to achieve an exact

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

outcome. What it requires you to do is to draw a district so that if there's a shift in the electorate, it's an equal shift either way.

So a five point shift towards republicans would elect the exact same number of additional republicans as a five point shift towards democrats would elect democrats. So it requires similar performance regardless of which way the political tides in a state turn. Um, that's in zero states. It was -- Missouri was going to have to do it, but it was repealed by the voters in 2020.

I'm going to be honest with you, I don't know how any state could possibly draw a district plan to achieve that outcome. It seems almost impossible. But, uh, don't be surprised if this starts percolating up again in other states this coming decade as more and new laws are passed.

And so all -- everything I've told you could change via litigation. I'm going to specifically highlight racial gerrymandering, which that doctrine has changed every single decade. At the start of the decade to the end of the decade, that doctrine has not been consistent -- consistent for the entire time that it has existed. So all of these doctrines could start to change as new redistricting lawsuits percolate

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 through the federal courts.

Um, there are a couple of lawsuits that are worth mentioning to you right now. Uh, Alabama and Ohio, uh, had sued the Census Bureau for failing to deliver -to deliver redistricting data on schedule. Uh, Ohio actually settled that suit because the Census Bureau said they'll release it by August 16th. Originally it was supposed to be September 30 th. So when you see that August 16 th , you got the data on August 12th, that's because of Ohio's lawsuit.

Um, Alabama brought a similar lawsuit. They also were challenging the Census Bureau's use of differential privacy which mentioned earlier. Uh, there are two lawsuits in Illinois right now against that preliminary use of alternative data that I mentioned. One of them is brought by the state republican party and one of them is brought by the Mexican American Legal Defense and Education Fund, MALDEF.

Um, and then there are four lawsuits currently for what $I$ will call predicted failure to redistrict. Uh, those are in Minnesota, Louisiana, Wisconsin, and Pennsylvania. And what that means essentially is the plaintiffs had said there's divided government in those four states.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Because there's divided government in those states, the state will have no possibility of succeeding in redistricting. So federal courts, I don't even know why you're giving the legislature a chance, you just need to start, uh, redistricting for them right now. And, um, none of those cases have gone forward past the preliminary stages yet. But just know that in the scope of litigation that currently exists, those are lawsuits that are out there.

Um, just a final few ways for you to stay connected, I do think the one thing that could be helpful is if there are members of the committee who do not have the red book, the redistricting law 2020 book. I don't know if any of you, uh, do not have that. That's NCSL's best redistricting resource. And it's free to legislators and to legislative staff that work on redistricting. Uh, I'd be happy to work with, uh, John to get all of you all red books, if that's something that you would be interested in.

There -- there it is. There's the red book.
Emily's got hers. So, um, it's a wonderful resource. And legislators tell us all the time that they find it really helpful in, uh, learning what's changed in redistricting since the last time that they did it. But with that, I'm happy to take any further
questions. And thanks very much for bringing me up here.

CHAIRMAN DEVLIN: Questions. Representative Schauer.

MR. SCHAUER: Thank you, Mr. Chairman. Uh, Mr. Williams, uh, I should've mentioned this earlier, but if you can go back to page 28. And on the right hand side, those senate factors, uh, when it comes to subdistricts.

Are those factors, um, met by individuals that want the subdistricts or those who do not want the subdistricts? In other words, if I want the subdistricts, do I have to prove all of these factors that this has happened? And then how do you do that?
MR. WILLIAMS: So it's -- it's not -- it's not the -- I don't know if there's a specific application to subdistricting. I will just be forthright with you on there. In general to get a remedy at all, you do not have to prove all of these factors. It's a totality of the circumstances analysis. And it's up to the court to decide how many of the senate factors are sufficient.

Congress provided no guidance on exactly how many. It has provided a list that courts could look at. So this is the list from the senate report, and
when the Voting Rights Act was reauthorized in 1982. And in general, um, you know, it's not like a majority are required. It's not like, you know, any particular one is more important than another. It's just a holistic answer.

And I realize that that's unsatisfactory, which is probably one of the reasons why the US Supreme Court stepped in and established the Gingles preconditions in the first place. Because up until they existed, that was the only test for when section two liability attached. And you can imagine how vague that was.

So, uh, I can look at the cases from other states that have done subdistricting and get an answer to you on exactly what factors were considered, if that would be helpful.

CHAIRMAN DEVLIN: Representative Schauer.
MR. SCHAUER: Just one other question that I have. Thank you, Mr. Chairman. Um, this idea that, um, we insert noise and we purposely insert error to increase uncertainty, uh, only the federal government can come up with that.

What is your analysis on this? And I know it really comes down to the accuracy of the census. And I guess it is what it is. But can you explain a little
bit how they came up with this whole idea?
MR. WILLIAMS: Sure. Mr. Chairman, Representative Schauer, so the -- the -- the, um, methodology -differential privacy is not a methodology that was created by the Census Bureau for this purpose. It's a method of statistical, uh, that's used in statistics in other circumstances.

It was adopted into the United States census, uh, because the chief scientist of the Census Bureau, um, after surveying resources decided that that was the best option available to the Census Bureau to protect respondent privacy.

And this primarily comes down -- they would say that this primarily comes down to the fact that if you asked these very large data vendors, like L2, and these people that, you know, if you buy their data set, they can predict with a certain percent accuracy how every person in the United States votes on any given time based on all of their number crunching.

They would say that this is necessary because if you compared the data that we release with the swapping to the L2 data, that's so sophisticated that you could crack the code and figure out what every person in the United States responded. And because they say of their dual mandates, they adopted this
differential privacy method.
I would not be surprised if there's litigation, uh, around the inaccuracies and the noise. I mean the Census Bureau announced itself on its own webinar introducing the data that states should it use the block data for redistricting, they should go up to the block group because there's more accuracy there than at the individual block level.

Um, and, uh, NCSL has actually sent letters to the United States Census Bureau and to, uh, the House of Representatives and the US Senate. Uh, that happened in 2020. I'd be happy to get a record of those for you just to show you, uh, the concerns that we highlighted before this was finalized.

I will say I am concerned that I'm not -- I would -- I'm not sure what the remedy would be at this point because the data's already been released. It would be hard to get them to release a second data set because then there would be even greater privacy implications. So I'm not sure that there's anything that can be done at this point.

But it is a big headache. And, um, the states that are -- you're the ones who have to deal with this. And, um, I wish I had a better answer for you on what can be done. This is actually something my boss
and I were talking about. We're like, should we even talk about differential privacy if our answer is -- if there's not much that we can help with.

CHAIRMAN DEVLIN: Representative Monson, I believe you had a question.

MR. MONSON: Uh, thank you, Mr. Chairman. It was pretty much same as what, uh, Representative Schauer came up with. I -- I just wonder how can we trust the data to be accurate and true when they've purposely distorted it and thrown in -- you know, I -- I just find it amazing. And only one state, Alabama, has filed a lawsuit officially on this or what?

MR. WILLIAMS: The Alabama lawsuit,
Representative Monson, was, um, was dismissed, uh, on standing grounds. The court said that it wasn't ripe yet because the data hadn't been released. That case is still in theory live. That case could come back now that the data has been released once the state of Alabama does some analysis on how inaccurate it is.

Now to be fair, it's hard to tell how inaccurate it is because there's no baseline to compare it against. There are some examples, like for example if North Dakota had a county or a -- a particular census block where you knew a prison was, and you had the exact count from your department of prisons on that

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021date, you could know whatever the Census Bureau reported against whatever the number your department of corrections reported. And you could have some comparison with discrete examples.

But it's hard to get a statewide baseline to compare it against, right. And the only answer is the answer that the Census Bureau has provided, which is to move one level up.

I will say, if you have a data expert and [inaudible] council, or outside, or anywhere else that you can talk to, uh, who can give you a -- do some analysis on the state of North Dakota's data, and give you a sense of the degree of inaccuracy as applied here to other states, that you know, that may be something that you could look into if you wanted to get a clearer answer.

CHAIRMAN DEVLIN: Representative Nathe, did you have another question?

MR. NATHE: Yeah. Thank you, Mr. Chairman. Ben, you alluded earlier to the Ohio lawsuit -MR. WILLIAMS: Mm-hmm. MR. NATHE: -- uh, moving the release up to, uh, August 16th. MR. WILLIAMS: Correct. MR. NATHE: In Salt Lake they were talking about
originally September 30, as you said.
MR. WILLIAMS: Yes.
MR. NATHE: They're still going to release or have their formal rollout on September 30? Now are those numbers going to be different than what we just received? Or will they be updated come September 30?

MR. WILLIAMS: Mr. Chairman, Representative Nathe, those numbers will be exactly the same as the numbers that are on the website. Um, that is being considered as the official delivery date of the Census Bureau. We've gotten questions from states that have deadlines that are tied to the release of census data, about whether -- what is the trigger.

And the best that we can figure out is if the state supreme court hasn't said anything, it's really up to the legislation to decide what the trigger date is. So that -- that's up to you. But the -- the August 16th data that came out, um, and that actually came out on August 12th, that will be identical to the September 30th data.

Now the September 30 th data will be in a different format. It'll be more user friendly. But, uh, any data expert that's done redistricting in the past can use what has already been released very well because it's the same data that was released in 2011,

1 and 2001, and 1991, and so on.

So what the Census Bureau was trying to do this decade was create a better format for releasing it. But in light of the delays, they decided to release it the old way in addition.

CHAIRMAN DEVLIN: Senator Holmberg, did you have another question?

MR. HOLMBERG: Oh, um, yeah. There -- there -there are a couple examples I think that we can use if you want to look at the noise. And that is, uh, we have the -- the submission from the University of North Dakota on a big block area which was group housing.

MR. WILLIAMS: Sure.
MR. HOLMBERG: And we know what that number was that they reported to the Census Bureau. But because that included dormitory people, you have already built in noise. But you can see how much difference what they put into the Census Bureau, as to what is actually reported.

MR. WILLIAMS: Yes. That would -- that would be another excellent example. Uh, uh, particularly if you have, uh, areas where you know that the students hadn't left by April 1st for example. I don't know what those states might be. Or I don't know what the

University of North Dakota was doing, um, at that time.

But there are -- there are -- any example where you have a group quarter number is probably the best bet to -- to get some baseline comparison.

CHAIRMAN DEVLIN: Senator Bekkedahl.
MR. BEKKEDAHL: Thank you, Chairman and Ben. So the -- forgive me if I missed this, but you were talking about census block. And did you just determine census layer too? Or are they interchangeable?

MR. WILLIAMS: I, uh, if I used census layer, that was in error and I apologize.

MR. BEKKEDAHL: Okay.
MR. WILLIAMS: Census block and census group -block group is another level of data. So there's -- so there's census blocks are the most granular level -- I mean a census block could be the onramp to a highway, to give you an idea of how small the geography we're talking about is.

Block groups are groups of blocks that is just another layer one step above. It's still a relatively small unit of geography, but it's not quite as granular. And then there are also census tracts. Uh, and then, uh, getting above that then you get to county boundaries and city boundaries. And it goes --

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 73 we have, we have a county layer, we have a voting district layer, and then we have a census block layer.

MR. WILLIAMS: Right.
MR. BEKKEDAHL: So the census block layer is the most detailed. We'll -- we'll -- we'll be able to have to use that. Is that correct?

MR. WILLIAMS: You'll have the census block layer to use. Now the census block layer is the one that has a -- we were discussing with Senator Holmberg, is the one that, uh, has the most --

MR. BEKKEDAHL: Has the most noise in it? Okay. MR. WILLIAMS: Correct.

MR. BEKKEDAHL: But that's what we have in our system. I just wanted to make sure we have those three and that's all we have available to us.

MR. WILLIAMS: Right. Yeah. And I mean you -Maptitude is, uh, in my experience is a responsive company, if you wanted to ask them to -- about getting block groups or something. I know -- I know Tracy will. I'm sure that she would be. Yeah.

MR. BEKKEDAHL: It's complicated enough. Thank you.

MR. WILLIAMS: Yeah. CHAIRMAN DEVLIN: Emily?

MS. THOMPSON: Uh, I just have one quick question. And I thank you, Mr. Chairman. I know with the differential privacy, you know, they generally say census is the smaller, um, you get, the more, you know, possibility for, you know, inaccuracies.

MR. WILLIAMS: Sure.
MS. THOMPSON: They do more or less guarantee that the state's number is correct. So because of course for congressional apportionment purposes. So that 779,094 people, that is 100 percent accurate what North Dakota's population is.

Is there a certain cutoff or threshold where it gets less accurate? I haven't been able to really pin down in my research, uh, kind of a straight answer to that, if there's some cutoff. I know census blocks they always say, you know, these could be a little inaccurate because of differential privacy.

But if we're looking at say the county level, is there that 100 percent certainty that what census says the county is is accurate? Or is it more of a threshold thing? Because I know North Dakota has some really small counties, like Slope County I think the population now after the 2020 census was just slightly over 700 .

Is there say a threshold if they pick, you know,

1 3,000, anything under a 3,000 population, to protect privacy, then we're going to kind of scramble or insert noise? Is there any kind of threshold where we can safely assume that this is the accurate number, like the state population is?

MR. WILLIAMS: So thank you, Emily. The answer is my understanding, and I will check on this and get back to you because I'm not 100 percent certain, but my understanding is that the only population level that has been held in variant is the total state population. And there is at least some noise as you go down.

Now there's less at the top, as you indicated. So the county level noise might be very minimal. I'm waiting to see the data analyses on that, because I'm an attorney, I'm not a data expert. So I'm not capable of conducting the analysis myself.

And I've -- I've called in friends in states and asked them what they're seeing in their states. And the only answer is I've gotten are, you know, we're still looking. What we're seeing right now there's -there's some stuff that we think is weird, but we don't know if that's just because population growth was different than we expected, or if that's the noise in the data.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

But, um, I will get back to you with an exact answer on what was held in variant and which was not. Uh, but my understanding is that it's -- it's two elements. There's only one level that's completely accurate. And there's a degree. And as you go down, the degree of noise increases, the -- the smaller and smaller the unit of geography gets.

CHAIRMAN DEVLIN: Representative Headland.
MR. HEADLAND: Uh, thank you, Mr. Chairman. Uh, Mr. Williams, is there any history that would reflect on, uh, the sheer, uh, land mass density of a district, a sparsely populated rural area versus an urban district, and, uh, how that might, uh, play out with representation of those that are elected within those districts?

MR. WILLIAMS: Um, Chairman Devlin,
Representative Headland, I'm not -- I'm not sure that I have seen such an analysis. That doesn't mean that one doesn't exist. I -- I read the legal, uh, articles more than $I$ do the political science ones just because of my background.

But there may be something in the political science literature that relates to that. I'd be happy to look into it and get back to you, if $I$ find anything.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

CHAIRMAN DEVLIN: Representative Lefor.
MR. LEFOR: Thank you, Mr. Chairman. So if I understand you correctly that, uh, we're using census block right now.

MR. WILLIAMS: Correct.
MR. LEFOR: And we don't have census block group.
MR. WILLIAMS: Correct.
MR. LEFOR: Is -- am I understanding correctly that census block group would be more accurate? And that's the first part of my question. The second part is, do you expect this information to be more accurate September 30th as far as those different levels, county census block, and so forth? What should we be using?

MR. WILLIAMS: Chairman Devlin, Representative Lefor, so the answer is, uh, the data will be exactly the same. The exact same differential privacy will be applied September 30th to August 12th. So you won't see anything different then. You are correct that the most noise that exists is at that block level. Uh, and that's the level that it's -- as it sounds like, is in your data set.

There are block groups that is another level of geography that the Census Bureau, uh, can report out. I don't have any knowledge about whether or not that's
available to be put into Maptitude. Uh, that's something you'd have to ask your data person or your software vendor, uh, to get an answer on.

But the Census Bureau has said, and we can -- you can debate whether or not how much weight or -- you put into this. But the Census Bureau has said that there's less noise at the block group level than at -than at the individual block level. And so, um, there is some accuracy advantage to moving up a layer.

CHAIRMAN DEVLIN: Further questions [inaudible] Representative Holmberg.

MR. HOLMBERG: Thank you for the promotion. [talking over each other]

MR. HOLMBERG: Um, but does that -- one of the things that we always keep in mind is, what is our degree of risk for litigation.

MR. WILLIAMS: Sure.
MR. HOLMBERG: But utilizing the census block which is what we have, uh, I can see why that would all of a sudden be the real rea- -- or the big reason why we would end up in court, because we used something that the federal government had given us.

MR. WILLIAMS: Yeah. Vice Chairman Holmberg, I think -- I think you're right. I mean this is -- the census data in the past, it had error in it anyway.

There was data swapping. You were intentionally taking information from one census block and putting it in another.

Um, and so there's -- there's -- the -- the Supreme Court has always said that we presume accuracy of the census data. And states that rely on the census data to redistrict, we will not presume any other inaccuracy here.

There is some question about the states that are litigating this accuracy question when it gets up to the Supreme Court. Would they rule rule differently this time because this is -- and the theory would be is this different to such a degree from the prior methods of disclosure avoidance that the Census Bureau has used, that you're in different legal territory.

All the history that we've had indicates to us that the Census Bureau usually wins when it's sued. And, uh, then it usually wins and the da- -- the data is given the blessing of accuracy. So from a -- from a perspective of avoiding litigation and avoiding successful legal challenges, uh, all the history indicates that, uh, you're on solid ground using census data.

Could it change in the future? I guess. But I mean, I'm -- I haven't seen anything to indicate that

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

1 that would be so.
that would be so.
MR. HOLMBERG: And I mean we can talk about the -

- the noise, etc. But aren't we just kind of looking at how many angels can fit on the head of a pin, because it's not going to make any difference at the end of the day.

MR. WILLIAMS: I think that that's certainly a -a valid way of looking at it. Yep.

CHAIRMAN DEVLIN: Emily, you have some insight.
MS. THOMPSON: Uh, thank you, uh, Mr. Chairman. Just to mention, the, uh, templates that we pushed out are currently the census block. But we can, um, add that additional layer of the census block group to your maps. So we can add that into your maps should we want to see those larger, uh, combination of census blocks.

CHAIRMAN DEVLIN: Senator Bekkedahl.
MR. BEKKEDAHL: Uh, thank you, Emily, for that. The way that I looked at the program, it -- it might be a helpful tool. Because once you get down to moving boundaries really distinctly, uh, going to the census block -- or going to the census block we have now is pretty time consuming.

So maybe the census block group would help us in that way. We're dealing about going from maybe one in
that census block group to maybe 10. So, but in terms of drawing up the maps, it might be a time saver.

MS. THOMPSON: I would be happy to, you know, work with those legislators with the computers to make sure they're set up to see those, uh, block groups. CHAIRMAN DEVLIN: Other questions for Mr. Williams? I see none. Thank you. Are you going to be around long? Or when is your plane?

MR. WILLIAMS: Uh, my plane -- my plane is this evening. I have to, uh, I have to -- I left my stuff up in John's office. I have to go back and meet him. But then, um, I might come back to the Capitol later this afternoon. I have to check out of my hotel. So I don't think they'd be appreciative if $I$ hung out here all day and they couldn't get their room back. So.

CHAIRMAN DEVLIN: Well I'm sure, Ben, that there will be some questions for NCSL. Because you've been so great to work with in the years I've been involved with this. And the only thing $I$ would tell the committee, if you -- if you got some specific questions, you might want to funnel them through legislative council. Because other people might have the same one. And then we can all get the question and the answer. And I know that the council staff would be more than willing to do that. So. Chairman. My contact information is on this slide. I'd be happy to answer any of your questions at any time. Research requests is our bread and butter. So happy to help however I can over the coming weeks and months. Thank you for having me.

CHAIRMAN DEVLIN: Thank you for being here. We appreciate it very much. Uh, presentation by legislative council staff on the background memorandum on redistricting. Who has that?

MS. THOMPSON: Thank you, Mr. Chairman. You all have, uh, a copy of these slides in your materials on your desk today. Uh, essentially this is kind of a follow up to Mr. Williams' presentation. His was, uh, broad. You got a lot of the constitutional principles.

Uh, the presentation we're going to go through now touches on a few of the same items that Mr. Williams covered. But it is, uh, a bit more specific to North Dakota. It's kind of a summary of the full background memo that you have in your -- your packets as well. So any slides that you might want some more information on, if you look to your background memo there's some additional detail there.

So again, as I mentioned, this is very North Dakota specific. Um, we're looking right out the gate

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

here, we're looking for the authority of our
redistricting in North Dakota. And our directive comes from house bill number 1397, passes, uh, past legislative session. And in that bill, uh, the chairman of Legislative Management is directed to appoint a committee to develop a redistricting plan. That would be our committee.

Uh, districts in the plan are required to be compact and contiguous, and conform to some of those constitutional requirements regarding population equality that Mr. Williams covered. Uh, the committee does have the discretion to adopt additional guidelines and principles when they're preparing your plan. And we'll go through some of those other optional guidelines more towards, uh, the end of the presentation.

Uh, house bill 1397 also specified that kind of the deadline for the committee's uh, plan to be submitted to Legislative Management is November 30th of this year. Um, that might be a little later than the committee would prefer to submit that plan to Legislative Management.

This date was simply selected because back when the bill was being drafted, we were still a little uncertain of when we would be getting the census
information. So we wanted to ensure that if it was really, really late, we still had a little extra time to, uh, get that plan out.

The chairman of Legislative Management, um, shall request that the governor call a special session, so the legislative, uh, assembly may convene to adopt that plan for use in time for the 2022 primary election.

And specific to North Dakota, I'm going to go through the, uh, requirements of the constitution in the next couple slides here. Um, and our constitution requires that membership of the senate has to range anywhere between 40 and 54 members. Uh, members of the house, that total must range anywhere between 80 and 108 members.

Um, the state is required to be divided into as many districts as there are senators. And those districts are required to be compact and contiguous. So those factors reviewed, those are mandatory in North Dakota, compact and contiguous. Uh, right now we do have 47 senatorial districts. So you can see it falls within the range of 40 to 54 senators that our constitution provides for.

Uh, next, uh, districts ascertained after the 1990 federal census, um, are required to continue
until the adjournment of the first regular session after each federal, uh, census, or until changed by law. Uh, the legislative assembly is required to establish by law a procedure whereby half of the members of the senate and half of the members of the house, as nearly as practicable, are elected biannually.

Um, in addition to these constitutional requirements, now we'll look at what is provided in North Dakota state statute that we have to follow when we're redistricting. Um, right now the, uh, section we're looking at is 540301.5. And this, uh, again requires a legislative redistricting plan based on any census after 1999. Um, here we did specify we're looking for 47 senators and 94 members of the house. And that is again within that constitutional range that we could provide.

Legislative districts must be as nearly equal in population as is practicable. And population deviation from district to district must be kept to a minimum. So we're really trying to kind of maintain that population equality.

Um, the total population variance of all districts from that average district population, um, that's not allowed to exceed, uh, recognized

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

constitutional standards. And just to, uh, reiterate, based on the 2020 census, um, our ideal population size now in North Dakota -- or excuse me, our ideal district size is 16,576 , if the committee decides to continue to use 47 districts in its plan.

Uh, overall range is the measure of population equality that is most commonly used by the courts. And that's, uh, the 10 percent standard Mr. Williams also mentioned. That was first established back in 1973. And, uh, he also touched on this, how to calculate that overall range. Uh, it's the sum of the deviation from the ideal district population, so for North Dakota, 16,576, for the most and the least populous district.

I know that can kind of be a jumble to read, so I did include a little example. Um, so for instance, if our greatest population district exceeded that ideal size of 16,576 , by say 4.2 percent, and then the smallest population district in our state falls short of that ideal district size of 16,576 , by 4.1 percent, then you would just add those two numbers together. So then the overall range that would be calculated for our state would be 8.3 percent.

MR. SORVAAG: Yeah, Mr. Chairman, Emily, just to expand on that, so everything with -- all the
districts would have to stay in that [inaudible] 8.3 [inaudible]. So if that bottom one was 4.1, top 4.2, all the others would be in the middle of that -- I just want to make sure I'm correct in there. So the next got to be 4 -- less than 4.1 [inaudible]

MS. THOMPSON: Um, uh, Mr. Chairman, uh, Senator Sorvaag, yes, that would, um, naturally occur -- occur just because it's a simple math calculation of, um, population. And so the largest population district would be your highest percentage deviation. And your lowest population district would be your lowest percentage deviation.

So any deviation in any district between the highest and lowest populations would fall between that 4.2 and 4.1.

MR. SORVAAG: But there would be no limitation to how many. You could have 30 districts --

MS. THOMPSON: Correct. Absolutely.
MR. SORVAAG: It would be no limitation that --
MS. THOMPSON: The only thing --
MR. SORVAAG: That's just the ceiling and the floor.

MS. THOMPSON: Yep. You're just taking the highest population district and the lowest population district. Those are the only two numbers you're adding
together. Yes.
MR. HOLMBERG: Mr. Chairman?
CHAIRMAN DEVLIN: Senator Holmberg.
MR. HOLMBERG: At the end of the day, they could be up to 10 because that number can go up like this or down like this, as long as the distance between the top and the bottom falls within that 10 percent. So you could have your biggest district could be 5.2 over, and you could have a -- a lower district that's 4.28. Yeah.

MS. THOMPSON: Correct. So you could have, you know, 10 districts that are all 5.2. And then maybe your bottom five districts are all, you know, 1.1, or something along those lines. Um, also in, uh, the North Dakota century code and statute, uh, we have section 540301.13 , which provides for the staggering of terms. Um, that's outlined in more detail in your memo.

This would be something we'd, uh, likely want to include in our bill. Because you'll notice the dates in there are back in 2012, 2014, and four year terms from those dates. So that we would also want to, um, likely address in our redistricting bill.

Uh, section 16.10102.2, this outlines procedures for special elections and allows the governor to call

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

a special election to be held 90 days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes, um, a legislative redistricting plan.

Uh, redistricting if it becomes effective after the organization of political parties, and before the primary or a general election, uh, section 16.10317 requires political parties in those newly established precincts and districts to reorganize as closely as possible in conformance with that, um, election chapter 16.103, and as an order to comply with those primary election filing deadlines.

CHAIRMAN DEVLIN: Emily, if I may interrupt -MS. THOMPSON: Yes.

CHAIRMAN DEVLIN: Representative Nathe.
MR. NATHE: Thank you, Mr. Chairman. Emily, so say, uh, we get the final plan on the floor in November and we pass it, is that effective immediately? Or is there a certain date? Or when -when does the plan take effect once we've approved it? MS. THOMPSON: Yes. Uh, Mr. Chairman, uh, Representative Nathe, it depends, um, in part on how we are reconvened. So if the governor calls a special session, then if you pass a bill during a special session, the, uh, basic rule for that is every bill
passed during a special session has to have an effective date. And then the bill will just take effect on the date specified in the bill.

If instead of using a special session, uh, let's say the legislative assembly decided to reconvene and use those four days we have left, so we wouldn't be called back for special session, we would just simply reconvene to use your days. Well then there's different effective date rules for that. I believe it's 90 days after the passage of the bill it will go into effect.

If you wanted it to go into effect say in a week after you passed it, then it would just be like any other, um, session for the emergency clause rules. You'd have to put, um, an emergency clause. And it would have to get that required vote total.

Uh, next part of this presentation simply covers the redistricting history specific to North Dakota. Uh, 1931 through '62, the legislative assembly did not redistricting itself, uh, despite the requirement in the constitution of the state for the assembly to apportion itself after each federal decennial census.

Uh, 1963 through '75, I just put nearly constant state of litigation. If you want more information on that, I suggest go through your background memo. It

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

kind of details all the litigation that was involved during that period.

Uh, 1981, uh, the state got a little more back on track with redistricting. And the state, uh, did have a 12 member, uh, interim committee. They used a consultant to assist in developing a 53 district plan. Again remember, the constitution has 40 through 54 districts as the allowable range.

So at that time we used a 53 district plan. Um, that was adopted during a reconvened session of the legislative assembly in November 1981. You'll notice it does say a reconvened session. This was not a special session. This was actually the first time, um, the state did use a reconvened session. And that was for this purpose.

Uh, 1991, a decade later, um, a 16 member committee, uh, also contracted with a consultant for different computer related services. And in that, uh, decade, they developed a 49 district plan. And that plan was adopted during a special session. And that was in November 1991. You'll see all of the redistricting plans were adopted during special sessions after 1981.

> In 2001, uh, it was -- redistricting was completed by a 15 member interim committee. And at

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 92
this time we switched from using consultants to more of what we do now. We, uh, used laptops with
redistricting software. And at that time, uh, it was a 47 district plan that was developed. That plan was adopted during special session again in November of 2001.

Uh, the last cycle in, uh, 2011, was done by a 16 member interim committee who used again those laptops with the redistricting software, similar to what you have now. We used Maptitude at that time as well. And that was a 47 district plan again. That plan was adopted during a special session in November of 2011.

Uh, next we're going to cover a little bit -MALE: Mr. Chairman?

CHAIRMAN DEVLIN: Senator?
MALE: Uh, it's -- it's digging too deep, but you might, you know, question the fact that the North Dakota didn't do anything from '31 until, uh, the '70s. But we had to do some research on this. And we made up for it in the teens because the legislature redistricted in 1911, 1913, 1915, 1917, 1919. They had a lot of fun. That was also during the NPL, uh, season that they -- they caught up. So they built up a cushion that they could use during the '40s and '50s and '60s, I guess.

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

Page 93
1 [talking over each other]

MALE: I wasn't on the committee. Martinson [ph] was.

CHAIRMAN DEVLIN: Go ahead, Emily.
[talking over each other]
MS. THOMPSON: So next up again we have, uh, uh, United States constitutional and federal law. And again this was covered, um, in, uh, quite a few of Mr . Williams' slides. He touched on this as well. So I'll just quickly review here.

Uh, 14th amendment of the United States Constitution passed back in 1868. Uh, this, uh, state said individuals are guaranteed equal protections under the law. The 15 th amendment to the United States Constitution, again following in 1870, uh, provides the right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Uh, the Supreme Court in, uh, 1962 in Baker v. Carr, determined that the courts would provide relief in state legislative redistricting cases when there are those constitutional violations either of the 14 th or 15 th amendment. Uh, following 1962, the Voting Rights Act was enacted in 1965. This was enacted as a
tool to essentially aid in the enforcement of the 14 th and 15 th amendments.

Those amendments were in place prohibiting those discriminatory practices, but there wasn't really any teeth to enforce it. So that was more or less the purpose of the Voting Rights Act. This act banned the use of literacy tests in voting. And also provided federal oversight of voter registration in areas where less than 50 percent of the minority population have registered to vote.

Next we're going to look at some case law talking about population equality. Um, Reynolds v. Sims, 1964, uh, the main case here. Uh, the equal protection clause of the 14 th amendment requires states to establish legislative districts that are substantially equal in population. And that is one of our requirements as well.

Uh, both houses of a bicameral legislature must be apportioned on a population basis. And again overall range is that most commonly used measure of population equality. And that we covered before in our example.

Uh, 10 percent was mentioned as kind of that, uh, benchmark range that we're looking at with overall range. So just to summarize, if a legislative

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021Page 95
redistricting plan with an overall range of more than 10 percent is challenged, uh, the state has a burden to demonstrate the plan is necessary to implement a rational state policy, and that the plan doesn't dilute or eliminate the voting strength of any particular group of citizens.

And as again Mr. Williams mentioned, the only real rational state policy that has succeeded in justifying a deviation of more than 10 percent has been preserving the boundaries of political subdivisions.

Um, if a plan with an overall range of, uh, less than 10 percent is presented, this may be subject to challenge if the justifications for that deviation is not deemed legitimate, and the plans, um, with lower deviations had been considered. So it's not a -- a total safety net if it's less than 10 percent. You can still be subject to challenge.

Rucho v. Common Cause, again this was, uh, touched on by Mr. Williams, a 2019 case. Uh, in this case the question of whether partisan gerrymandering is justiciable by the Supreme Court, uh, was settled. In this case they stated, uh, partisan gerrymandering claims present political questions that are beyond the reach of the federal courts. So that kind of closed

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 the door here.

Uh, the court further stated the, uh, US Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly. However, a little caveat here, the court did note that states may look to their own state statutes and their constitutions for guidance and standards to apply in those partisan gerrymandering cases. So while you might not be subject to that at a federal court level, if you're going down to state court, you have to be mindful of it.

Uh, also under our federal law section, we're looking at multimember districts and racial or language minorities. Uh, in regard to multimember districts, North Dakota is one of 10 states that have multimember districts. We have currently one senator and two representatives in each of our 47 districts.

Uh, also in this area we're looking at section two of the federal Voting Rights Act, which Mr. Williams also, uh, touched on. And this prohibits a state or political subdivision from imposing voter qualifications, standards, practices, or procedures, that result in the denial or abridgement of $a$ citizen's right to vote on account of race, color, or status as a member of a language minority group.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 97

And I went ahead and just provided the definition in case you're wondering what a language minority group is defined as. Uh, this is defined as persons who are American Indian, uh, Asian American, Alaska native, or of Spanish heritage.

Uh, continuing with multimember districts and, uh, racial or language minorities, we have Thornburg v. Gingles again, we touched on in the last presentation. That was in 1986. And this case established that a minority group that's challenging a redistricting plan, uh, initially what they must prove is that the minority is sufficiently large and geographically compact to constitute a minority in a single member district, the minority is politically cohesive, and in the absence of special circumstances, uh, block voting by the majority usually defeats the minority's preferred candidate.

Uh, to prove block voting by the majority usually defeats that minority group, uh, the use of statistical evidence is necessary. And that was touched on a little bit in our last presentation as well.

And, uh, Shaw v. Reno in 1993, uh, this determined that if race was not the predominant factor in creating the district, uh, a racial gerrymander

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 98
1 challenge is not likely to be successful. If race was the predominant factor in creating a district, the district will be evaluated under a test of strict scrutiny, where it must be shown that the district was narrowly tailored to serve a compelling, uh, state interest.

Uh -- excuse me, uh, common types of gerrymandering, we have, uh, listed below, are packing and cracking. You may have, uh, heard this reference before. Uh, packing essentially refers to overconcentrating a minority group into one or only a few districts. Uh, so for instance, um, drawing lines in possibly odd shapes in order to pack a minority group into a single district of say, you know, 90 percent of that minority group, and thereby essentially wasting any votes over a simple majority in order to dilute the minority votes in those neighboring districts. They're all packed into one district.

Um, cracking, again this is splitting a geographically compact minority group into multiple districts, in order to dilute the voting power of that mi- -- mor- -- minority groups, kind of the opposite. So for instance here, you might take, um, an area that could have compactly been drawn to consist of say 60
percent of a minority group. And that would be possibly split into say three separate districts. So then you'd only have 20 percent minority in three separate districts. That would be cracking to the vote, uh, dilute that voting power.

CHAIRMAN DEVLIN: Excuse me, Emily. Representative Monson.

MR. MONSON: Thank you, Mr. Chairman. So Emily, looking at those two definitions, how can we win? No matter what we pick, I mean somebody could take offense. They could say, whoa, you're packing it because you're keeping the reservation pretty much whole. So now we're packing it. And they might -- and somebody else might say, oh no, you're cracking it.

So how -- how do you -- how do you balance this, packing and cracking?

MS. THOMPSON: Uh, Mr. Chairman, uh, Representative Monson, yes, it -- there are, uh, several layers of analysis. This is very high level. But if you're looking at, uh, kind of that test there, was race a predominant factor. So for instance in your example if you were looking at say the reservation, well you're also in that case having an area that's more of a political subdivision boundary. You have reservation boundaries.

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

And so if one of the factors that you're prioritizing compact, uh, contiguous, preservation of boundaries, if you're drawing that district primarily to preserve the boundaries of a reservation by not splitting that reservation, well that's legitimate. You could argue that your predominant reason isn't, you know, a race or language minority based. You're preserving those district boundaries.

So there's kind of a balancing test you have to look at those circumstances. If it was only because of race, no other factors, compact, contiguous, you know, uh, preserving district boundaries, then you're going to have a -- a harder time there.

CHAIRMAN DEVLIN: Senator Holmberg.
MR. HOLMBERG: Um, and -- one of the slides that we had earlier about, uh, talked about racially polarized voting in the state. And if you theoretically had an area that was, uh, a native reservation, and because of its loss of population, you all of a sudden have to add -- and that particular county votes predominantly, overwhelmingly predominantly one way, and the counties all around it, uh, vote a different way, uh, partisan-wise.

Uh, if you add a large -- a number of those people from outside what was the original county, uh,

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 101
does that -- does that not lead us to have to discuss whether or not we should be doing a division of, um, house districts for example, because, uh, of that factor regarding polarized.

Well you can show that there was polarized
[inaudible] and you can show they voted this way, these people voted that way. And are we doing something that dilutes the native population vote, uh, which would I think be very thin ice. And, uh, yeah, so you can say, oh, and that's it, but.

MALE: [inaudible]
MR. HOLMBERG: A couple instances of the state where that might be an issue.

MS. THOMPSON: And also if you think as well, if you had a reservation in the state that say you had a population of 30,000 , you would have to split that as well. Because it would be over the ideal district size, which is one of those predominant balancing factors, so.

Sorry? Regard to federal law, continuing on here, uh, there have been these traditional districting principles defined. Uh, these are included. The -- the six that are included here are compactness, contiguity, preservation of political subdivision boundaries, preservation of communities of interest,

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 102
uh, preservation of cores of prior districts, and protection of incumbents.

And so the next slides I'm just going to walk through each of these six items to give you kind of some visual examples of what this looks like and some further description. So in this slide here we're looking at compactness. Districts must be geographically compact. And here we have an example of, uh, Rolette County, which is the current District 9. This is a picture of our current district map.

And you can see, uh, District 9 is kind of our -our star county right now as far as these constitutional tests. It's very, very compact. It's a nice square shape. So $I$ have a little green checkmark. This is a -- a gold star district in terms of compactness.

Uh, if you look at the second picture, which kind of resembles a lake or a river, um, this is actually the third congressional district of Florida drawn back in 1992. Uh, of course this was later struck down because as you can see this is nowhere near compact with this snaking blue, uh, picture they have up here.

Uh, next factor, contiguity. Uh, districts must be consist -- must consist of a single shape with a connected boundary. Again looking at District 9,

Rolette County, it's one single boundary. It consists of just one county. If you were to, uh, redistrict, because as you can see in your slide here, the population of Rolette County after the 2020 census is now 12,187. So that would not meet our ideal district size of about 16.5 thousand.

So if you wanted to remedy that to get that up to the correct population size, you would not want to do it in the manner you see in the -- the second picture here with that red $X$. Adding just to kind of a chunk of area to get your population up to ideal district size off to the side there, that's not contiguous. It doesn't touch. You can't travel from one area to the next. So that's what you would want to avoid. That's what you're looking at when you're looking at contiguity.

Uh, the third item here, preservation of political subdivision boundaries, uh, this is, uh, essentially avoiding excessively splitting political subdivision boundaries. So again, our -- our nice example of District 9, Rolette County, you're not splitting any political subdivision boundaries, it's right on the -- the county line, so it's all intact.

Uh, the second picture though you see on the right, um, this is of the 7th congressional district

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 of Pennsylvania from the state's, uh, 2011
congressional plan. That plan again, that blue area you see there has those odd and winding boundaries, and actually consists of portions of five different counties.

So as you can guess from that little exhibit sticker you see down on the -- the right hand corner of that picture, the plan was challenged in court. Uh, the Pennsylvania Supreme Court held that the map, uh, was unconstitutional in part due to that excessive splitting of local jurisdiction boundaries. Uh, the court also did replace that map with a plan drawn by a special master. So that one did not hold up.

Uh, the fourth item, preservation of communities of interest, uh, 26 states take this, uh, factor into account. Um, communities of interest, as Mr. Williams mentioned, is kind of defined in a lot of different ways, sometimes state to state, but a general broad definition you can see here is defined as neighborhoods, communities, groups of individuals, who would more or less benefit from being retained in a single district due to either, you know, shared interests, policy concerns, or characteristics. I know socioeconomic was mentioned in the last presentation.

Uh, these are often self-defined by the members

1 of the community such as the Alaskan fishers he mentioned. Uh, race and ethnicity can play a role in defining a community of interest. But it can't be the sole defining characteristic. There has to be something more.

Uh, preservation of core or prior districts, 11 states require, uh, prior districts to be maintained to the extent possible of course after adjusting for those population deviations. And that is in order to maintain a continuity of representation. One approach to preserving cores of prior districts is starting with the existing boundary line, so to be starting with the 2011 map, rather than just a blank map of the state. And then proceeding to just adjust those boundaries to meet those population, uh, quality requirements.

Uh, lastly protection of incumbents. Uh, this is less commonly used. 12 states, uh, require drafters to avoid pairing incumbents. Um, this is essentially placing two or more incumbents in a single district, which leads to one incumbent either having to move, or retired, or be defeated. Uh, and the policy against, uh, this here of pairing incumbents, it aims to promote, uh, again continuity of representation.

And that leads us to our final slide which is

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 106
your background memo as well. And this is something that we look at in all of our background memos. You know, what should the committee possibly address, how would you like to proceed. So these are items that the committee might want to con- -- um, consider.

Uh, first, what parameters should be used, um, should be followed in preparing plans. Again when you go back to the main list here, compact, contiguous, those are in the constitution. We have to follow those. Also, um, equal population, that's something statutory. And the Supreme Court, uh, constitutional as well. So we have to follow that.

But three, four, five, and six, those are kind of optional in North Dakota. That's something that generally the redistricting committee will consider whether or not they want to apply any of these, uh, policies or principles when drawing their maps. Oops. So that's, uh, that first bullet here.

Uh, also the committee might want to consider, uh, if it should limit considerations to plans that establish a certain number of districts, whether you want to stick with that 47 districts or if you want to deviate somewhere in the range between the -- the 40 and the 54 allowable districts.

Also, um, how should the plan effectuate --

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

Page 107
1 effectuate the staggering of terms of members of the legislative assembly, which I touched on earlier. Uh, what is the proper procedure for submitting proposed plans for consideration by the committee, how does the committee want to receive plans. Um, also how often should the committee meet. And should the committee meet in locations other than Bismarck.

So that's something the committee can consider. I know there's kind of a committee discussion, uh, time block at the end of the meeting today, if that's something you'd like to address then. Uh, and I'd be happy to answer any questions.

CHAIRMAN DEVLIN: Are there any questions?
Obviously staff is going to be here throughout this process. Are there any questions that need to be asked now? Representative Schauer.

MR. SCHAUER: Thank you, Mr. Chairman. I just wanted to get this on the record. Um, because this committee has already been criticized prior to us meeting. And it bothers me. So Emily, my question for you, are you comfortable with the guardrails that we have legally, that we will stay within a process that will bring this group's decision, um, that will be based on integrity, fairness, and transparency.

Are you comfortable with the legal guardrails

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 108
that we have to make these decisions?
MS. THOMPSON: Uh, Mr. Chairman and
Representative Schauer, uh, I guess as far as my, you know, personal comfort level, it's more of, um, compliance with our constitution and our statute. I'm not the individual that determines what, you know, our plan should look like. We have these overriding, you know, boundaries or guardrails that we have to comply by.

Our constitution says the plans have to be compact, they have to be contiguous, they have to be as nearly, you know, equal in population as practicable. Um, the committees in past, um, redistricting cycles have adopted other criteria. Um, for instance, some have set a specific population variance. Some have set it at 10 percent like the -- the federal case law has established. Other committees have said, you know, we don't want to go above 9 percent, we want to stay even safer than what we might get challenged on in court if we go over 10 percent. We're not -- we're going to cap it at 9. And that was the case in your last cycle in, um, 2011. The committee decided we're not going to exceed a variance of 9 percent. Um, also the last cycle the committee said, you know, we really want to preserve
existing district boundaries, even though that's not in the constitution of North Dakota or the statutes currently. The committee decided, you know, we want to really play it straight, play it safe. We want to preserve those boundaries.

Um, so that's something that -- it shows in I guess the history of North Dakota's redistricting process. Not only have they complied with those constitutional and statutory requirements, they've also, you know, voluntarily elected these additional principles.

Uh, almost every time it was, you know, retain, uh -- excuse me, the -- the variance not over 10 percent. Um, they've looked at, you know, retaining as many districts in their present form as possible, not splitting those subdivisions.

So I think the state has the constitutional and statutory guidelines to provide for those legitimate plans and also has shown in its action over the -- the decades that it institutes those extra voluntary protections. That answers your question.

CHAIRMAN DEVLIN: Representative Bellew. And this will be the final question, so.

MR. BELLEW: This is not a question, Mr. Chairman. It's a request. Uh, we've been talking about
the reservations. And I noticed, uh, one of my [inaudible] and Rolette County with two reservations. I guess I would personally like to have a list of all the reser- -- reservations and populations. Because I think Senator Holmberg said that one had 300 and some in it and --

MALE: [inaudible]
MR. BELLEW: Okay. I -- I -- just -- just the parts that are in North Dakota, I guess. If -- if that's possible.

CHAIRMAN DEVLIN: Yeah. It is possible. And we will be looking at that as -- as we have dialogue with tribal governments.

Uh, Randy, I know Representative Holmberg [inaudible] you have another meeting at 12:00 that won't take long. So I'm going to break till 1:00. And, uh, we will see you then.
[recess]
CHAIRMAN DEVLIN: Committee, we will come back to order and start with the 1:00 presentation by legislative council.

MS. KRAMER: Good afternoon, Chairman and members of the committee. I'm going to briefly go over a memo that should be in your packets. It's the LC number 9119.01 and it's the information you've all been
waiting for. It's the actual data. So as Mr. Williams announced earlier that the census data indicated that North Dakota experienced the fourth largest percentage increase in population with a population increase of 15.9 or 15.8 , excuse me, over the state's 2010 population. It's also home to the county with the largest population increase with McKenzie County increasing by 131 percent over their 2010 population. Uh, in regard to rural counties, the population trends tracked with the nationwide trend of less populous counties losing additional population.

Uh, this memo provides a summary of the change in population of legislative districts, counties and cities and then, uh, compares the results of the 2010 census to those of the 2020 census.

So when we compare the 2010 census results to the 2020, uh, in regard to legislative districts, the five legislative districts with the largest percentage increase in population were districts $2,27,16,7$ and 39 with the five legislative districts with the largest percentage decrease in population being districts 9, 42, 23, 10 and 14.

And as you can see in the table right underneath on the first page there that summarizes the population change in districts comparing, uh, the last census and
the current census results, including the deviation from the newly calculated ideal district size if we're looking, again, at keeping the 47 districts.

The second table on the next page provides a visual of what the ideal district size would be for various numbers of districts, if that's something that the committee would like to consider.

And then the top of the third table on the second page provides similar data relating to counties.

So when we compare 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.

And the five counties with the largest percentage decrease are Rolette, Benson, McIntosh, Steele and Pierce. So the table on page two and then carrying over to page three shows you the population
information for each county in the state along with that deviation. Starting at the bottom of page three, we have a similar table that, uh, lists all of the city data. So when we compare the 2010 census to the 2020 census, the five cities with the largest percentage increase in population are Watford City, Arnegard, Venturia, Williston and Tioga.

And those with the largest percentage decrease
are Ruso, Wales, Calio, Bantry and Ardoch. And then the table, uh, on page three and then for the remainder of the memo, actually, lists all of the cities in the state and their corresponding populations and, uh, deviations. We'd be happy to answer any questions. I imagine it'll take you a few minutes to digest that, but we are here as always.

CHAIRMAN DEVLIN: Questions from the committee? I don't see any. So are we already down to the 1:30 presentation?

MS. KRAMER: Yes.
CHAIRMAN DEVLIN: You are so efficient. Okay. We'll move on to the 1:30 presentation on -- who's -who's doing this one? Claire? Okay, Claire Ness will do this one.

MS. NESS: Okay, Mr. Chairman and members of the committee, we're going to talk a little bit about recordkeeping today.

So developing and maintaining redistricting records and the possibility of having records used in court if the legislative assembly might be sued over redistricting issues.

And this is an area that is litigated a lot, so this presentation is just going to be a very high level summary and overview of some of the key issues.

If you ever have questions about details, please let me know.

Any of us at the table here can address any specific questions you might have.

So as you create and maintain your documents throughout the redistricting process, you're going to need to balance two different interests.

And the first interest is going to be making sure that you maintain a clear record of your decisionmaking process for how you draw your map.

So this will help not only to keep your decisionmaking organized and consistent regardless of whether you're sued, it also would be invaluable if you are sued as a legislative assembly, because what it'll do is use the -- excuse me, the record could be used to show a court how and why you made your decisions about district borders.

If you don't have a record showing how and why you made certain district choices, then the holes in your record could be filled in by somebody else who might be misinterpreting or misunderstanding what the documents you do have, show.

So you don't want to leave those holes open to some sort of a subjective interpretation that may not have been what you were intending to do.

Second, you're going to have an interest in protecting the deliberative process.

So courts all over the country, including the United States Supreme Court, have said that individual legislators have to have breathing room to make decisions without fear of litigation because legislators bear significant responsibility for many of our toughest decisions in society.

So court sometimes will not require legislators to produce some materials related to their decisionmaking. We're going to talk about this in more detail, but you have these two competing interests you're going to have to keep in mind and -- and balance as you go through this process.

Please keep in mind, however, that even though you're going to be protecting the deliberative process, that does not mean that you can have a quorum of the committee meet secretly or share a document secretly amongst a quorum of the committee members.

Anything that you do in a quorum has to be in a public meeting and any documents you share in a public meeting are going to be open records.

There are two primary scenarios in which somebody might have a record become public, even if the committee has not chosen to make it public. The first
would be an open records request, and I think everybody is probably familiar with those.

And the second scenario would be in litigation. And those two things are different, so we're going to talk about them differently.

If somebody makes a request for a redistricting record under the open records laws, the record may be protected from disclosure, either under laws that are specific to redistricting or under our general open records laws.

And you can see the bullets on this slide provide some examples of protections for records that you're going to be working with.

So under House Bill number 1397, which is our redistricting bill that was passed this past legislative session, draft plans that are created either by a legislator or by the legislative council are exempt unless they're presented to a committee or the full legislative assembly.

And once you present a draft, it becomes open, but previous versions of that draft still remain exempt from open record. So they do not have to be provided upon request.

That is something that has been the case, um, for several district -- redistricting committees going --
going back in time. Um, and again, that's intended to help protect the deliberative process.

You can also see that we have our standard open records statute that protects your communications with other individuals, our work product and our communications with you from disclosure under the open records laws, and then there are also other statutes that might -- might protect requested records from disclosure.

CHAIRMAN DEVLIN: Claire, we have a question, if you don't mind. Representative -- or Senator Bekkedahl.

MR. BEKKEDAHL: Thank you, Mr. Chairman.
Claire, the, um, question $I$ have is if -- if $I$, as a legislator, had assistance or had something presented by legislative council relative to a map and was -- and had sent to me, that's still protected as long as it's not give to the whole committee in a quorum environment?

Is that correct? So a legislative council can still help me with a map and we can correspond between us and have that protected then?

MS. NESS: Uh, yes. Mr. Chairman and Senator Bekkedahl, that is correct. Those drafts would be protected, even if we are helping you work on them

1 from an open records request.

However, if we get to litigation -- so if there's a lawsuit, the -- the rules change. And litigation, like $I$ said, is different from open records request.

And just because a record is exempt from open records laws doesn't mean that an opposing party, who is suing you, you can't get access to that record.

Because what you have in litigation is discovery and for those of you who haven't been, you know, personally involved in litigation, um, a lot of things become available to the other party upon their request.

So during redistricting litigation, there can be extensive discovery and that means that legislators, consultants, staff and others may be required to do things like appear for a deposition.

And the reason $I$ put this picture on the slide is this is kind of what it looks like during a deposition. You sit at the other end of the table. You're under oath.

There's usually a video camera and a bunch of lawyers looking at you and you answer questions that they provide to you that you don't know in advance, and you're doing that under oath and it can be a fairly stressful situation.

You might also have to answer questions in writing under oath. Those are called interrogatories. And again, you might have to provide records to the other party. You typically do that before a deposition so they can ask you questions about the records.

And discovery can cost a lot of time and a lot of money and so that's a completely different scenario from an open records request.

If you have to provide records in a lawsuit, you may have to provide any records related to redistricting, regardless of where or how those records are stored.

Putting a record on your personal computer or texting a message about redistricting on your personal phone will not protect the record from disclosure, so keep that in mind.

And when you do provide records, you're generally going to be asked under oath if you have provided all of the responsive records and that would include things on your personal electronic devices.

So if we end up in litigation and there is a discovery request for redistricting records, there are some protections that we can claim to try to limit the amount of materials we have to provide to the other party and that's -- that's common procedure so that

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

you don't end up just providing mountains and mountains of information that may not be relevant to the issue at hand.

The North Dakota constitution says that members of the legislative assembly may not be questioned in any other place for any words that are used in any speech or debate in legislative proceedings and this kind of relates back to what we talked about earlier, where you have this legislative privilege that applies to your deliberations and has been extended by courts to include the records that are used in your decisionmaking process.

And so we would often be able to assert legislative privilege if there were a request for documents in a lawsuit.

There's an attorney client privilege that may be applicable if you are working with one of the attorneys on staff, however, for government attorneys, that privilege can be really weak.

We could claim that the documents are work product, protected as legislative council or attorney work product and there may be a confidentiality statute somewhere that would apply.

However, you have to keep in mind that the judge is going to be the one who's going to decide whether

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 121
or not those privileges or protections actually apply to the records at hand and a judge could certainly say that those protections are inapplicable.

So these privileges have limits. When a court is trying to determine whether one of those privileges or protections applies, they'll look to the words of the relevant statute or [inaudible] or definitions that other courts have provided for those privileges in the past.

And I provided one example up here that's been used in redistricting cases. So this test is to determine whether a record is protected by legislative privilege. And it consists of those five bullet points.

And a court would look at those five bullet points and say, okay, is this particular record going to be -- um, are these five bullet points going to weigh more in favor of producing the record to the other party or keeping it protected?

And as you can see, the first four bullet points out of those five, generally are going to favor producing that record. Um, and so a lot of times these tests that the courts use are going to result in one of your records being provided to the opposing party.

I wanted to give you some examples of past cases
too, to see what courts have said about some of these, um, discovery disputes.

And again, these are just a couple of examples that I'm going to go through. This is something that has been litigated a lot.

Um, but in this particular case, this is from the Supreme Court of Florida and the court basically said that yes, there is a legislative privilege and that is great, but making sure that redistricting complies with the constitution is more important than that legislative privilege.

So even though you have that privilege, it's been outweighed by the interest of, uh, voters and residents and having a constitutionally compliant redistricting map.

So in this particular case, the legislators had to provide their draft plans and supporting documents to the other party.

So even though under open records laws those documents would be considered exempt and you would not have to provide them to somebody who's asking for them under the open record statutes, it can very well turn out that a court would say in that litigation context those documents have to be provided to the plaintiffs who are challenging your map.

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

Page 123

Here's a -- another case. This is out of the Rocket Docket, which is the eastern district of Virginia. It's a federal court. Um, the federal court here required a consultant to provide evidence in a redistricting case.

Uh, the consultant was an independent contractor. He was paid by a political party. He was not somebody who was, um, you know, a legislative staff member, wasn't in a legislative, um, you know, uh, their version of the legislative council. It was a private consultant.

And even though those legislators had had conversations with that consultant outside of an open meeting and they had worked together on a map, the court said that the consultant was so involved that the consultant's documentation, um, that he had worked on with the legislators and his communications with the legislators were fair game and had to be provided to the opposing party.

And as you can imagine, that resulted in a lot of interesting headlines and, um, and reports that were being made to the public.

So one of the things that, when $I$ was in private practice, I used to always counsel my clients was don't put something in email unless you want to put it

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 124
in the Washington Post. And I think that's still applicable.

Um, you can see these emails were all made public in redistricting cases. So sometimes you can say, don't put things in emails, because they can be misconstrued and oftentimes emails can be misconstrued, because you take one snippet of a conversation and put it in a document.

The same is obviously true for text messages. However, sometimes you just maybe would say prudence is the better part of valor and maybe just not put some of these things in writing, because they just don't sound very good.

These are some headlines that have resulted in some of these cases where people have litigated whether or not certain documents should be made public or provided to the opposing party in litigation.

Um, again, you can come up with these in a few minutes of searching Google.

These are all over the place and when this is coming out in the papers on a daily basis during a redistricting committee's work, it's distracting, um, and it's obviously not something that is very pleasant for legislators and staff and the public to go through.

It can undermine the confidence in the redistricting process. And as everybody knows, this has become a much more public, uh, much more of a public interest issue in the past decade, so there's obviously a lot of scrutiny on what this committee is going to be doing.

So I wanted to put together a few best practices and on the left-hand side, you should see the word do. So at a recent conference, on speaker said the easiest way to stay out of legal trouble is to do the right thing.

And there's sometimes a question about what -what is that in this context? You want to comply with the law, but the law is complicated. Um, and the best thing to do is to identify what the lawful reasons for creating districts are and create districts for those reasons.

You want to document those reasons and the criteria that you use and the process you went through carefully so that you do have that record to support what you've done in case you are end up -- in case you do end up in litigation.

And try to have your conversations in person or on the phone, if possible, and that's to avoid misunderstandings or misinterpretations of snippets of
conversations that might end up in emails or text messages.

What you don't want to do is you don't want to create districts for unlawful reasons. You don't want to create a false record and because you're creating a document for an unlawful reason.

Um, you don't want to create -- you don't want to discuss creating districts for unlawful reasons, even if you don't plan on doing it or you don't end up doing it, don't discuss it.

Um, you don't want to create confusion or send messages that are subject to misinterpretation, because certainly that would end up as, you know, potentially an exhibit in litigation.

Similarly with jokes, those are often misunderstood. They're not -- you know, they may be improper. They may be okay, but just taken out of context. So really be careful about joking about improper or unlawful redistricting.

So with that, I'll be happy to take any questions. Again, that's just a very high-level overview of recordkeeping, but something to keep in mind as you go throughout this entire process.

CHAIRMAN DEVLIN: Questions for Claire? Senator Burckhard?

MR. BURCKHARD: Mr. Chairman, uh, Claire. So if we have questions, we can call your office, right? And you can guide us?

MS. NESS: Yes. Mr. Chairman and Senator Burckhard, yes, of course.

MR. BURCKHARD: Thank you.
CHAIRMAN DEVLIN: Representative Schauer.
MR. SCHAUER: Thank you, Mr. Chairman. The question $I$ have is how does the process work? Because right now, we're already being threatened to be sued. How does the lawsuit work?

Where does it? What -- what level of court? How is it handled and who ultimately makes the decision?

MS. NESS: Mr. Chairman and Representative Schauer, that depends on what the plaintiff -- where they file the suit.

So they could choose to go to a state court or a federal court and it would depend on who the plaintiffs are and what the issues are to decide -excuse me, to help the court determine whether or not they have jurisdiction.

So the answer to that question is it really depends on who is it, what are the issues they're claiming, and then the court will decide if they have jurisdiction. If that's something that we would

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 128
1 challenge.

The process would, presumably, if we are sued, go into, um, litigation mode where you would have attorneys filing motions on different issues back and forth. And those really can be any number of things.

There are, you know, dozens and dozens and dozens of types of motions that can be filed. So I hate to say the answer to your question is it really depends, but it -- it does. It can go any number of ways.

And that -- and at this point, there has not been any lawsuits filed.

CHAIRMAN DEVLIN: Representative Nathe.
MR. NATHE: Thank you, Mr. Chairman. Claire, when was the last time the state was sued?

MS. NESS: I think I'll defer to Emily. Emily, do you have that in your memo? I know we discuss it in the memo. I don't remember off the top of my head.

MS. THOMPSON: Uh, Mr. Chairman, Representative Nathe, I do believe we've touched on that in the memo. One moment. Let me refresh my memory.
[inaudible]
MS. THOMPSON: Well, we have someone that recalls that directly [inaudible] our director, 1991. Yeah.

MR. BJORNSON: Nineteen. Mr. Chairman, uh, members of the committee, John Bjornson, legislative

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 129
council. Um, we were briefly engaged in a -- a litigation in 1991, uh, that, uh, was dismissed almost immediately by the federal district court.

But, uh, the, uh, the claim was -- or the wish was, of the plaintiffs, to connect the Standing Rock and the three affiliated tribes into one district by using the river as a, uh, uh, a line to connect the two -- two tribal entities. And the -- the, it, uh, did not make it very far.

CHAIRMAN DEVLIN: Senator Klein.
MR. KLEIN: So, Mr. Chairman, um, and Claire, do we -- is -- is litigation begin at any point or is it after the legislature has finally condoned and voted and passed the bill?

Because, um, certainly a work in progress, uh, as some of us who have just looked at a couple of districts and it's just pushing all over, but eventually we've got to get it down to where the entire body is going to give us a thumbs up or a thumbs down.

When -- when - -can this process start at any point where somebody may feel that they haven't been in -- I suppose involved in the process properly? Or can you shed some light on that?

MS. NESS: Sure, Mr. Chairman and Senator Klein.

1 Um, I think Mr. Williams pointed out that the -- there have been a couple of lawsuits already. A plaintiff can file a lawsuit at any time.

Um, but you can also -- a court will decide whether it's right. Um, you can file motions, you know, about that issue too and rightness will depend on several factors. But, um, I would imagine that the -- the vast majority of the cases are filed once a plan has been adopted.

But that doesn't mean that a plaintiff can't file a lawsuit at another point in this process.

CHAIRMAN DEVLIN: Further questions? Thank you, Claire. Who gets to do the Maptitude demonstration? Emily?

MS. THOMPSON: Thank you, Mr. Chairman. Um, up now on our agenda, what we're going to do for you is just give you kind of a high-level overview of the Maptitude for Redistricting software that, um, legislative council has purchased.

Uh, I mentioned briefly in our -- uh, my last presentation that, um, in the last redistricting cycle the, uh, staff and committee members also use this same Maptitude software, so some of you might be familiar with this.

But for those of you that are not and for just

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 131
members of the public in general to get an idea of what this software looks like and some of its functions, I'm just going to briefly go over and show you some, um, highlights of the software.

So again, this is Maptitude for Redistricting, and what it allows you to do is draw plans or draw new legislative district maps.

And as I mentioned before, um, sometimes states will use, um, as part of their consideration, preserving those core district boundaries, uh, Representative -- or excuse me, Mr. Williams touched on that, um, as well.

So that's one thing that legislators can keep in mind when they're drawing maps is whether you want to start from a blank map and just a clean slate, draw all new boundaries, or do you want to look at all at preserving those, uh, core districts and start with possibly the current boundaries and then just modify that by population.

So here you can see we have, um, two items listed here. We have a blank map, or a template.

Um, just for demonstration purposes, I'm going to start with a blank map just to show you some features and then we can look at what a template of the current legislative line map looks like.

I'll just open that here. Yes.
MALE 1: Sorry, Mr. Chairman. I'm -- Senator Burckhard, missed the last meeting, so I'm giving the computer to do this, but when I bring up the plan manager, I have Brad Plan 1 and Brad Plan 2 in there. I don't see a new category.

How do we get to a new so he can start over?
MS. THOMPSON: Uh, yes. Um, we can do new maps from templates. Um, and I can, uh, come through and help you generate new maps.

Um, right now I just had -- I just went ahead and preloaded, um, just a blank map and a 2010 map just so -- a kind of walkthrough of the demonstration. But yeah, I can stop over, um, and do the new map templates.

MALE 1: Sorry, are you under the plans manager under plans or libraries? Which [inaudible]?

MS. THOMPSON: Um, it's plan manager, plans.
MALE 1: Okay.
MS. THOMPSON: And then you'd want to make sure you've selected the right library from the drop down under plan manager.

MALE 1: Okay, thank you.
MS. THOMPSON: Mm-hmm. So when we pull up, um, a blank map, this is kind of the view that you'll be
looking at and you'll have certain kind of popup features that allow you to draw your map, uh, here.

Go ahead and drag -- zoom in a little bit. So in this map, you can tell it looks kind of busy. There's a lot of different features on here. You can see all of these, um, blue lines. Those are the county boundaries.

So you can get a sense of where all your county lines are. Also, you'll see a lot of kind of little purple dots here and if $I$ zoom in on that, you can see that this is showing you where all your city boundaries are.

So here you can see the outline of, in this case, Minot. I zoom in a little more.

MALE 2: Woohoo. Oh, excuse me.
MS. THOMPSON: Oh, shout out to Minot. So this is a way for the map to kind of help you if you're saying, you know, I want to keep these political subdivision boundaries together. I want to try to keep these counties whole or I want to try not to split up these cities.

Or maybe I want to look at, you know, townships. You can see Burt, North Dakota right here is, um, a township and then you can see that light gray boundary if I -- I zoom in there.

And so this is just, um, they're called kind of layers that you add to your map and you can see over here you have a list on the far-left hand side of all these different options. So you can make your map more or less busy depending on your preferences.

So, in this case, let's say I would uncheck the city town feature. You can see I lose that purple outline of Minot. You can't see it anymore. It doesn't look as, um, busy. But if you want to use it, you can turn that back on.

So that's a little bit of the functionality of the software.

MR. BELLEW: Mr. Chairman, can I ask Emily a question? It's --

MS. THOMPSON: Yes.
CHAIRMAN DEVLIN: [Inaudible] Bellew, I'm sorry.
MR. BELLEW: Thank you, Mr. Chairman, and Emily, uh, you have the townships there and you have the population of the townships. Uh, are the cities populations separate in that township?

Like Burlington is Burlington Township and Burlington town? Or do you have two separate populations there?

MS. THOMPSON: Uh, yes, Mr. Chairman and Representative Bellew.

MR. BELLEW: Because I -- I don't see it, so.
MS. THOMPSON: Yeah. If I zoom in a little more, you can see, uh, Minot here. The new population for 2020 is 48,377 people there. But if you're looking at this, um, Nedrose Township, this 2334 people.

The township would be classified as any area that's outside the city limits. So they wouldn't be layered or combined. That's a distinct separate population.

And the reason it's nice to kind of have these little population summaries is that when you're going through and you're adding areas, you can kind of get an idea of if you click on $a$ county or if you click on a city, how much is that going to add to your total?

And the way you kind of track your total, they also have this handy pending changes view here. So what I'm going to do to demonstrate this feature is I'm just going to go ahead and just mock draw a county so you can see what that looks like.

So I'm going to zoom back out. Drag this. Takes a minute to load, so you'll have to bear with me. So here we have Richland County and I mentioned earlier that our ideal district population is 16,576 people now that we're taking into account those new 2020 figures.

So in this case, I can see, you know, hey, Richland County, 16,529 . That's almost spot on with what our ideal district size is now. So if $I$ wanted to just say, okay, we're just going to start and say Richland's the first district that we're drawing if we're using those 47.

So I'd want to make sure this said new district and I want to select by county. You can select by big chunks at a time or little chunks at a time, like such as a city or a -- a census block. I know I want this whole county, so to save myself some time, I'm just going to select by county.

Use my little pointer tool. And then when I click on Richland County, you can see it turns this whole county read and it's also going to add up how many people I have in the county.

Uh, and this pending changes, I know it's a little small on your screen there. I wish I could blow it up, but $I$ don't think $I$ can. Um, it has kind of a -- a rolling tally of this new district that I'm creating.

So right now, in my new district, the population is 16,529 .

MR. BELLEW: I have a -- I have another question, Mr. Chairman.

MS. THOMPSON: Yes.
CHAIRMAN DEVLIN: Representative Bellew.
MR. BELLEW: Thank you, Emily. Okay, Richland County is one of those counties where an Indian reservation is in two different counties and if we wanted to try to keep the Indian reservation whole, um, either we'd have to stick it in to Richland County or to the county over.

Um, I guess that's one of the reason why I was asking for the population of the Indian reservations and how to do that, so -- are you understanding what I'm trying to -- thank you. You're so good.

MS. THOMPSON: I do. Uh, Mr. Chairman and Representative Bellew, and that's something the committee will have to kind of work through as part of its policy decision, if it wants to split the county. If it's looking more to retain, um, the reservation area on the north side of, you know, the South Dakota, North Dakota border, and, you know, that, again, as Mr. Williams mentioned, it's -- it's kind of like a domino effect once you start drawing maps.

So, you know, what he said, I think, one state starts from one side of -- or yeah, one side of the state and then just kind of draws out. It's going to

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021Page 138
really depend on what are your neighboring districts look like?

If you're going to have to split a county, you know, are you going to have to creep into another county and split another county? It's that domino effect.

So as you start developing maps, you'll have these little tabulations that are also, um, that's a -- that's a good point to kind of mention right here. You'll have, uh, factors that you can track while you're making these districts, in addition to just the population.

So, for instance, here you can see, you know, what percentage of this area is, um, Native American, if you want to kind of look at those population totals. And we built that in as a factor so you can see, when you're making these districts.

So in this case, you can see in, um, Richland County, the, uh, portion of that 16,529 people who are classified as American Indian in the census is 467, and you can see what percent of that district is made up of that population.

So that's, again, all just this great information this tool provides you, so you can take all these factors into consideration when you're drawing based
on how you --
MR. BELLEW: Uh, Mr. Chairman, if I might. Uh, that just tells you the amount of -- of American Indians in that county. That doesn't tell you the amount that's on the reservation. Is that not correct?

MS. THOMPSON: That is correct, uh, Mr. Chairman and Representative Bellew. That is measuring -- right now, it's measuring the number of, um, American Indians in that area that you've selected. In that red area that you've selected.

If $I$ went in and selected a little chunk of Sargent County to the neighboring side and turn that red, this population tally would change. The number of American Indians in the red area would be tracked.

So that's kind of what it's showing you there.
MALE 3: Emily, isn't it also true though that you can -- if he wants to find out about the American Indian, you have that on there and all you have to do is push that, take off the red, push that and it'll tell you there's 205 people that are in that reservation? Yeah.

MALE 4: Mr. Chairman, I was going to say the same thing. So if you just go in and click on the layer, which is, um, right now on new districts on this one, but if $I$ just click on, um, or not -- no,

1 I'm sorry, the county.

If I click on the county layer and bring up
Indian reservation and then if I bring my pointer down to Fort Berthold, it'll populate the population of Fort Berthold or the -- the reservation population into that little box on the side, won't it?

MS. THOMPSON: And that's correct.
MALE 4: Because that's what he's trying to get to?

MS. THOMPSON: Yeah, and I can show you that quickly. If, let's say $I$ don't want to select by county, so I want to select by, um, we have an option that dropped down that says Indian reservation.

So then if I use my pointer tool, and you see -you can kind of see here this light beige area. Those on the maps, on that beige area you can see in your little, uh, list over here, Indian reservation.

It's kind of a tan color. Anywhere you see kind of a tan area on the map indicates that there's an Indian reservation in that area. So then if you used your pointer tool and you clicked on that, you can see it only highlights the portion of the reservation that's actually in North Dakota.

So we're not looking at the total population. And so in this case, you can see the population of the

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 141

Indian reservation that we've just clicked on is 206 people. And so that will kind of help you track that way too. That --

And as you're clicking through, if you decide, well, I don't want to do based on reservation, I just want to do on county, you kind of just click red, click white, turn them on and off.

So for just demonstration purposes, I'll go back to, um, a county level, just because the population is so nice and tidy in Richland County, and show you what it looks like when you, um, actually decide you want to kind of finalize that as a district.

So I just click this little green checkmark and then it's going to want me to number the district. I'll just put one for demonstration purposes. That'll be our first of 47 districts.

And you can see this turns green and then it adds a district one information bar at the top of your screen there. And so then you can see the total population of that district, um, the deviation from your ideal population.

Uh, you can see here, um, we're only 47 people short from ideal in Richland County, that's how close it is.

I also mentioned earlier, um, in my presentation

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 142
the overall range where you take the most populous county and then the least populous county and you take that deviation percentage and you add them together, disregarding the plus and minus signs.

So here, in the percent deviation, which is very hard for you to see, it says negative 0.28 percent. And so it -- let's assume that, uh, this is the closest you're going to get.

Um, if you had another county that was maybe a one percent deviation and those were your highest and lowest population counties, your total deviation would be 1.28 percent.

You would add the biggest population county, the littlest population county, add those two deviation numbers together and that's how you know you are kind of within a, you know, a more acceptable range. You're hitting that benchmark of 10 percent or less.

So next, just to kind of, again, demonstrate some of these features, we'll go ahead and add another district. And again, for demonstration purposes, I'm just picking kind of the -- the easy math population counties that would add up to the number we're shooting for here.

The ideal district size. So in this case, if I clicked on Barnes, Griggs and Foster, you can see in
my little pending changes box, my red area pending changes box, that, um, we're very close to the ideal district size.

Or excuse me, clicked on the wrong one here.
[inaudible] over the ideal district size. Um. There we go. [inaudible] quite high. Oh, let's see. Actually, I'll probably use a different example.

Actually, I think I'll -- in this one, I'll show how to split a county, just so you get an idea for the tools of how to select by a smaller layer.

So in this case, let's use Stutzman County. The new population is 21,000 people, so that's way over your ideal district size of 16,000 . So in this case, you would essentially, more or less, have to split a district -- or excuse me, a county to get to the ideal district size.

So if you wanted to, for instance, um, make -let me zoom in here. Jamestown, if you wanted to preserve the boundaries of Jamestown, you could take that out of the area you're looking at and possibly make that its own district.

Now you see if I change this selection layer to city town, you can select the entirety of Jamestown at one time and then you can see on your pending changes, you know, what that -- that gets you up to.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 144

When you're all done and you've decided you -you like your second district, it's within the population range, again, you would just -- this little green checkmark and then you could see, uh, what your district looks like.

I think it might have added it to -- oh, one moment. We added it. Forgot to select a new target. Select a new target there. Um, when you're drawing a second district, you have to select that you're doing a new district.

Forgot to click that button. But now we have Jamestown and now when I click that checkmark, I'll label it as district two. Apologies there. So now you have district two and you can see that loaded on your little taskbar kind of summary sheet up here.

You have district one and you have district two. You can see the percent deviation, um, if just using Jamestown as a district is -4.39 or 727 people short. So that's within that, you know, acceptable deviation range of -- about 5 percent is kind of what you're shooting for.

So that's a -- I guess just a high-level summary of what this looks like. I'm going to go ahead and close this and just quickly open, um, a map that already has all of the existing districts on it.

So if the committee decided, you know, one of the factors we want to look at is preserving core districts to the extent possible. If you wanted, you could start with the, uh, existing map.

You can see that here. So this map has an additional layer, in addition to all those county boundaries and those purple city boundaries. It has all these yellow lines right here, which are your existing legislative districts.

But it also factors in, well, what's the new 2020 population in those existing districts? And it gives you these little markers here so you can see, you know, district two grew substantially. It's 78.7 percent over the ideal district size now with the population change.
Um, you can also see this same -- essentially this same picture in your, uh, census population memo that Sam presented. The very last page has the same kind of picture of all the districts with that current deviation based on the new population.

And so, in this case, instead of, you know, creating a new district, you would select this existing district and then either kind of steal area from the neighboring district or subtract area out. You would just be essentially modifying the

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

1 boundaries.

So I think that covers the basic features. Um, I'm going to turn it over to Claire now and she's going to touch on, um, the reports that you can generate using this software. And I'll [inaudible].

MS. NESS: Thanks, Emily. So Maptitude actually has dozens of types of reports that you can generate. Um, you probably will not use most of them, but I'll show you an example of, um, what these reports look like.

So here, I know some of the writing is really tiny when you blow it up on the screen, but what it basically does, is it says this is a population summary report. So the type of the report is at the top and then you can see that I selected three different districts.

And these were based on 2020 -- or excuse me, 2010 data. So these would not necessarily reflect what's going on today. And then I identified, um, not only the population of those different districts, but also different characteristics of those districts.

So in this case, I looked at different races and the population of individuals over 18. Again, I wish you could see it better on the slide, but basically those -- yeah. There we go. If you can see that a

1 little bit better.

Um, and so you can see that for each district, it shows you those numbers. And then at the bottom, it has a bunch of other statistics that it just runs automatically. So I'll -- this is what a summary report -- a population summary report will look like.

I'll go back to the redistricting software here and show you how we get there. So you just go up to your redistricting window and then you would go down to reports. And then all of these, in this window here, are all of the different types of reports you can run.

Now, I didn't select any areas in the map, so if I select one of these types of reports, um, so we could do a population summary report. I can do all the districts or all except for the unassigned, which is, in this case, the same thing.

So it would be all the districts and then I would hit the run tab. When $I$ hit the run tab, then you would get a report generated that looks like the one I just showed you and it would include all of the 47 districts, because that's what I've reported on.

Now, for the really tricky part, I'm going to see if $I$ can get it to do a report on a selection. So this is, um, you won't be able to see it well, but we can
always do this for you or we can walk you through it.
You have a little icon up here that looks like a funnel, essentially, and it takes you to this box that says district selection and you click one of these icons. And then you want to go ahead and -- I'll just click a county to make it easy.

And then that is now going to be -- oops. Oh, okay, it wants to give me this county instead. So that is my selection. And so then, just for example purposes, you still go back to redistricting at the top menu.

You run down to reports and then you choose the type of report you want to run and then here, in the report on button, there will be an option for selection. And again, $I$ know that's a few different steps.

We can create a document that kind of shows you how to do it. We're happy to answer questions, walk you through it, do it for you. I just want to show you that it is possible, then, to choose a selection on your map.

And instead of running the report for all 47 districts, you can do it for one or two districts or counties or whatever the layer is that you have selected. And then you just hit run and that report

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 149
will come up for that selected part of the state. Are there any questions?

CHAIRMAN DEVLIN: Committee members, I will tell you from personal experience that the three people sitting here from legislative council can provide you all the expertise you want.

Just schedule some time with them if you want to come out and discuss a concept for your area or whatever. You know, obviously they can't take all of us in one day, so $I$ would ask that -- well, some of them might take a little longer, Representative Bellew, than you would.

So I -- that's why, you know, I want to give them -- I want to give them a little extra time there. But you know, just -- yeah -- yeah.

So give them a heads up and ask what will work out and they're very good to work with and I'm convinced the, uh, documentation plans that they've come up with should be used nationwide, because they are really, really good.

So anyway, I just wanted -- I mean, it's there for members of this committee. Call them, schedule it and let them work with you.

And I know new people have the computers today and I know that these -- these three people and others
of legislative council will be glad to help you with them any way possible. They work very good, but I did have to come out to do it.

It was a lot easier for them to have me in front of them than trying to explain it to me over the phone. You can understand that Representative Bellew? Okay. Thank you.

Okay, are we -- we're done with that? Okay.
MS. NESS: Mr. Chairman, if I might, um, just mention, the committee, uh, does have that select number of actual laptops with this software on it, but that doesn't mean there aren't other tools available for other individuals to be able to kind of see and draw maps.

I know it was mentioned in 2011, uh, Dave's Redistricting. If you just Google Dave's Redistricting, you get kind of a similar thing where you can draw maps and kind of see different ideas for districts.

And so for those members of the public that might think, well, I don't have access to this software and these fancy computers, there is another tool that's more publicly available, um, online.

CHAIRMAN DEVLIN: Thank you. Um, we have -- I think we have time, as we will at every meeting that

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 151
we have before we get into some, uh, um, future planning, for comments from the general public.

And there is letters here from the, uh, um, two different -- two different groups. Uh, uh, secretary of League of Women Voters of North Dakota and the, uh, North Dakota's Voter's First group and I know that there's several groups working together on this.

And that is here in writing in your committee. Please take it and read it and study what they have to say. Is -- is there anyone else here in the public today?

I know this is just the initial meeting that has something that they want to say today? Otherwise we'll move on. Let's -- you've got like this too? Yeah. Yeah. Did you get one?
[202108260956_Redistricting Committee_21573 pt4]

CHAIRMAN DEVLIN: -- one? [inaudible]
MR. PURDUE: Chairman Devlin, members of the committee, thank you for the opportunity to testify today. My name is Matt Purdue. I'm testifying on behalf of North Dakota Farmer's Union.

NDFU recognizes the challenging task before the committee and we appreciate this opportunity and

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 152
future opportunities to provide input.
Uh, NDFU's member-driven policy and action states three basic principles that we feel ought to be followed in the redistricting process.

Those principles that districts should cross as few county lines as possible, seek to retain communities of common interest within district boundaries and give geographical balance to our legislature.

NDFU is particularly concerned by the loss of rural representation, uh, through the redistricting process. Um, obviously you all have seen the map. We've had pretty significant growth.

Uh, the state's population as a whole. But we've had 30 counties who have lost or that have lost population. And so we are concerned that as the, uh, state's population gravitates towards urban areas, um, a couple key dynamics will impact rural voters.

First, we will have some areas of the state where districts become much, much larger. Um, our members are concerned that the larger the district gets, the less they have an opportunity to directly interact with their elected officials.

The other dynamic is that members or -- or, uh, citizens of North Dakota who currently live in

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 153
primarily rural districts will find themselves living in districts that are urban, rural split.

And that's a concern for many of our members who feel, especially if the rural population is in a minority there, that their concerns will be, uh, drowned out, uh, really, by the urban constituents.

We feel that one of the, uh, ways to address this issue, particularly in those two situations that I highlighted, is to consider or explore possibilities to subdivide districts for purposes of house representation.

Uh, North Dakota is one of only 10 states that currently uses multi-member districts, uh, and we feel that single member house districts, um, may provide more geographic bounds to our legislature and better retain communities of common interest within those boundaries.

Uh, so with that, uh, again, we would encourage the committee to explore that as a possibility. Uh, appreciate the opportunity to testify today. Uh, and you may see I -- I reference regional meetings.

I realize I may have jumped the gun on that, uh, but we do think that -- that regional opportunity to provide input is really important to this process. So thank you and I will stand for any questions.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

CHAIRMAN DEVLIN: Any questions? Senator Klein?
MR. KLEIN: Mr. Chairman and Matt and I think -am I not clear that today's meeting is everywhere? That anyone can participate today?

I guess we haven't talked about that much, but what we've done with all this technology has provided an opportunity for people from every corner of the state not having to drive to any particular community. Uh, your members are aware of that, I hope? MR. PURDUE: Mr. Chairman, Senator Klein, uh, yes, they certainly are aware of that. Um, I think, as you all recognize and as we learned through the pandemic, there are a lot of ways that we can stay connected virtually.

I think that there's also a lot of value in being able to have that face-to-face interaction. So yes, our members do appreciate that, uh, the virtual opportunities are available. Uh, we also see, uh, value in, uh, regional opportunities to engage face-to-face. Thank you.

CHAIRMAN DEVLIN: Thank you. Representative Boschee.

MR. BOSCHEE: Thank you, Mr. Chairman. I think just to point out, though, Senator Klein's comment is that people can observe, but we don't have the
capabilities right now for people to engage or to communicate back with us.

Uh, so you know, for instance, the folks -- uh, Mr. Purdue, who is here, had to come here to testify. He wasn't able to testify virtually.

MS. NESS: Uh, Mr. Chairman, members of the committee. Today, uh, our meeting was live streamed. Um, we have a Teams option right now for committee members only or the presenters that are actually scheduled.

So for instance, if Mr. Williams wouldn't have been able to fly in today, he was one of our scheduled presenters that the committee had specifically requested present in front of it.

So he would have, uh, been able to receive a Teams link that we've used in interim committees. I also mentioned at the outset those rules of procedure that the committee follows.

Again, in-person, uh, attendance is encouraged by committee members, but if a committee member is ill or has some other reasons, they can receive a Teams link.

Um, at this time, uh, the committee, uh, was not set up for -- today for members of the public to interact via Teams, kind of like they did during the legislative session. It's just a live stream only.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 156

Uh, however, you know, individuals that contacted me about participating in the committee, uh, I always let them know that they can provide written testimony if they don't wish to appear in person and, um, that testimony would be distributed by our staff if that was their option.

So at this time, we don't have that -- this meeting was not set up for Teams for individuals from the public to participate, but that is something that could be at the discretion of the committee at -- at a later date, they want to allow Teams participation from the public.

CHAIRMAN DEVLIN: Okay, committee. Let's -- let's talk a little bit about -- I mean, I, you know, at least the people in the session know that I spent my whole life in the newspaper business, but I thought when we just got done with the legislative session, we'd -- half million people in the state participated in the legislative process from a distance and I suspect that we're going to be able to do that as we go through this as well.

Um, you know, the question is whether you need to have meetings all the way across the state and I guess the committee has to decide that. You know.

Um, we did, in the past, it wasn't always very

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

well attended, but we did -- but we didn't have the virtual options that we have today.

And, um, you know, if -- if the committee thinks we have to go outside the Bismarck [inaudible] some areas, then we may need to make that decision now, because the legislative council, it takes them two hours to go out -- or two hours to set up all of the electronic equipment when they get to, let's say they have it in Finley, a major hub, Representative Bellew.

So two hours when they set it up in Finley and another two hours to take it down, plus the time they're there. So it is -- you know, because we're doing it virtually across the state, it isn't an easy thing to do and we want to make sure anybody in the state can see everything we do.

And we'll have to work through the questions as well, but, you know, what is your -- what are your thoughts? I mean, I need to know. What are your thoughts about going out or can we run it the way we did the legislative session or is there one or two places you want to go?

Um, Representative Bellew.
MR. BELLEW: Thank you, Mr. Chairman. I -- I guess from a personal standpoint I would just as soon that we have them here in Bismarck and somehow allow
the public, if necessary, like we did during the session in our committees.

You know, it's, um, beamed out to them or whatever is done, but, uh, the -- the public, if I remember right, could, uh, do -- do testimony, uh, right at the first part of the committee meeting and then -- then we would conduct our meeting or something similar to that. So.

CHAIRMAN DEVLIN: Representative Schauer.
MR. SCHAUER: Hey, Mr. Chairman. I have no problems with going virtual, although I think we should go to Cass County live at one particular point. At 25 percent of the population, I think it's wise for us to get out in that part of the state.

CHAIRMAN DEVLIN: Senator Klein.
MR. KLEIN: Uh, Mr. Chairman, any recollection of what happened 10 years ago. I know it was Fargo and Devil's Lake. I think those were the only -- and we had a -- and we had three more months or four more months to -- to work on it.

I know we're up against a -- kind of a narrow time window, but, uh, I guess I understand the Fargo thing, um, certainly, but if -- as Representative Bellew said, uh, if -- if you notify staff with testimony and we can set you up just like we did in --

# Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 

Page 159
1 in the committees, that from wherever you are, you can provide your testimony live, we -- we can do that yet, even after a session?

Right, Kim?
MR. KOPPELMAN: That is correct.
MR. KLEIN: I guess we went to two communities last time and I get the Fargo thing, but, uh, I know it does create additional time and expense for the council and -- and their -- their folks, but maybe they want to go to Fargo shopping or something.

CHAIRMAN DEVLIN: No. Representative Nathe?
MR. NATHE: Thank you, Mr. Chairman. Again, I -I wouldn't have a problem or anything with Fargo, but just a little historical perspective, 10 years ago, as Senator Klein said, we had meetings in Devil's Lake and -- and Fargo and probably the number -- the total number of public that attended both those meetings probably wasn't two dozen.

I remember up in Devil's Lake, I think it was three or four. That was it.

We all drove from all over the state, took our time off. I mean, again, I think with what we have now with the electronic means and Zoom and everything else, uh, I think we can reach far more people if we do something along these lines.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

But again, I have no problem with Fargo. I think, uh, Representative Schauer makes a good case for that. Um, we had it at NDSU at the Alumni Center, and again, maybe a handful of people.

I mean, you know, so I'd be interested to see how many people are watching today. It'd be interesting to see that. I bet there's far more people today watching, so -- because it's more accessible than 10 years ago we didn't have Zoom. So.

CHAIRMAN DEVLIN: Representative Boschee.
MR. BOSCHEE: Thank you, Mr. Chairman.
Um, well, I can certainly appreciate what's been said about, uh, you know, people have more access in terms of beaming in from wherever they are and if we can set up processes for them to testify from wherever they're at, uh, we have to remember that this is a once in every 10 -year process.

And so while there may be some inconveniences to us or to our staff and the great work they do, um, I do think we should make an effort to have conversations with communities that are going to be -especially those that are going to be negatively impacted.

And we can define that differently. It could be Cass County because they've grown -- we've grown so

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 161
much. It could be rural community or communities, because they're going to get, in some cases, twice as big as they currently are.

Um, so, um, while I understand that we have the technology and the ability for people to participate, um, I think we should try to make every effort to connect with communities, also recognizing we only have two months to do this work.

But it is a once in an every 10 -year process that we do this.

CHAIRMAN DEVLIN: Representative Boschee, as you well know, it was a lot easier when we started at the end of April and could go well into the fall [inaudible].

And the other thing that has come up, it didn't come up in this conversation, but had come up earlier today when somebody asked me a question that was tribal input.

And right now what we're doing is the tribal relations committee is meeting with every tribe in the state this month and they are -- redistricting is one of the things they're talking with the tribes about.

And then it's my intent, when that is completed here, to allow the tribes to present either virtually or in person so the committee has an opportunity to
hear from each of the tribes as well.
So I mean, I think that is being done very well
with the tribal relations committee and I praise
leadership for making that happen and, uh, we will
have full input from every tribe that wishes to participate. So.

MS. OBAN: Mr. Chairman?
CHAIRMAN DEVLIN: Representative -- Senator Oban. MS. OBAN: Uh, assuming most of our work likely will be done, um, by providing access virtually, no matter where we're meeting, um, has there been thoughts by legislative council on how to make any maps we discuss as a, um, as a committee available to the public while we're -- while we're talking about it?

Just as a bill draft would be available, um, online to look at while we were discussing during session?

MS. NESS: Um, Chairman Devlin, uh, Senator Oban, uh, yes, the maps, uh, last, uh, go around in 2011 were all linked to the minutes.

Now we obviously have the technology to broadcast things right on the overhead if we're doing a Teams meeting, livestream, everyone can pretty much be right in the room with you.

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 163

And that's something, um, just like, uh, memos or bill drafts, how we link those to the agenda, maps could easily be linked to the agenda beforehand if -if you wanted to use that option.

CHAIRMAN DEVLIN: 326 today. So probably ten times what we had, easy. Uh, what -- was there someone else from the general public that meant to talk that I missed? Sorry about that. Okay.

MS. BROWN: Is this on? Okay. Uh, good afternoon, Chairman Devlin and members of the redistricting committee. Uh, thank you for having me here or allowing me this time.

I am here with Nicole Donaghi of, uh, North Dakota Native Vote and, um, as -- my name is Collette Brown. Um, I'm the gaming commission executive director for the Spirit Lake Casino and Resort and I'm here to speak on behalf of the Spirit Lake Nation and give some testimony.

The Spirit Lake Nation is a federally recognized tribe located in the state of North Dakota with enrolled membership of 7559 members as of January 2021.

According to the American Community survey, there are almost 4000 Native Americans currently living on our reservation in North Dakota. Spirit Lake is a
sovereign governed nation by its tribal council.
Tribal operations include schools from elementary through community college, radio stations, a resort and casino, to name a few.

The tribe, in its operations, are major economic drivers in the greater Devil's Lake area, providing jobs and opportunities for many North Dakotans and tribal members. I'm here to advocate on behalf of the tribe and it's members for fair and legal voting systems.

For the tribe's communities be considered a community of interest that should not be split into multiple legislative districts.

For the use of single member districts to elect representatives to the state of house and to demand that the North Dakota redistricting committee listen to tribal input and hold district meetings and tribal consultations on reservations.

But as you guy were just discussing, it's probably something maybe we guys could set up with, um, a virtual invite to each tribe? Uh, tribes across the nation have had to fight for their right to vote and the Spirit Lake Nation has been at that forefront of that fight.

In 2000, the United States sued Benson County due
to the county's at large electoral system, which diluted the voting power of Spirit Lake's members in violation of their voting rights.

To settle the case, the county entered into a consent decree, agreeing to abolish the at large system and adopt five single member districts with at least two Native American minority or majority districts.

Despite entering into the consent decree, Benson County has gone back into implementing an at large election system.

As the Native American population has increased in Benson County and every census since at least 1990, this election system must be reviewed to ensure that it complies with the Voting Rights Act.

In 2016, the tribe, on behalf of its members, sued the North Dakota Secretary of State over the state's illegal voter identification requirements that would make it impossible for many tribal members to vote.

In 2020, the parties entered into a mutual agreed upon consent decree that will allow for the recognition of tribal IDs and allow tribal voters to identify their residence on a map due to many tribal members lacking a physical street address.

The right to vote is a fundamental right in our democracy and Spirit Lake will vigorously defend that right of its members. As the state of North Dakota undertakes its redistricting process, the legislature should take several steps first.

It is critical that the legislative comply with the Voting Rights Act. This includes moving away from the at-large districts for the state of house representatives, which may have dilutive effect on a minority votes.

Where there are tribal communities such as Spirit Lake, the legislators should carefully analyze whether there should be a single member house districts to ensure tribal communities have equitable representation.

Failure to draw a single member house district can dilute the need to vote and may violate the Voting Rights Act.

Second, a community of interest should -standard -- standards should be utilized in redistricting, which can take into consideration communities that have similar language, culture, economics and identity to keep those communities together with legislative districts.

Spirit Lake and its communities are a community
of interest and should remain in a single legislative district. Splitting the reservation and our communities into multiple districts would dilute the ability of tribal members to elect a representative of their choice.

Third, even though the redistricting schedule is abbreviated, there is no excuse for failing to consult with tribes and take tribal input into account in redistricting process.

Many other states have already begun -- begun holding redistricting hearings to get feedback directly from citizens and tribal governments. This process is far too important to ignore the perspective of tribal communities.

I thank the committee's -- the members of the committee for your consideration on these important issues and I'm happy to address any questions with Nicole.

CHAIRMAN DEVLIN: Questions from the committee? Oh, Senator Holmberg isn't here and he's obviously been doing this a little longer than -- than some of the rest of us, but it has been one of our standards, ever since $I$ was involved, that we do not split a reservation.

MS. BROWN: Thank you.

CHAIRMAN DEVLIN: You know, that just is -- does not happen in North Dakota. Um, I believe that the, uh, that the, uh, legislative meeting with -- that your tribe is scheduled for next week.

I'm not on that committee, but $I$ think that it is, but we will still want to have a meeting with Spirit Lake Nation as part of, you know, when we reach out to all the tribes. So we will do everything we can to have input from the tribes so we do not split a reservation in North Dakota.

That does not happen.
MS. BROWN: Thank you, Chairman. And our meeting is set for September 1.

CHAIRMAN DEVLIN: Oh, okay. Thank you.
MS. BROWN: Thank you.
CHAIRMAN DEVLIN: Thank you. I guess that was it. So is there anyone else today that I missed? I apologize, I didn't see the representatives from Spirit Lake to speak. Me.

MR. DAVIS: Hello, uh, Chairman, committee members. I'm Nathan Davis. I'm the new executive director [inaudible] affairs and $I$ just wanted to, uh, go on record to something that you just stated, uh, Chairman.

Uh, last week, we were up in the Turtle Mountains

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

with the tribal state relations committee. Uh, next week we'll be in MHA on the 31st and Spirit Lake on the 1st. So I think maybe these are some topics of discussion we can, uh, engage with tribal nations on. Tribal leaders.

Uh, we are still tentatively setting a date for, uh, the Standing Rock Sioux tribe and I think it would be a great first step to kind of begin these discussions with tribal leaders and, um, I can set up any -- any correspondence, any meetings that we may need to follow up on what the committee -- and I just want you to know my office will be -- will be available to assist in those endeavors.

So I just wanted to go on the record and let you all know.

CHAIRMAN DEVLIN: And we appreciate that. I mean, it was -- that was very important to us, that the tribal relations committee reach out to each tribe in the state and start that process and then we will probably work with your office when we want to have each tribe have an opportunity to -- to testify of this committee.

Whatever works best for them, virtually or in person, but we will work through your office to do that.

MR. DAVIS: Okay, thank you, Chairman. Committee members, $I$ just want to, once again, go on the record and say we will be available --

CHAIRMAN DEVLIN: Yeah.
MR. DAVIS: -- to assist and if there's any, uh, comments or concerns I may be able to answer now, I guess I'll feel free to take any questions that you may have in regards to tribal relations or, uh, setting up future, uh, consultation.

If not, I just wanted to pop in real quick. I know I'm on a call with Chairman Yankton as we speak right now, on some other issues. So he apologized for not being able to be here. Um, but if there's anything else, I guess I'll take my leave.

CHAIRMAN DEVLIN: Thank you.
MR. DAVIS: Yeah. Thank you.
CHAIRMAN DEVLIN: Senator Holmberg?
MR. HOLMBERG: Mr. Chairman. Uh, one of the things, as you -- as you go forth, which we have done in the past, is to put parameters around what we're doing so that we don't have, uh, Senator Klein over there working on his master plan of 54 districts and someone else doing 42 districts and someone else.

So I would like to make a motion and see what the -- the, um, feeling of this committee is like and you

## Charles Walen, et al. vs Doug Burgum, et al. <br> Committee Meeting on 08/26/2021

Page 171
know all the arguments. You can say, you know, growing government, not growing government, increasing, uh, access to legislators.

I would make a motion that we, uh, go forward with -- with a plan of 47 districts as we have right now. Remember, South Dakota has 35 districts and they are bigger than us. So I would like to make that motion and see what happens.

MS. OBAN: Second.
MR. BELLEW: Second.
CHAIRMAN DEVLIN: Second by Representative Bellew, I believe. Well, you were a little quicker. Yeah, so. Discussion. Representative Monson?

MR. MONSON: Thank you, Mr. Chairman, and I think it's a little premature to be settling on just 47 or 49 or whatever the number is until we've all had a chance to maybe get a computer and play with a couple different, uh, versions.

I am leaning toward 47 districts, uh, I just don't know that we are quite ready for that. But, um, we have to move quickly, I understand that. We don't have the luxury of taking a long time to look at a bunch of different plans that might have anywhere from 54 to 42 districts.

So just my thought, it might be a little bit
early, but --
CHAIRMAN DEVLIN: Yeah, I certainly understand what you're saying, Representative Monson. Just I think in the abbreviated timeframe, you know, we don't want people coming in with three different size plans and then trying to, you know, sort it out.

I mean, uh, you know, when $I$ look at it as a rural legislator, I could understand the argument, but you still get down to there's roughly 600 people between the two. It doesn't do me much good in rural North Dakota.

If it was 2000 or 1000 or whatever, it would make a difference, but it doesn't at this point. But whatever the committee wants to do. Do you want to wait on --

MR. BELLEW: Mr. Chairman?
CHAIRMAN DEVLIN: Yes. Representative Bellew, I'm sorry.

MR. BELLEW: If -- if I remember right, now, Representative Nathe or Senator Holmberg can correct me if I'm wrong, but we made the decision in our first meeting 10 years ago to go with the 47 districts.

And I think we should make that decision now, today, or decide what we're going to do, anyway.

CHAIRMAN DEVLIN: Representative?

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 173

MR. HEADLAND: Thank you, Mr. Chairman. Uh, just curious, uh, with that in mind, have you got an idea of how many times you expect this committee will meet? Uh, you know, the more opportunities we have to meet, maybe the more we don't need to rush into the -and settle on the number of districts. I -- I don't have any idea what you've got in mind.

CHAIRMAN DEVLIN: Um, I'm trying to find -- here. Representative Headland, you know, I -- we know we had a schedule earlier that we looked at, that just gave us some basic dates, but, um, at a couple of those -I think until this committee starts getting some, not plans, but some concepts from legislators, we can't do much.

You know, and it's my thought that if we're going to do Cass County, if that's what the -- the legislature feels or this committee feels, we should do that early on.

You know, that first week at September and then after that, start having two day a week meetings and start looking at the concepts and see if we can pull this together.

It's pretty easy for me to lay out a play for my district, but it's a little tougher when I start looking at all the other ones. I -- I think we need to
have some concepts, uh, to go on, and I think we need to do that sooner rather than later.

Representative Monson?
MR. MONSON: Thank you, Mr. Chairman. So this isn't really relevant, $I$ guess, to the motion that we have at hand, but you brought up, um, okay, so if we're going to have two-day meetings and we're going to have four of those, that would be eight. Eight meetings.

Are you planning on full two days each time or what do you have in mind there?

CHAIRMAN DEVLIN: Personally, Representative Monson, I think it may be more like six meetings. The three weeks after that meeting in Fargo, if that's what we do.

Um, I'm -- you know, and I may be very naï i½ve, because I've not been involved in this as many times as Representative Holmberg has, but I believe that we need to have our work done by the end of September, hopefully.

So that's going to mean a meeting in -- a meeting in, say, Fargo the -- let's say the 8th of September and then three meetings in a row here to go over the concepts and see if we can bring all these different factors together and -- and do it.

I believe the 47-district question has to be decided today, because $I$ don't know of any way that you could start laying out these concepts without doing that. So Representative Nathe?

MR. NATHE: Thank you, Mr. Speaker. Uh, Representative Bellew is absolutely right. Ten years ago, we took this, uh, question up right away. Um, and as you stated, we had a lot longer timeframe.

This time we're under a condensed time -- we're under -- we're under the pressure to get this done in a short amount of time. Uh, the other thing that's going to really -- is a challenge for us, is the number of computers.

We only have, you know, four computers for 16 people and we're from all over the state. So I like your idea also -- I support the 47.

I like your idea of meeting a couple times a week so when we're here we can work on the computer with LC, share the computer with somebody else who needs the -- who needs it, because the avail -- the computer availability is a big question.

That's a big challenge. So, uh, um, I think we should stick with the 47 and, as you said, Mr. Chairman, uh, start, uh, knocking out these, uh, ideas.

CHAIRMAN DEVLIN: And as I pointed out earlier, Representative Nathe, I mean, the -- the council staff does have the computers here as well.

So there's members of this committee that want to come into Bismarck like I did the other day, whether you have the committee or not -- or excuse me, the committee, the computer or not, you will be able to work through [inaudible].

They will help you do that. You know, and -- and like I said, only thing I would ask, out of respect of their time, is you try to schedule that and if two or three of you want to come in or something at the same time to discuss the same issues, just schedule that with council staff.

MR. NATHE: And just so they know, you have to do it with them present, correct?

CHAIRMAN DEVLIN: Right, right. MR. NATHE: Yeah, in their office. So that's -CHAIRMAN DEVLIN: Right.

MR. NATHE: -- you know, I kind of hate to be in there working on it while Emily is working on her job, so it's, uh, but yeah, you're exactly right.

CHAIRMAN DEVLIN: They will -- they will arrange the time for you. Representative Lefor, did you have something?

MR. LEFOR: Yes, uh, thank you, Mr. Chairman. Um, I guess I'd like to know if that software that's available that we're talking about, Dave's or whatever it's called, can that be downloaded into Maptitude?

Because if it could, then you can go on to that internet software. I've seen it. And if that could be downloaded, then everybody'd have access to it.

MS. THOMPSON: Uh, Mr. Chairman and Representative Lefor, offhand, I haven't played much with the Dave's redistricting, so kind of trying to get up to speed on our software, so I wouldn't off the cuff be able to answer that, but we can look into that and see if they're mergeable.

CHAIRMAN DEVLIN: We discussed this 10 years ago, but $I$ forgot about it this time and, uh, Emily has what it costs to add one district. I know that was part of the conversation last session and I think I would ask her to present that now, just so you know before.

And then we'll do a rollcall vote on the 47 districts.

MS. THOMPSON: Just as a refresher, uh, 2011, the last time we had a redistricting cycle, the committee did consider if they wanted to expand it, you know, within that 40 to 54, uh, district range and they

1 looked at the cost of what it would be to add one more legislative district, which in our state would mean three more legislators, a senator and two representatives in each district.

And so the cost for that, and that was looking at a 10-year cost period, because of course until you redistrict again, that's going to be your fixed cost for those three additional individuals.

And so they looked at things like the monthly salary, health insurance, pay, mileage, lodging, all those costs, and the figure came out to almost $\$ 1.2$, um, million, for those three additional legislators.

And again, we're looking at, um, 2011 salaries and costs, so -- you could pretty safely assume that might be higher today.

CHAIRMAN DEVLIN: I'm sorry, Senator Klein?
MR. KLEIN: Well, Mr. Chairman, um, I sense we are kind of pushing our way into this, but you know, um, and I might support the motion, but if -- if Representative Headland goes home and -- and figures out 49 and he brings it back and shows that it's a -a reasonable, rational, uh, map, uh, would -- are we just saying now that we would never consider that?

Because, uh, but -- but he's done that on his own time and his own effort, as some of us tried to last

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Page 179
time, uh, figure out a way to make it, uh, our districts less than five counties.

But, uh, I see that being -- 47, 49, you hit on it, 600 people. I still need -- I need 2400 , so I need another three times that or so. I get that, but I hope we're not -- by passing this motion, I get it.

We're -- we're suggesting 47, but if -- if there's a member and the software will allow that, will that not -- uh, wouldn't we say 49, then we could work from that point. So, um, uh, I hope we're not just slamming the door on some individual who wants to -- to work on that.

And I understand, you know, a growing government and those comments, but, uh, um, yeah, the geography is growing. I know South Dakota's got 35. I -- I did have, uh, someone sent me, uh, the picture of South Dakota's map.

Um, they -- they've got like some districts have seven counties. I get it, but, um, you know, we are probably the closest -- I think we are very close to our people and, um, you know, I hate to -- to see it, um, diluted any more, but, uh, I just don't want to slam the door on anybody that wants to go through those efforts.

CHAIRMAN DEVLIN: And your point is well taken. I

1 understand that too, I -- but I also really don't want 214 members of the committee designing different size districts if we're most likely going to end up with 47, but $I$ have absolutely no problem at all if Representative Headland can come up with a really good 49, because $I$ would like that a lot.

MR. KLEIN: Mr. Chairman, if -- if 14 of them do, that only leaves two that have got 47 , so certainly we'd be on track then and we'd be -- we'd be -- we'd be very close.

CHAIRMAN DEVLIN: Well, I would hope the committee would always be open to a new idea and that's what it would be at that stage, but I think -I think you need a starting point and if everybody is starting to design a plan, whether it's on the public one or on the one that you've got the computer [inaudible] or working with legislative staff, it'd be kind of nice if we were at the same page, uh, at least to start.

And then, like I say, if Representative Headland comes up with that, I am just fine with that. Rural North Dakota, I'd like that. I'd go to 54, but I don't think the rest of you would do that either, so.

Uh, Representative Monson.
MR. MONSON: So Mr. Chairman, you're saying this
is -- the 47 is pretty much in stone, but it isn't chiseled there for sure?

CHAIRMAN DEVLIN: Yeah. I'm saying the 47 is for planning purposes.

MR. MONSON: Okay.
CHAIRMAN DEVLIN: And that's what, you know, people are working on. But if somebody comes up with a concept that's different than that, they should always be welcome to present it. So.

Well, poll the committee.
MS. THOMPSON: If I may just, uh, jump in. We've received some input on the previous question for Dave's redistricting. Um, it looks like you can, um, export a shape file from that software, so that is something that we could upload in ours.

CHAIRMAN DEVLIN: I think we're ready to vote on Senator Holmberg's motion to start 47 for the planning purposes.

MS. THOMPSON: Representative, uh, Devlin?
CHAIRMAN DEVLIN: Aye.
MS. THOMPSON: Representative Bellew?
MR. BELLEW: Yes.
MS. THOMPSON: Representative Boschee?
MR. BOSCHEE: Yes.
MS. THOMPSON: Representative Headland?

## Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

```
    1 MR. HEADLAND: Yes.
    2 MS. THOMPSON: Representative Lefor?
    3 MR. LEFOR: Yes.
    4 MS. THOMPSON: Representative Monson?
    5 MR. MONSON: Yes.
    6 MS. THOMPSON: Representative Nathe?
    7 MR. NATHE: Yes.
    8 MS. THOMPSON: Representative Schauer?
    9 MR. SCHAUER: Yes.
    10 MS. THOMPSON: Senator Holmberg?
    11 MR. HOLMBERG: Aye.
    12 MS. THOMPSON: Senator Bekkedahl?
    13 MR. BEKKEDAHL: Aye.
    14 MS. THOMPSON: Senator Burkhard?
    15 MR. BURKHARD: Aye.
    16 MS. THOMPSON: Senator Erbele?
    17 MR. ERBELE: Aye.
    18 MS. THOMPSON: Senator Klein?
    19 MR. KLEIN: Aye.
    20 MS. THOMPSON: Senator Oban?
    21 MS. OBAN: Yes.
    22 MS. THOMPSON: Senator Poolman?
    23 MS. POOLMAN: Aye.
    24 MS. THOMPSON: And Senator Sorvaag?
    25 MR. SORVAAG: Aye.
```

MS. THOMPSON: And the motion passes.
CHAIRMAN DEVLIN: Thank you. The, um, if we're going to do Cass County, would -- would the committee be open to doing Cass County on the first Wednesday in September?

I hate to meet the day after Labor Day, because some of you might have travel plans, but if we're going to -- I'd like to get that set up, which is the 8th. And then after that, we'll do twice a week until the end of September and -- huh?

MR. BELLEW: Are there going to be two days in Cass County?

CHAIRMAN DEVLIN: No. Just the one day.
MR. BELLEW: Just the one day in Cass County? Okay.

CHAIRMAN DEVLIN: Yeah.
MR. BEKKEDAHL: Mr. Chairman?
CHAIRMAN DEVLIN: Um, Senator Bekkedahl.
MR. BEKKEDAHL: My -- my only conflict is then if we do the next week in Bismarck, I'll have to leave early on Thursday if that's a meeting day, because I have a dental CE class in Fargo on that evening $I$ have to get to.

So, um, I can be at Fargo the first week, it just means if we're in Bismarck the next week I might have
to leave early on a Thursday to get there, so.
CHAIRMAN DEVLIN: Or would Tuesday and Wednesday
be -- work better for the committee after the initial meeting in Fargo?

MR. BEKKEDAHL: That would be fine with me. I'm just -- I just want to make sure I'm here as many times as $I$ can and that's my only conflict and I wanted to make aware of it, so thank you.

CHAIRMAN DEVLIN: Yeah. I only -- Senator, I only did Wednesday in Fargo mainly because I know that a lot of people go away for Labor Day or whatever and having a Tuesday just doesn't work, so I thought Wednesday would be better.

But I have no problem if the committee, you know, you can let council staff know, but if Tuesday, Wednesday is better for us for those other meetings, then over the last week we have to add a third day, we can do that.

MS. OBAN: Mr. Chairman?
CHAIRMAN DEVLIN: Yes, I'm sorry.
MS. OBAN: Is it possible for us to set these, like the entire month of September as much as we possibly can right now?

CHAIRMAN DEVLIN: Yep.
MS. OBAN: I mean, I hate to be a pain, but some
of us have to make work arrangements and child arrangements and --

MS. POOLMAN: I already called a sub for all the days that you had on the calendar, so yeah, if we could rearrange and -- and definitely define that, that would be awesome.

CHAIRMAN DEVLIN: Is Tuesday, Wednesday better for the committee than Wednesday, Thursday? Because it's immaterial to me, but is one better than the other? You think Tuesday, Wednesday is better?
[inaudible]
CHAIRMAN DEVLIN: Uh, October 15. Tuesday, Wednesday is better? Okay. Then my thought would be that we would meet --

MS. OBAN: There's already a government administration meeting on Tuesday the 14th.
[inaudible]
CHAIRMAN DEVLIN: Oh.
MS. OBAN: Admin.
[inaudible]
CHAIRMAN DEVLIN: Uh, committee, the bad news is there's several other committee meetings on those various Tuesdays, so I mean, I understand your issue, Senator, but --

MALE: Mr. -- Mr. Chairman, I think a lot of them

1 did, because [inaudible].

CHAIRMAN DEVLIN: Yeah, [inaudible]. So I will
take full blame for that. Um, so let us go for
September 8, which is a Wednesday in Fargo so they can set that up.

MALE: The 15 th and 16 th or what?
CHAIRMAN DEVLIN: 15 th and 16th, 22nd and 23rd and hope -- and hopefully we won't have to be here 29th and 30th in Bismarck.

MALE: Okay. Okay.
MALE: And Mr. Chairman, it's budget section on the 30 th.

CHAIRMAN DEVLIN: Okay, so then could we do the -- what about the 28 th?

MALE: Right, the office [inaudible].
CHAIRMAN DEVLIN: Oh, higher ed tentative?
[inaudible]
CHAIRMAN DEVLIN: Well, let -- let us set just the -- anybody on higher ed on this committee? I don't think so. Okay, so then we're [inaudible]. So it's Wednesday, Thursday, Wednesday, Thursday, Tuesday, Wednesday.

MALE: Okay. What are the dates?
[crosstalk]
CHAIRMAN DEVLIN: Well, I'm wondering if we can

1 do these two then -- okay. Yeah, at the end of the month, it'll probably be the 28th and 29th, which is a Tuesday, Wednesday, just to work around some other things.

But we would have a little time to adjust that as we go along here.

MR. BELLEW: And Mr. Chairman, one -- one final thing. You said it takes legislative council how long to draft it? Like 20 days or? Or?

MS. THOMPSON: Uh, we had tentatively looked at possibly two weeks, and for this, we're talking about the actual final bill draft. Not just making a map.

Uh, the final bill draft that, uh, will be submitted to legislative management has to have all of those Metes and Bounds description from here to here in this county all written out.

So that, obviously, takes a little bit longer for our staff to make sure. We want to make that accurate. But as far as just drawing a map on your computer, that's not a -- a two-week thing. It's just the legal description. The Metes and Bounds for a statute.

CHAIRMAN DEVLIN: And I know, uh, there is some people with conflicts starting like the first of October that are serving on this committee, um, but you know, if we're into the first week in October,
we'll work -- we'll work through that too.
But I'm hopeful that we will be able to get done.
I'm very optimistic. I've studied the committee makeup, you know, completely. I think we can get this done in time. Uh, Senator Holmberg?

MR. HOLMBERG: Um, another issue -- not issue. Another -- I'm done.

MS. POOLMAN: I'm sorry, Mr. Chairman, but I was talking out of turn and $I$ wasn't listening. Can we go through the final, final, what you decided for the month of September so $I$ can get the right dates?

CHAIRMAN DEVLIN: Yeah.
MS. THOMPSON: Uh, Mr. Chairman, uh, Senator Poolman, a quick recap of those dates. We're looking at, uh, September 8 -- or, yeah September 8, which is a Wednesday at Fargo and then Bismarck meetings on September 15 and 16, which is a Wednesday, Thursday.

September 22 and 23, a Wednesday, Thursday, and then again, September 28 and 29, which is Tuesday, Wednesday in Bismarck.

MALE: What was that last one?
MS. THOMPSON: Twenty-eighth and 29th is the last one.

CHAIRMAN DEVLIN: Uh, I wanted Senator Holmberg to address something that we want to see in all the
concepts so we make sure we're all on the same page. Um.

MR. HOLMBERG: Uh, sorry, there's been a natural disaster that I'm handling. So but here we are. Actually, uh, I'm referring to page 10 of the memo that we had, which lists the various, um, items that we have used in the past as criteria.

Uh, for example, such things as compactness, uh, [inaudible] which I believe is constitutional, preservation of political subdivision boundaries, and that is really counties.

If you recall, uh, last time we had a -- a lot of discussion about county lines and at the end of the day, we ended up with 33 counties that were not divided and there were some counties that had to be divided because of just their population or their location, which meant that they were kind of on the menu and two other counties grabbed those things.

Um, and as we heard earlier today -- as we heard earlier today, um, that those, uh, issues are -- are, um, important and -- and can be used.

Uh, preservation of communities of interest, cores of prior districts, uh, protection of incumbents is one of those that has been articulated as traditional practices and obviously compliance with

Section 2 of the Voting Rights Act.
Those were the things that were in the memo that you had today and I would hope we would certainly keep those in mind as you put together your ideas.

Um, and, uh, so I mean, I would just hope that they could do that, because we've done that in the past and some of it is statutory and some of it is what we have done and some of it is just practical. CHAIRMAN DEVLIN: Representative Monson? MR. MONSON: Thank you, Mr. Chairman. Can we get that list that you just read off? MR. HOLMBERG: It's -- it's in your handout. MR. MONSON: Oh, it's in the packet? CHAIRMAN DEVLIN: Yep, it's on page -MR. HOLMBERG: Yeah, it's -- it's, uh, the last page of the redistricting background memo.

MR. MONSON: Okay.
MR. HOLMBERG: I knew it was familiar, but I didn't know where it was. CHAIRMAN DEVLIN: Okay. [crosstalk] CHAIRMAN DEVLIN: Yep. Yep. MR. HOLMBERG: Yep, okay, I [inaudible]. CHAIRMAN DEVLIN: Representative Headland? MR. HEADLAND: Thank you, Mr. Chairman. Uh, for
the respective dates you've picked out, your Tuesday, Wednesday, every week except for September 22 and 23 and I guess I didn't hear why we are going Wednesday, Thursday?

CHAIRMAN DEVLIN: We -- we looked at the other legislative hearings that were coming up and we were working around that.

MR. HEADLAND: Okay, so it's hearings?
CHAIRMAN DEVLIN: Or legislative --
MR. HOLMBERG: Budget section.
CHAIRMAN DEVLIN: Budget section, other committees are already scheduled, you know, so.

MR. THOMPSON: Tax committees.
CHAIRMAN DEVLIN: Okay, tax committee, like I said, the tribal relations committee will be meeting with the tribes starting next week. I think they already met with one, I think Mr. Davis said that. So is there anything else for this committee today? Last chance, Representative Bellew.

Are we done?
MS. THOMPSON: Yes.
CHAIRMAN DEVLIN: Thank you very much. I know it's been a long day and there's going to be more long days, but we'll get through this. So thank you. We're adjourned.

## Charles Walen, et al. vs Doug Burgum, et al.

 Committee Meeting on 08/26/2021Page 192

17
18 (NoDak Redistricting Committee, 8-26-21)
I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 191 pages contain a full, true and correct transcription of the tape-recording that $I$ received regarding the event listed on the caption on page 1.

I further declare that $I$ have no interest in the event of the action.


March 21, 2022
Chris Naaden

$$
20
$$

$$
21
$$

24
25
19

$$
22
$$

$$
23
$$

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: \$1.2..1919

|  | 7,12 94:23 | 77:18 | 136:2,23 |
| :---: | :---: | :---: | :---: |
| \$ | 95:2, 9, 13, | 23:13 | 138:19 |
| \$1.2 178:11 | 17 96:15 | 131 111:8 | 16,576 86:4, |
|  | 108:16,21 | 131 111:8 | 13,18,20 |
|  | 109:13 | 1397 83:3, | 135:23 |
| - | 111:22 | 17 116:14 |  |
| -4.39 144:18 | 142:17 | 13th 7:7 | 16.10102 .2 |
| -4.39 144.18 | 153:12 | 13th 7.7 | 88:24 |
| -can 129:21 | 158:17 | 14 23:13 | 16.103 89:11 |
|  | 159:14 | 111:22 |  |
| 0 | 160:8 | 180:2,7 | 16. |
| 0.28 142:6 | 172:22 | 14th 30:18 |  |
|  | 177:14 | 45:4 | 16.5 103:6 |
| 0.382 52:7 | 189:5 | 93:11, 23 | 16th 6:24 |
| 0.589 | 10-year | 94:1,14 | 62: 7, 9 |
|  | 160:17 | 185:16 | 69:23 |
| $0.738: 2$ | 161:9 | 15 14:19 | 70:18 |
|  | 178: 6 | 91:25 | 186:6,7 |
| 1 | 100 60:20 | 185:12 | 17 7:8 |
| 1 15:24 | 74:10,19 | 188:17 | 59:14 |
| 16:6 17:1 | 75:8 | 15.8 111:5 | 18 11:24 |
| 25:14 | 1000 172:12 |  | 146:23 |
| 132:2,5, | 1000172.12 | 15.9 111:5 |  |
| 16,19,23 | 108 84:15 | 15th 45:5 | 1800s 53:17 |
| 168:13 | 11 59:21 | 93:14,24 | 1868 93:12 |
| 1,000 25:12 | 105: 6 | 94:2 | 187 24:21 |
| 1.1 88:13 | 11th 7:1 | 186:6,7 | 1870 93:15 |
|  |  | 16 91:16 |  |
| 1.28 142:12 | 12 15:25 | 92:7 | 188 24:22 |
| 10 6:8 7:21 | 91:5 | 111:19 | 19 20:14 |
| 15:14 18:1 | 105:18 | 175:14 | 19 |
| 25:15 | 12,187 103:5 | 188:17 | 1911 |
| 26:9,18 | 12:00 110:15 | 16,000 40:9 | 1913 92:21 |
| 27:9,13, |  | 143:13 | 1915 92:21 |
| 15,20,22 | $28: 15 \quad 62: 9$ |  | 1917 92:21 |
| 53:11 81:1 |  | 16,500 39:16 | 1917 92:21 |
| 86:8 88:5, | 70:19 | 16,529 | 1919 92:21 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 195 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: 1930s.. 27

| 1930s 14:17 | 1999 85:14 | 54:7 70:25 | 2020s 60:16 |
| :---: | :---: | :---: | :---: |
| 1931 90:19 | 1:00 | 92:7,12 | 2021 15:24, |
| 1960s 11:4, | 110:16,20 | 104:1 | 25 19:20 |
| 12,20 | 1:30 113:9, | 105:13 | 163:22 |
| 1962 93:20, | 13 | 150:15 | 202108260956_ |
| 24 | 1st 15:23 | 162:20 | redistricting |
| 1963 90:23 | 16:5,7 | 177:22 | 56:3 |
|  | 20:13 | 178:13 | 151:17 |
| 1964 94:12 | 71:24 | 2012 88:21 | 2022 19:12 |
| 1965 46:24 | 169:3 |  | 84:7 |
| 47:10 |  | $201346: 10$ | 2025 41:23 |
| 93:25 | 2 | 47:6 48:15 |  |
| 1973 86:9 |  | 2014 88:21 | 205 139:20 |
|  | 2 25:14 | 2016 165:16 | 206 39:24 |
| 1980s 22:4 | 111:19 | 2016165.16 | 40:10 |
| 35:3 | 132:5 | 2017 49:16 | 141:1 |
| 1981 91:3, | 133:15 | 2018 49:24 | 21,000 |
| 11,23 | 190:1 | 2019 30:21 | 143:12 |
| 1982 65:1 | 20 52:8 | 95:20 | 22 188:18 |
| 1986 97:9 | 99:3 187:9 | 2020 10:18 | 191:2 |
|  | 2000 164:25 | 14:13 15:2 | 22nd 186:7 |
| $84: 25$ | 172:12 | $16: 6,7,25$ |  |
| 165:13 | 2001 54:7 | 17:1,6,18 | $23111: 22$ $188: 18$ |
|  | 71:1 91:24 | 18:14 19:3 | 181.2 |
| 1990s 22:7, | 92:6 | 60:13 | 191:2 |
| 24 28:12 |  | 61:11 | 2334 135:5 |
| 1991 45:23 | 2010 22:7 | 63:13 | 23rd 186:7 |
| 46:3, 6 | 111:5,8, | 67:12 | 23rd 186:7 |
| 71:1 | 14,16 | 74:23 86:2 | 2400 179:4 |
| 91:16,21 | 112:10,21 | 103: 4 | 25 24:24 |
| 128:23 | 132:12 | 111:15,17 | 158:13 |
| 129:2 | 146:1 | 112:11,22 | 104:15 |
|  | 2010s 11:25 | 135:4,24 | 26 104.15 |
| 1992 102:20 | 22:25 | 145:10 | 26th 18:1 |
| 1993 29:3 | 2011 7:1,13 | 146:17 | 27 111:19 |
| 97:23 | 15:18 18:1 | 165:21 |  |



Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: 7.4..add

| 111:19 | 24 111:22 | acceptable | 31:12,15, |
| :---: | :---: | :---: | :---: |
| 7.4 14:16 | 9,000 40:8 | 12:16,17, | 23 32:4, |
| 7.4 14.16 | 9,000 10:8 | 21 142:16 | 18,19 |
| 70 38:2 | 90 43:18 | 144:19 | 34:19 |
| $70074: 24$ | 89:1 90:10 |  | 35:22 |
|  | 98:14 | $150 \cdot 21$ | 36:12 |
| 70s 92:1 | 9119.01 | 150:21 | 37:11 |
| 727 144:18 | 110:25 | 162:10 | 38:18,23 |
| 75 90:23 | 94 85:15 | 171:3 | 44:7,11 |
| 7559 163:21 |  | 177:7 | 45:2,7,19 |
|  |  |  | 46:10,15, |
| 779,094 | A | accessible | 22 47:25 |
| 74:10 |  | 160:8 | 55:15 |
| 78.7 145:13 | 167:7 | account 11:7 | 57:21 65:1 |
| 7th | 172:4 | 93:18 | 93:25 94:6 |
|  |  | 96:24 | 96:19 |
|  | ability 1 | 104:16 | 165:15 |
| 8 | 36:12 | 135:24 | 166:7,18 |
|  | 161:5 | 167:8 | 190:1 |
| 8 186:4 | 167:4 | 167.8 |  |
| 188:15 |  | accuracy | action |
| 8,000 40 | abolish | 65:24 | 109:19 |
|  | 165:5 | $66: 17$ 67:7 | 152:2 |
| 8,500 | abridged | 78:9 79:5, | active 17:18 |
| 8.3 86:23 | 93:17 | 10,19 | actual 23:10 |
| 87:1 | abridgement | accurate | 111:1 |
| 80 84:14 | 96:23 | 16:5 17:11 | 150:11 |
| 85 28:25 | absence | 21:2 68:9 | 187:12 |
| 8th 174:22 | 97:15 | $74: 10,13$, $20: 75: 4$ | add 25:24 |
| 183:9 | absent 22:6 | 76:5 77:9, | 80:12,14 |
|  | absolutely | 11 187:18 | 86:21 |
| 9 | 39:7 47:20 |  | 100:20,24 |
|  | 57:9, 23 | achieve | 134:2 |
| $9102: 10$,11,25$103: 21$$108: 19,21$, | 82:1 87:18 | 60:2,5,25 | 135:14 |
|  | 175:6 | 61:14 | 136:15 |
|  | 180:4 | act 28:20 | 142:3,13, |
|  |  | 30:1 | 14,19,22 |
|  | accept 6:3 |  | 177:16 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: added..amendments
affairs
$168: 22$
affiliated
$129: 6$
affirmativel
$26: 23$
afternoon
$81: 13$
$110: 22$
$163: 9$
age $11: 23$
$12: 21$
$22: 17$
$35: 19$
agenda 3:24
130:16
163:2,3
agree 40:11
agreed 49:19 165:21
agreeing
165:5
ahead 9:12,
20,22
30:10 93:4
97:1
132:11
133:3
135:18
142:19
144:23
148:5
aid 94:1
aims 105:23

Alabama
62:3,11 68:11,13, 19

Alaska 59:7, 9 97:4

## Alaskan

105:1
Aleutian 59:11
algorithm 21:15 23:3
allowable 91:8 106:24
allowed 32:7 85:25
allowing
163:12
alluded
69:20
alternative
18:9 19:2
62:15
Alumni 160:3
amazing 68:11
amendment 93:11,14, 24 94:14
amendment's 30:18,19
amendments

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: American..area

| 45:5 94:2, | 76:18 | application | 105:10 |
| :---: | :---: | :---: | :---: |
| 3 | 99:19 | 38:22 |  |
| American | analyze | 54:10 | approval $45: 12$ |
| 17:16 | 166:12 | 64:16 |  |
| 18:10 | 166.12 58 | applications | approved |
| 28:13 | anew 58 | $54: 21$ | 4:24 7:2 |
| 48:22 | Angeles |  | 89:20 |
| 62:18 97:4 | 48:25 | applied | April 15:23, |
| 138:14,20 | angels 80:4 | 21 | $2416: 5,6$, |
| 139:3,8, |  | $31 \cdot 741$ | 7 17:1 |
| 14,17 | annexed | 31:7 41: | 71:24 |
| 163:23 | 53: 8, 9, 10 | 69:13 | 161:13 |
| 165:7,12 | announce | 77:18 | arbiters |
|  | 5:11 | applies 24:3 | 51:2 |
| Americans | 促 | 32:2 34:2 |  |
| 163:24 | announced | 44:8,9 | Ardoch 113:1 |
| amount 25:25 | 111:2 | 47:20 48:5 | area 12:7 |
| 119:24 |  | 57:6 120:9 | 25:5 34:14 |
| 139:3,5 | answers | 121:6 | 71:12 |
| 175:11 | 109:21 | apply 21:15 | 76:12 |
| analyses | anymore | 31:15 | 96:18 |
| 37:14,15, | 30:10 46:8 | 47:21 96:8 | 98:24 |
| 16 38:1 | 134:8 | 106:16 | 99:24 |
| 43:14 48:3 | anything's | 120:23 | 100:18 |
| 75:15 | 48:12 | 121:1 | 103:11,13 |
|  |  |  | 104:2 |
| analysis | Apologies | appoint 83:6 | 113:23 |
| 34:4 | 144:13 | apportion | 135: 6 |
| 36:15,17 | apologize | 90:22 | 137:18 |
| 37:23 | apologize $4: 10 \quad 72: 12$ |  | 138:14 |
| 40:14 |  | apportioned | $139: 9,10$ |
| 42:25 | 168:18 | 94:19 | $14 \text { 140:15, }$ |
| 43:24 | apologized | apportionment | $16,19,20$ |
| 64:20 | 170:12 | 74:9 | 143:1,20 |
| 65:23 | applicable | appreciative | 145:23,24 |
| 68:19 | 120:17 | $81: 14$ | 149:8 |
| 69:12 | 124:2 |  | 164: 6 |
| 75:17 |  | approach |  |


| areas 24:18 | articulated | attach | availability |
| :---: | :---: | :---: | :---: |
| 25:2,4 | 189:24 | 53:24,25 | 175:21 |
| 40:5 71:23 | ascertained | attached | average |
| 94:8 | 84:24 | 65:11 | 85:24 |
| 135:12 |  |  |  |
| 147:13 | Asian 97:4 | attend 5:6, | avoid 103:14 |
| 152:17,19 | asks 29:21 | 11 9:5 | 105:19 |
| 157:5 |  | attendance | 125:24 |
| argue 100:6 | 4:21 7:12 | 4:23 5:14 | avoidance |
| argued 12 | 84:6 85:3 | 155:19 | 20:23 |
|  | 90:5,19,21 | attended | 79:14 |
| argument | 91:11 | 157:1 | avoiding |
| 45:15 | 107:2 | 159:17 | 59:21 |
| 172:8 | 113:21 | attending | 79:20 |
| arguments | 114:14 | 4:1 5:1,4, | 103:19 |
| 171:1 | 116:19 | 5,18 | aware 5:3 |
| arise 53:5 | 120:5 | attorney | 33:24 |
| Arizona | assert | 75:16 | 154:9,11 |
| 41:14 | 120:13 | 120:16,21 | 184:8 |
| $\begin{aligned} & 58: 15,18, \\ & 24 \end{aligned}$ | assessing | attorneys | awesome |
|  | 96:4 | 29:16 | 185: 6 |
| Arizona's | assist 91:6 | 120:18 | aye 3:21,22 |
| 41:16 | 169:13 | 128: 4 | 181:20 |
| Arkansas | 170:5 | August | 182:11,13, |
| 45:22, 23 | assistance | 15:16, 25 | 15,17,19, |
| 46:1 | 117:15 | 18:1 62:7, | 3,25 |
| Arnegard | $\begin{aligned} & \text { assume } 75: 4 \\ & 142: 7 \end{aligned}$ | $9: 69: 23$ $70: 17,19$ | B |
| 112:24 | 178:14 | 77:18 | back 18:15, |
| arrange176:23 | assuming | authority | 19 20:2 |
|  | 162:9 | 83:1 | 43:10 |
| arrangements$185: 1,2$ | at-large | automatically | 53:17 64:7 |
|  | at-large | 147:5 | 68:17 75:8 |
| articles | 1 |  | 76:1,24 |
| 76:19 | Atlanta | avail 175:20 | 81:11,12, |
|  | 34:14 |  | 15 83:23 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 201 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: background..Benson

| 86:9 88:21 | 152:8 | basis 36:13 | 184:5 |
| :---: | :---: | :---: | :---: |
| 90:7 91:3 | balancing | 47:14 | Bellew 2:7,8 |
| 93:12 | 100:9 | 94:19 | 109:22,24 |
| 102:19 | 101:18 | 124:21 | 110:8 |
| 106:8 |  | beamed 158:3 | 134:13,16, |
| 110:19 | ballots |  | 17,25 |
| 117:1 | 19:12 | beaming | 135:1 |
| 120:8 | banned 94:6 | 160:14 | 136:24 |
| 128:4 | Bantry 113:1 | bear 115:7 | 137:2, 3,14 |
| 134:10 | Bant | 135:21 | 139:2,7 |
| 135:20 | bar 141:18 | begin 7:15 | 149:12 |
| 141:8 | Barnes | 129:12 | 150:6 |
| 147:7 | 142:25 | 169:8 | 157: 9, 22, |
| 148:10 | based 12:5,6 |  | 23 158:24 |
| 155:2 | 30:17 | beginning | 171:10,12 |
| 165:10 | 43:12 |  | 172:16,17, |
| 178:21 | 44:17 | begun 167:10 | 19 175:6 |
| background | 66:19 | behalf 26:21 | 181:21,22 |
| 7:20 76:21 | 85:13 86:2 | 151:23 | 183:11,14 |
| 82:9,20,22 | 100:7 | 163:17 | 187:7 |
| 90:25 | 107:24 | 164:8 | 191:19 |
| 106:1,2 | 138:25 | 165:16 | Ben 8:24 |
| 190:16 | 141:5 | beige | 9:11 33:2 |
| backup 13:24 | 145:20 | 140:15,16 | 37:4 42:20 |
| 14:2,11 | 146:17 |  | 55:19 |
| bad 185:21 | baseline | Bekkedahl | 69:19 72:7 |
| bad 185.21 | 68:21 69:5 | 2:23,24 | 81:16 |
| bail 44:25 | 72:5 | 3:18 |  |
| 45:19 | 72.5 | 55:17,19 | benchmark |
| 46:4,19 | basic 10:17 | 56:1,4,11 | 94:24 |
|  | 89:25 | 72:6,7,13 | 142:17 |
| bailed | 146:2 | 73:1,5,12, | Bend 53:18 |
| 45:18, 23 | 152:3 | 14,22 |  |
| Baker 93:20 | 173:11 | 80:17,18 | benefit |
| balance | as | 117:12,13, | 104:21 |
| 99:15 | 33:6 122:7 | 24 182:12, | Benson |
| 114:7 | 146:13,24 | 13 183:17, | 112:15 |
| 115:13 |  | 18,19 | 164:25 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: Berthold..boundaries

| 165:9,13 | 187:12,13 | 105:13 | 15:4 |
| :---: | :---: | :---: | :---: |
| Berthold | bills 20:1 | 131:15,21, | 102:22 |
| 140:4,5 |  | 23 132:12, | 104:2 |
| 140.4, 5 | bipartisan | 25 | 133: 6 |
| bet 72:5 | 10:4,6 |  |  |
| 160:7 |  | blessing | bodies 38:25 |
| 160:7 | Bismarck | 79:19 | body 129:19 |
| biannually | 22:10 |  | body 129.19 |
| 85:7 | 107:7 | block 23:22 | book 63:13, |
| bicameral | 157:4,25 | 24:20,21, | 14,20 |
| bicameral $94: 18$ | 176:5 | 23,25 | books 47:23 |
|  | 183:20,25 | 36:7,12 | 63:18 |
| Biden 17:21 | 186:9 | 42:25 |  |
| big 5:8 | 188:16,20 | 67:6,7,8 | boom 15:6 |
| 24:22 | bit 6:7,12, |  | border |
| 38:17 | 19 9:22 | 71:12 | 137:19 |
| 40:11 | $31: 12$ | 15,17, | borders |
| 53:18 | 40:21 66:1 |  | 114:17 |
| 67:22 | 82:18 | 9 |  |
| 71:12 | 92:13 | 9,20 77:4, | Boschee 2:9, |
| 78:20 | 97.21 | 6,9,13,20, | 10 4:5 |
| 136:8 | 113.17 | 23 78:7,8, | 154:22,23 |
| 161:3 | 113:17 | 18 79:2 | 160:10,11 |
| 175:21,22 |  | 80:12,13, | 161:11 |
|  | 134:11 | 22,24 | 181:23,24 |
| bigger 171:7 | 147:1 | 81:1,5 |  |
| biggest 88:8 | 156:14 | 97:16,18 | boss 67:25 |
| 142:13 | 171:25 | 107:10 | bothers |
|  | 187:17 | 136:10 | 107:20 |
| bill 5:20 |  |  |  |
| 7:4 8:17 | Bjornson | blocks 22:1, | bottom 87:2 |
| 13:5 83:3, | 128:24,25 | 9,10,11, | 88:7,13 |
| 4,17,24 | black 28:21 | 13,19,23 | 112:19 |
| 88:20,23 | 32:19 | 72:16, 20 | 147:3 |
| 89:24,25 | 33:12 | 74:15 | boundaries |
| 90:2,3,10 | 34:17 | 80:16 | 19:9 72:25 |
| 116:14,15 | 35:21 | blow 136:18 | 80:21 |
| 129:14 | blame 186:3 | 146:12 | 95:10 |
| 162:16 | ank 22.2 | blue 13:10 | 99:25 |
| 163:2 | blank 22:2 | blue 13.10 | 100:3, 4, 8, |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: boundary..calculate

| 12 101:25 | 115:5 | 15 167:25 | 10,17,21 |
| :---: | :---: | :---: | :---: |
| 103:18, 20, | briefly | 168:12,15 | 24:11,14 |
| 22 104:3, | 30:11 59:2 | bubble 12:25 | 37:18 |
| 11 105:15 | 110.23 |  | 62: 4,6 |
| 108:8 | 110:23 | budget | 66:5, 9, 11 |
| 109:1,5 | 130:20 | 186:11 | 67:4,10 |
| 131:10,16, | 131:3 | 191:10,11 | 69:1,7 |
| 18 133:7, |  | built 71:17 | 70:11 |
| 12,19 | bring 52:10 | 92:23 | 71:2,16,19 |
| 143:19 | 107:23 | 138:16 | 77:24 |
| 145:7 | 132:4 |  | 78: 4, 6 |
| 146:1 | 140:2, 3 | bullet | 79:14,17 |
| 152:8 | 174:24 | 10 |  |
| 153:17 | bringing |  | 62:12 |
| 189:10 | 49:4 64:1 |  |  |
| boundary | brings 20.22 | bullets | Burkhard |
| boundary | brings 20:22 | 116:11 | 182:14,15 |
| 99:24 | 46:20 |  |  |
| 102:25 | 178:21 | bunch 27:19 | Burlington |
| 103:1 |  | 118:21 | 134:21, 22 |
| 105:12 | Brnovich | 147:4 | Burt 133:23 |
| 133:24 | $41: 7,13,21$ $44: 13,18$ | 171:23 | business |
| bounds 8:6 |  | Burckhard | 156:16 |
| 153:15 |  | 2:25 3:1 |  |
| 187:15,21 | 82:15 $104: 18$ | 4:6 27:10, | $\begin{gathered} \text { busy } 133: 4 \\ 134: 5,9 \end{gathered}$ |
| box 140:6 | broadcast | $1728: 4$ $126: 25$ | butter 82:4 |
| 143:1,2 | 162:22 | 127:1,5,6 | button |
| 148:3 | broadly 36:6 | 132:3 | 144:11 |
| Brad 132:5 |  | burden 26:20 | 148:14 |
| bread 82:4 | 22:17 | 32:8 95:2 | buy 45:15 |
| break 38:12, | brought | Bureau 12:3 | 66:16 |
| 19 58:11 | $26: 19 \quad 31: 1$ | 15:21 |  |
| 110:16 | 49:16 50:1 | 16:11,15 | C |
| breaking | 62:11,16, | 17:7 21:1, |  |
| 41:1 | 17 174:6 | 8,12,23 | calculate |
|  |  | 22:14 | 86:10 |
| breathing | Brown 163:9, | 23:1,3,5, |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: calculated..ceiling

| calculated | 59:17 | Carr 93:21 | 146:22 |
| :---: | :---: | :---: | :---: |
| 27:25 | 89:23 | carried 3:23 | 147:17 |
| 86:22 | camera | 41:21 | 160:2 |
| 112:2 | 118:21 | carrying | 165:4 |
| calculation | candidate | 112:16 | cases 11:4 |
| 87:8 | 32:1 34:8, |  | 30:13,25 |
| calendar | 17 36:13 | cascading | 31:5,7 |
| 18:24 20:2 | $37: 4,5,7$, | 56:18 | 32:8 45:16 |
| 185:4 | 9,13,18 | case 12:4 | 46:16 50:9 |
|  | 59:16 | 27:9 29:3 | 57:10 63:6 |
| Ca | 97:17 | 30:22 | 65:13 |
| 49:1 |  | 33:11 | 93:22 96:9 |
| Calio 113:1 | candidates | 35:2,5,22 | 121:11,25 |
| call 2.1 | 20:4 | 36:25 | 124:4,15 |
| 4:20 6:15 | cap 108:21 | 40:23 | 130:8 |
| 36:6 59:22 | capabilities | 41:7,8,13 | 161:2 |
| 62:21 84:5 | 155:1 | 44:13 | casino |
| 88:25 89:1 |  | 45:7,8,9, | 163:16 |
| 127:2 | capable | 24,25 46:2 | 164:4 |
| 149:22 | 75:16 | 56:8 |  |
| 170:11 | capacity | 68:16,17 |  |
|  | 30:23 | 94:11,13 | 158: |
| called 7:6 |  | 95:20,21, | 160:25 |
| 18:24 | Capitol | 23 97:2,9 | 173:16 |
| 21:11, 22 | 81:12 | 99:23 | 183:3, 4, |
| 22:8 23:2 | careful | 108:17,22 | 12,14 |
| 30:22 35:2 | 126:18 | 116:24 | category |
| 41:7 45:25 | carefully | 122: 6, 16 | 20:17 |
| 53:18 58:2 | 125:20 | 123:1,5 | 132: 6 |
| 60:23 | 166:12 | 125:21 |  |
| 75:18 90:7 |  | 133:13 | caught 33:5 $92: 23$ |
| 119:2 | Carolina | 134:6 |  |
| 134:1 | 28:15 29:2 | 136:1 | caused 16:12 |
| 177:4 | 30:14 | 138:18 | caveat 96:5 |
| 185:3 | 49:24 | 140:25 |  |
| calling 5 | 50:5,23 | 142:24 | CE 183:22 |
|  | 55: 4, 6 | 143:11,13 | ceiling |
| calls 23:3 |  | 145:21 | 87:21 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| census 10:18 | 14,17,23 | 34:25 | 23 126:24 |
| :---: | :---: | :---: | :---: |
| 12:3 14:13 | 80:12,13, | 37:3, 8 | 127:1,4,7, |
| 15:2,20, 21 | 15,21,22, | 38:6,7,15 | 8,14 |
| 16:3, 4, 6, | 24 81:1 | 39:9 40:12 | 128:12,13, |
| 11,14,16 | 83:25 | 42:19,20 | 18,24 |
| 17:2, 6, 7, | 84:25 | 44:1, 3 | 129:10,11, |
| 10 18:14 | 85:2,14 | 55:17,19 | 25 130:12, |
| 19:3 | 86:2 90:22 | 56:10 | 15 132:2 |
| 20:23, 25 | 103: 4 | 57:24 | 134:13,16, |
| 21: 4, 7, 8, | 111:2,15, | 64:3,5 | 17,24 |
| 12,16,23 | 16,25 | 65:17,19 | 136:25 |
| 22:1,9,10, | 112:1,10, | 66:2 68:4, | 137:2,13 |
| 13,14,19, | 11,21,22 | 6 69:17,19 | 139:2,6,22 |
| 23 23:1,3, | 136:10 | 70:7 71:6 | 149:3 |
| 4,10,16, | 138:20 | 72:6,7 | 150:9,24 |
| 21,22 | 145:17 | 73:25 74:2 | 151:19,20 |
| 24:10,14, | 165:13 | 76:8,9,16 | 154:1,2, |
| 20,21,23 | Center 160:3 | 77:1,2,15 | 10,21,23 |
| 25:17 26:8 |  | 78:10,23 | 155:6 |
| 37:17 | century | 80:9,10,17 | 156:13 |
| 62: $4,6,12$ | 88:15 | 81:6,16 | 157:23 |
| 65:24 | certainty | 82:2,7,11 | 158: 9,10, |
| 66:5,8,9, | 74:19 | 83:5 84:4 | 15,16 |
| 11 67:4,10 | Chair 9.14 | 86:24 87:6 | 159:11,12 |
| 68:23 | Chair 9.14 | 88:2, 3 | 160:10,11 |
| 69:1,7 | chairman | 89:13,15, | 161:11 |
| 70:10,12 | $2: 1,4,6$ | 16,21 | 162:7,8,19 |
| 71:2,16,19 | 3:12,14, | 92:14,15 | 163:5,10 |
| 72: 9, 10, | 19,23 4:9, | 93:4 99:6, | 167:19 |
| 11,14,16, | 13,21,24 | 8,17 | 168:1,12, |
| 17,23 | 5:11 6:15, | 100:14 | 14,16,20, |
| 73:3,5,8,9 | 16 7:23 | 107:13,17 | 24 169:16 |
| 74: 4, 15, | 8:22 9:13, | 108:2 | 170:1, 4, |
| 19,23 | 23 27:10, | 109:22,25 | 11,15,17, |
| 77:3, 6, 9, | 12,17 | 110:11,19, | 18 171:11, |
| 13,24 | 28:3,7 | 22 113:8, | 14 172:2, |
| 78: 4, 6, 18, | 32:25 | 12,16 | 16,17,25 |
| 25 79:2,6, | 33:1,17 | 117:10,13, | 173:1,8 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: challenge..citizenship

| 174:4,12 | challenging | 28:22, 24 | chosen |
| :---: | :---: | :---: | :---: |
| 175:24 | 62:12 | chart 20:10 | 115:25 |
| 176:1,17, | 97:10 | 23:10,11, | chunk 103:10 |
| 19,23 | 122:25 | 15 | 139:11 |
| 177:1,8,14 | 151:24 |  |  |
| 178:16,17 | chamber | check 75:7 | chunks 136:9 |
| 179:25 | chamber $60: 20$ | 81:13 | circuit 42:8 |
| 180:7,11, |  | checked 8:17 | circumstance |
| 25 181:3, | chance 13:7 | 17:3 | 5:9 45: |
| $6,16,20$ | 63:5 | checklist | 5.9.45.21 |
| 183:2,13, | 171:17 | $36: 18$ | circumstances |
| 16,17,18 | 191:19 | 36.18 | 36:17 |
| 184:2,9, | change | checkmark | 47:8,14 |
| 19,20,24 | 24:19,23 | 102:14 | 64:20 66:7 |
| 185:7,12, | 45:12 | 141:13 | 97:15 |
| 18,21,25 | 61:19,25 | 144:4,12 | 100:10 |
| 186:2,7, | 79:24 | Chicago | cited 51:23 |
| 11,13,16, | 111:12,25 | 32:16 | cities 26:13 |
| 18,25 | 118:3 | chief 66:9 | 53:7 54:13 |
| 187:7,22 | 139:13 | chief 66. | 111.14 |
| 188:8,12, | 143:22 | child 185:1 | $111: 14$ 112.22 |
| 13,24 | 145:15 | children | 112.22 |
| 190:9,10, | changed | 22:13, 21 | $133: 21$ |
| 14,20,22, | 47:10 |  | 134:19 |
| 24,25 | $61: 21$ | chiseled | 134:19 |
| 191:5,9, | $61: 21$ $63: 23-85: 2$ | 181:2 | citizen |
| 11,14,22 | 63:23 85:2 | choice 32:1 | 12:13,20 |
| challenge | changing | 34:18 | 35:19, 20 , |
| 95:14,18 | 58:2 | 36:13 | 21 |
| 98:1 128:1 | chapter | 37:9,13,18 | citizen's |
| 175:12,22 | 89:11 | 167:5 | 96:24 |
| challenged | characteristic | choices | citizens |
| 11:25 95:2 | 105:4 | 114:19 | 93:16 95:6 |
| 104:8 | characteristic | choose 10:13 | 152:25 |
| 108:20 | s 104:23 | 43:15 | 167:12 |
| challenges | 146:21 | 127:17 | citizenship |
| 79:21 | Charlotte | 148:12,20 | 11:22 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: city..comments

| city 9:4,25 | classified | 123:24 | 16:13 |
| :---: | :---: | :---: | :---: |
| 26:16 | 135:6 | Clinton | Collette |
| 32:16 | 138:20 | 45:25 46:1 | 163:14 |
| 38:24 | clause 25:19 |  |  |
| 48:22,23 | clause 25:19 | close 60:6 | color 13:11 |
| 53: 8, 9, 13 | 30:18,19 | 141:23 | 15:4 17:24 |
| 72:25 | 49:17 50:1 | 143:2 | 48:18 |
| 112:21,23 | 90:14,15 | 144:24 | 93:18 |
| 133:11 |  | 179:20 | 96:24 |
| 134:7 | clauses | 180:10 | 140:18 |
| 135:7,14 | 49:3,8,9 | closed 16:24 | Colorado |
| 136:10 | 50:14 51:6 | 95:25 | 18:22 25:4 |
| 143:23 | clean 131:15 | closely 89:9 | colors 15:13 |
| 145:7 | clear 27:13 | closest | combinati |
| claim 37:2 | 29:9 114:9 | 142:8 | 80:15 |
| 119:23 | 154:3 | 179:20 |  |
| 120:20 |  | 179.20 | combine |
| 129: 4 | le | closing | 55:10 |
| claiming | 69:16 | 24:15 | combined |
| 49:16 | click 135:13 | code 22:17 | 135:8 |
| 127:24 | 139:23,25 | $66: 23$ | combining |
| claims 29:14 | 140:2 | 88:15 | 28:21 |
| 95:24 | 141:6,7,13 | codes 32:6 | 32:18 |
| Claire | 144:11,12 | codification | comfort |
| 113:14 | 148: 4 , 6 | 58:7 | 108: 4 |
| 117:10,14 | clicked | codify 58:13 | comfortable |
| 126:24 | 140:21 |  | 107:21,25 |
| 127:1 | 141:1 |  |  |
| 128:13 | 142:25 | 40:15, 25 | commenced |
| 129:11 | 143:4 | cohesive |  |
| 130:13 |  | 36:1 40:18 | comment 18:5 |
| 146:3 | clicking $141: 4$ | 42:21 59:7 | 154:24 |
| clarified |  | 97:15 | commentators |
| 47:4 | client | college | 41:12 |
| class 183:22 | 120: | 164:3 | comments |
|  | clients | Colleges | 151:2 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: commission..compact

| 170:6 | 125:5 | committee's | 155:2 |
| :---: | :---: | :---: | :---: |
| 179:14 | 128:25 | 7:3 83:18 | nications |
| commission | 130:22 | 124:22 | 117:4,6 |
| 13:15 | 137:15 | 167:15 | 123:17 |
| 14:2,5,11, | 145:1 | Committee_ |  |
| 12 18:22 | 149:3,22 | 21573 56:3 | communities |
| 19:1 | 150:10 | 151:17 | 54:14 59:3 |
| 163:15 | 151:8,21, |  | 101:25 |
| 163:15 | 25 153:19 | committees | 104:14,16, |
| commissions | 155:7,8, | 5:6,17 | 20 152:7 |
| 13:24 | 13,18,20, | 6:11 54:7 | 153:16 |
| committee | 22 156:2, | 108:13,18 | 159: 6 |
| 2:1,2 4:4, | 10,13,24 | 116:25 | 160:21 |
| 23,24 5:7, | 157:3 | 155:16 | 161:1,7 |
| 12,25 6:4, | 158:6 | 158:2 | 164:11 |
| 7,22 7:9, | 161:20,25 | 159:1 | 166:11,14, |
| 21 8:10,23 | 162:3,13 | 191:12,13 | 22,23,25 |
| 9:5,14,21 | 163:11 | common 30:22 | 167:3,14 |
| 15:18 19:8 | 164:16 | 37:20 | 189:22 |
| 41:7 57:18 | 167:16,19 | 38:22 | community |
| 58:8 63:12 | 168:5,20 | 46:12 | 18:10 |
| 81:20 | 169:1,11, | 51:15,17 | 33:13 |
| 83: 6, 7, 11, | 18,22 | 52:17 | 36:2,3 |
| 21 86:4 | 170:1,25 | 59:20 | 37:10 |
| 91:5,17,25 | 172:14 | 95:19 98:7 | 54:18 |
| 92:8 93:2 | 173:3,12, | 119:25 | 59:5,11 |
| 106:3,5, | 17 176:4, | 152:7 | 105:1, 3 |
| 15,19 | 6,7 177:23 | 153:16 | 154:8 |
| 107:4,5,6, | 180:2,12 | commonly | 161:1 |
| 8, 9,19 | 181:10 | 32:15 | 163:23 |
| 108:23,25 | 183:3 | 35:23 | 164:3,12 |
| 109:3 | 184:3,14 | 51:22, 23 | 166:19,25 |
| 110:19,23 | 185:8,21, | 86:7 94:20 |  |
| 112:7 | 22 186:19 | 105:18 | 26:15 |
| 113:8,17 | 187:24 |  |  |
| 115:18,19, | 188:3 | commonplace | compact 35:8 |
| 25 116:18 | 191:14,15, | 11:8 | 52: 4, 5 |
| 117:18 | 18 | communicate | 83:9 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 84:18, 20 | competing | 57:20 | 152:10,16, |
| :---: | :---: | :---: | :---: |
| 97:13 | 115:12 | 89:11 | 21 |
| 98:21 | competitivenes | 108:8 | concerns |
| 100:2,11 | s 59:24 | 125:13 | 67:13 |
| 102:8,13, | 60:4 | 166:6 | 104:23 |
| 21 106:8 | complain | computer | 153:5 |
| 108:11 | 9:21 | 21:15 | 170:6 |
| compactly |  | 91:18 | condensed |
| 98:25 | $8: 17$ | 119:13 | 175:9 |
| compactness |  | 132:4 |  |
| 51:11,18, | completed | 171:17 | condition |
| $2457: 5,11$ | 18:2 19:21 | 175:18,19, | 93:1 |
| 101:23 | 91:25 | 20 176:7 | conditions |
| 102:7,16 | 161:23 | 180:16 | 35:4 |
| 189:8 | completely | 187:19 | condoned |
| company | 53:19 76:4 | computers | 129:13 |
| 73:19 | 119:7 | 81:4 | conduct 4:22 |
|  | 188:4 | 149:24 | $158: 7$ |
| compare 43:6 | compliance | 150:22 |  |
| 68:21 69:6 | 18:21 | 175:13,14 | conducted |
| 111:16 | 18:21 | 176:3 | 37:25 |
| 112:10,21 | 108:5 | con- 35:24 | 43:15 |
| compared | 189:25 | 51:1 106:5 | conducting |
| 37:17 |  |  | 75:17 |
| 66:21 | compliant | concept |  |
|  | 122:14 | 149:8 | conducts |
| compares | complicat | 181:8 | 37:23 |
| 111:14 | 73:22 | concepts | conference |
| comparing | 125:14 | 173:13,21 | 33:2 125:9 |
| 111:25 | complied | 174:1,24 | confidence |
| comparison | 109:8 | 175:3 | 125:1 |
| 69:4 72:5 |  | 189:1 | ntial |
| compelling | complies | concern 25:3 | y 120:22 |
| 98:5 | 165:15 | 153:3 | conflict |
| compensation | comply 18:16 | concerned | 55:15 |
| 5:15,19 | 28:20 | 67:15 | 183:19 |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

| 184:7 | 154:14 | constitute | 96:7 |
| :---: | :---: | :---: | :---: |
| conflicts | consent | 35:9,17 | construction |
| 187:23 | 165:5,9,22 | 43:22 | 28:19 |
| conform 83:9 | consideration | 97:13 | 29:11 |
|  | 56:15 | constitution | consult |
| conformance 89.10 | 57:21 | 45:5 47:17 | 167:7 |
| 89:10 | 107:4 | 49:12 |  |
| confusing | 131:9 | 51:13 54:5 | consultant |
| 35:10,14 | 138:25 | 58:9,19 | 91: 6, 17 |
| confusion | $166: 21$ | 84:10,11, | 123:4,6, |
| 126:11 | 167:16 | 23 90:21 | 11,13,15 |
|  |  | 91:7 | consultant's |
| congress | considerations | 93:12,15 | 123:16 |
| 46:24 | 106:20 | 96:3 106:9 |  |
| 47:13 | considered | 108:5,10 | consultants |
| 48:7,10 | 5:21 35:24 | 109:2 |  |
| 51:9 64:23 | 65:15 | 120: 4 | 118:15 |
| congressional | 70:10 | 122:10 | consultation |
| 14:8, 9 | 95:16 | constitutional | 170:9 |
| 20:20 | 122:20 | 25:20, 22 | consultations |
| 26:2,4 | 164:11 | 82:15 | 164:18 |
| 28:15,16 | consist | 83:10 | consuming |
| 49:20 50:3 | 98:25 | 85:8,16 | 80:23 |
| 74:9 | 102:24 | 86:1 93:7, |  |
| 102:19 |  | 23 102:13 | contact 82:2 |
| 103:25 | consistent | 106:11 | contacted |
| 104:2 | 61:23 | 109:9,17 | 156:1 |
| congressionall | 114:12 | 189:9 | context 35:6 |
| y 20:21 | consists | constitutional | 41:10,11, |
| connect | 103:1 | ity 41:15 | 18,22 |
| 129:5,7 | 104: 4 | 44:20 | 44:8,9,16, |
| 161:7 | 121:13 | constitutional | 21 122:23 |
|  | constant | ly 122:14 | 125:13 |
| connect | 90:23 |  | 126:18 |
| 10:2 |  | constitutions |  |
| 53:18, 23 | constituents | 49:3, 9 | contiguity |
| 63:11 | 12:24 | 50:16 51:1 | 29:1 |
| 102:25 | 153: 6 |  | 52:16,17, |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: contiguous..country

| 24 53:4 | 177:17 | 139:5,6 | 164:1 |
| :---: | :---: | :---: | :---: |
| 101:24 | conversation | 140:7 | 176:2,14 |
| 102:23 | 123:13 | 159:5 | 184:15 |
| 103:16 | 125:23 | 172:20 | 187:8 |
| contiguous | 126:1 | 176:16 | councils |
| 52:20,21 | 160:21 | corrections | 38:24 |
| 53: 8, 13, 22 | convinced | 69:3 | counsel |
| 83:9 | 149:18 | correctly | 123:24 |
| 84:18,20 | cool 49:11 | 77:3,8 | count 17:11 |
| 103:12 | copy 82.12 | correspond | 35:17 |
| 106:8 | cop | 117:21 | 68:25 |
| 108:11 | core 105:6 | correspondence | counted 17:5 |
| continue | 145:2 | 169:10 | 23:20 |
| 84:25 86:5 | cores 57:25 | cost 119:6 | counties |
| continued | 102:1 | 178:1,5,6, | 26:12 |
| 15:11 | 105:11 | 7 | 48:16,23, |
| continuing | 189:23 | costs 177:16 | 24 54:13, |
| 97:6 | corner 58:19 | 178:11,14 | $13,14,20$ |
| 101:20 | 104:7 | council 8:2, | 56:13,25 |
| continuity | 154:7 | 13 29:15, | 57: 6, 9 |
| 105:10,24 | coronavirus | 16 69:10 | 74:22 |
|  | 16:2 | 81:22,24 | 100:22 |
| $91 \cdot 17$ |  | 82:9 | 104:5 |
| 91:17 | correct | 110:21 | 111:9,11, |
| contractor | 19:12 | 116:17 | 13 112:9, |
| 123:6 | 23:19 | 117:16,20 | 11,14 |
| control | 27:16,18 | 120:21 | 133:20 |
| 13:12 | 37:20 | 123:10 | 137: 4,5 |
| 13.12 | 38:17 | 129:1 | 142:11,22 |
| convene 84:6 | 69:24 | 130:19 | 148.24 |
| convened | 73:7,13 | 149:5 | 152:15 |
| 7:12 | 74:8 77:5, | 150:1 |  |
|  | 7,19 87:4, | 157: 6 | 189:11,14, |
| conversation | 18 88:11 | 159:9 | 189.11, 14 , |
| 124:8 | 103:8 |  | 15,18 |
| 161:16 | 117:20,24 | 1 | country 15:5 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| $54: 16$ | 15 145:6 | 51:23 | 93:21 |
| :---: | :---: | :---: | :---: |
| 115:3 | 148:6,8 | 53:21 | 95:25 |
| counts 11:18 | 152:6 | 54:23, 25 | 115:3 |
|  | 158:12 | 55:12 | 120:10 |
| county 49:1 | 160:25 | $64: 21$ 65:8 | 121:8,23 |
| 53:12 | 164:25 | 68:15 | 122:1 |
| 54:16,19, | 165:4,10, | 70:15 | 5.2 |
| 24 55:2,23 | 13 173:16 | 78:21 | $92: 13$ |
| 56:6,7,12, | 183:3,4, | 79:5,11 |  |
| 13,16 | 12,14 | 93:20 | coverage |
| 57:1,19,20 | 187:16 | 95:22 | 46:22 47:7 |
| 68:23 | 189:13 | 96:2,5,10, | 48:3 |
| $72: 25$ 73:2 | county's | 11 104:8, | covered |
| 74:18, 20, | county's | 9,12 | 25:23 48:4 |
| 22 75:14 |  | 106:11 | 82:18 |
| 77:13 | couple 25:4 | 108:20 | 83:11 93:8 |
| 100:21,25 | 42:23 | 113:21 | 94:21 |
| 102:9,12 | 47:24 | 114:16 |  |
| 103:1,2,4, | 48:15 62:2 | 115:4,9 | covers 90:17 |
| 21,23 | 71:9 84:11 | 121:4,15 | 146:2 |
| 110:2 | 101:12 | 122:7,23 | crack 66:23 |
| 111:6,7 | 122:3 | 123:3,15 | cracking |
| 112:18 | 129:16 | 127:12,17, | 98:9,20 |
| 133: 6, 8 | 130:2 | 18,20,24 | 99:4,14,16 |
| 135:13,18, | 152:18 | 129:3 | 99.4,14,16 |
| 22 136:2, | 171:17 | 130:4 | create 21:18 |
| 8,11,12, | 173:11 | 130.4 | 34:20 |
| 14,15,16 | 175:17 | courts | 38:20 71:3 |
| 137:4,7,8, |  | 26:12,17 | 114:5 |
| 16 138:3, | court 11:4 | 30:9,21,23 | 125:16 |
| 5,19 | $1212: 14$ | $31: 1,4,8$, | 126: 4,5,7, |
| 139:4,12 | 26:8 27:7 | 10 36:15, | 11 148:17 |
| 140:1,2,12 | 29:6,9,21 | 20 38:4,11 | 159:8 |
| 141:6,9, | 30:16,21 | 42:4 44:11 |  |
| 141:6,9, | 33:7 35:14 | 45:4,15 | created 16:9 |
| 142:2,9, | 41:9 42:7 | 50:10,15, | 31:13 66:5 |
| 13,14 | 44:18 46:2 | 17 51:2 | 116:16 |
| 13,14 | 47:1, 4, 6, 8 | 62:1 63:3 | creating |
| 143:9,11, | 49:19,23 | $64: 2486: 7$ | 23:5 97:25 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 98:2 | cuff 177:12 | 48:16 49:6 | 74:11 |
| :---: | :---: | :---: | :---: |
| 125:16 | culture | 51:13,14 | 109:7 |
| 126:5,8 | 166:22 | 54:4 57:6, | 151: 6 |
| 136:21 |  | 13,16 | 179:15,17 |
| 145:22 | curious | 58:8,24 | Dakotans |
| creation | 173:2 | 68:23 | 164:7 |
| 29:22 30:6 | current | $71: 12$ 72:1 |  |
|  | 39:16 | 74:21 | dark 13:10 |
| creep 138:4 | 102:9,10 | 82:19, 25 | 14:5 |
| criteria | 112:1 | 83:2 84:9, | data 15:20 |
| 10:22, 24 | 131:18,24 | 20 85:10 | 16:4 18:9, |
| 51:7 | 145:19 | 86:3,13 | 14 19:2,4 |
| 57:14,17 | cushion | 88:15 | 21:16,19, |
| 58:4 59:1, | 92:24 | 90:18 | 22 22:8 |
| 17 108:14 |  | 92:18 | 23:4,6 |
| 125:19 | cutoff | 96:15 | 24:1 43:6, |
| 189:7 | $74: 12,15$ | 106:14 | 17 60:1,2 |
| criterion | cycle 6:21, | 109:2 | 62:5, 9, 15 |
| 51:11,13 | 22 92:7 | 110:9 | 66:15,16, |
| $54: 4$ 56:22 | 108:22,24 | 111:3 | 21,22 |
|  | 130:21 | 120:4 | 67:5,6,18 |
| critical | 177:23 | 133:23 | 68:9,16,18 |
| 166:6 |  | 137:19 | 69:9,12 |
| criticized | $108: 14$ | 140:23 | 70:12,18, |
| 107:19 | 108.14 | 151:5,23 | 20,21,23, |
| cross 43:5 |  | 152:25 | 25 72:15 |
| $152: 5$ | D | 153:12 | 75:15,16, |
| 152.5 | da- 79:18 | 163:14,20, | 25 77:16, |
| crossing |  | 25 164:16 | 22 78:2,25 |
| 34:8,16 | daily 124:21 | 165:17 | 79:1,6,7, |
| crossover | Dakota 4:15 | 166:3 | 18,23 |
| 34:7 | 9:15 11:1, | 168:2,10 | 111:1,2 |
| crosstalk | 10 14:18, | 171:6 | 112:9,21 |
| crosstalk $186: 24$ | 21 15:3,6 | 172:11 | 146:18 |
| 186:24 $190: 21$ | 20:16 24:4 | 180:22 | data's 67:17 |
|  | 25:6 39:12 | Dakota's |  |
| crunching | 40:5,23 | 13:1 48:4 | date 8:12, |
| 66:19 | 42:5,8 | 69:12 | 16 16:4 |

Index: creation..date

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 214 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: dates..define

| 20:12 69:1 | 8,10 | 125: 4 | 172:21,23 |
| :---: | :---: | :---: | :---: |
| 70:10,16 | 174:10 | decades 11:9 | decision |
| 83:23 | 183:11 | 109:20 | 114: 9,11 |
| 89:19 | 185:4 |  | 115:10 |
| 90:2, 3, 9 | 187:9 | decennial |  |
| 156:11 | 191:24 | 90:22 |  |
| 169:6 | DC 47:2 | decide 30:24 | decisions |
| dates 88:20, |  | 31:1 40:4 | 10:12 |
| 22 173:11 | dead 31:9 | 48:12 | 108:1 |
| 186:23 | deadline | 64:21 | 114:16 |
| 188:11,14 | 13:25 | 70:16 | 15: 6, 8 |
| 191:1 | 19:20 | 120:25 | decks 23:18 |
|  | 83:18 | 127:19,24 | ecrease |
| Dave's |  | 130: 4 | decrease |
| 150:15,16 | deadlines | 141:4,11 | 111:21 |
| 177:3,10 | 18:11,23, | 156:24 | 112:15,25 |
| 181:13 | 24 19:23 | 172:24 | decree |
|  | 20:11,13 | 172:24 | 165:5,9,22 |
| Davis | 70:12 | decided |  |
| 168:20,21 | 89:12 | 21:10 | deduce 22:6 |
| 170:1,5,16 |  | 44:15,18 | deemed 95:15 |
| 191:17 | deal 7:14 | 57:19 | deemed 95.15 |
| day 5:23 | $\begin{array}{ll} 16: 11 & 20: 9 \\ 67 \cdot 23 & \end{array}$ | 66:10 71:4 | $\begin{gathered} \text { deep } 17: 17 \\ 92 \cdot 16 \end{gathered}$ |
| 7:1,14 |  | 90:5 | 2.16 |
| 16:6 80:6 | dealing | 108:23 | defeated |
| 81:15 88:4 | 80:25 | 109:3 | 105:22 |
| 149:10 | debate 78:5 | 144:1 | defeats |
| 173:20 | 120:7 | 145:1 | 97:16,19 |
| 176:5 | decade 14:24 | 175:2 | defend 26.23 |
| 183: 6, 13, | $17: 13$ | 188:10 | defend 26:23 |
| 14,21 | 21:10 | decides 86:4 | 166:2 |
| 184:11,17 | 21.10 |  | Defense |
| 189:14 | 28.18 | decision | 62:18 |
| 191:23 | 30:12 | 42:1,17 | defer 128.15 |
|  | 34:15 39: | 56:18 | 128.15 |
| days 5:22 | 58:17 | 107:23 | define 59:6 |
| 7:9,16 | 61:16,21, | 127:13 | 160:24 |
| 33:6 47:24 | 22 71:3 | 137:16 | 185:5 |
| 89:1 90:6, | 91:16,19 | 157:5 |  |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

| defined 97:3 | demand | density | designing |
| :---: | :---: | :---: | :---: |
| 101:22 | 164:15 | 76:11 | 180:2 |
| 104:17,19 | democracy | dental | desk 82:13 |
| defines 59:7 | 166:2 | 183:22 | detail 82:23 |
| defining | democrat | department | 88:17 |
| 105:3,4 | 60:16 | 46:6 47:2 | 115:11 |
| definition | Democratic | 68:25 69:2 | detailed |
| 42:21 59:4 | 41:7 | depend 38:16 | 73:6 |
| 97:1 | democrats | 41:2 | details 24:3 |
| 104:19 | 10:7 60:21 | 127:18 | 91:1 114:1 |
| definitions | 61:6,7 | 130:6 | determine |
| 99:9 121:7 | demographer | 138:1 | 42:22 |
| degree 69:13 | 24:2 | depending | 46:24 72:9 |
| 76:5,6 | demographic | 26:1 134:5 | 121:5,12 |
| 78:16 | 22:15 | depends | 127:20 |
| 79:13 | 43:10 | 38:16 | determined |
| delayed | demography | 40:13 | 93:21 |
|  | $24: 7 \quad 37: 17$ | 89:22 | 97:24 |
| $17: 24$ | 24:7 37:17 | $127: 15,23$ | determines |
|  | demonstrate | 128:8 | determines 108: 6 |
| delays | 95:3 | deposition |  |
| 17:22,23 | 135:17 | 118:16,19 | Detroit |
| 19.571 .4 | 142:18 | 119:4 | 48:25 |
| deliberations | demonstration | Depression | develop 83:6 |
| 120:10 | 130:13 | 14:17 | developed |
| deliberative | 131:22 | describe 8:7 | 31:6 91:19 |
| 115:2,16 | 132:13 | describe 8:7 | 92:4 |
| 117:2 | 141:8,15 | description |  |
| deliver 7:7 | 142:20 | 102:6 | developing |
| 62: 4,5 | denial 41:4 | 187:15, 21 | 91: 6 113:19 |
| delivered | 44:5,8 | descriptions | 138:7 |
| 6:18 7:11, | 96:23 | 31:18 |  |
| 17 | denied 93:17 | design | 106:23 |
| delivery | dense 24:21 | 180:15 |  |
| 70:10 |  |  | viation |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: deviations..direct

| 25:25 | 65:17 68:4 | 16 169:16 | differential |
| :---: | :---: | :---: | :---: |
| 26:9,24 | 69:17 71:6 | 170:4,15, | 20:25 |
| 27:9,15, | 72:6 73:25 | 17 171:11 | 21:11 |
| 21,23 | 76:8,16 | 172:2,17, | 23:2,12 |
| 56:14 | 77:1,15 | 25 173:8 | 62:13 66:4 |
| 85:19 | 78:10 | 174:12 | 67:1 68:2 |
| 86:11 | 80:9,17 | 176:1,17, | 74:3,17 |
| 87:10,12, | 81:6,16 | 19,23 | 77:17 |
| 13 95:9,14 | 82:7 88:3 | 177:14 | differently |
| 112:1,19 | 89:13,15 | 178:16 | 50:18 |
| 141:20 | 92:15 93:4 | 179:25 | 79:11 |
| 142:3,5, | 99:6 | 180:11 | 116:5 |
| 10,11,14 | 100:14 | 181:3, 6, | 160:24 |
| 144:17,19 | 107:13 | 16,19,20 |  |
| 145:20 | 109:22 | 183:2,13, | dig 24:10 |
| deviations | 110:11,19 | 16,18 | digest 113:7 |
| 27:1,2 | 113:8,12 | 184:2,9, | digging |
| 95:16 | 117:10 | 20,24 | 92:16 |
| 105:9 | 126:24 | 185:7,12, |  |
| 113:5 | 127:7 | 18,21 | dilute 95:5 |
| 113.5 | 128:12 | 186:2,7, | 98:17,22 |
| devices | 129:10 | 13,16,18, | 99:5 |
| 119:20 | 130:12 | 25 187:22 | 166:17 |
| Devil's | 134:16 | 188:12,24 | 167:3 |
| 158:18 | 137:2 | 190:9,14, | diluted |
| 159:15,19 | 149:3 | 20,22,24 | 165:2 |
| 164:6 | 150:24 | 191:5,9, | 179:22 |
| Devlin 2:1, | 151:19,20 | 11,14,22 | dilut |
| 5,6 3:14, | 154:1,21 | dialogue | dilutes 101: |
| 19,23 4:9 | 156:13 | 110:12 | 101:8 |
| $7: 23$ 8:22 | 158:9,15 |  | dilution |
| 9:23 27:10 | 159:11 | difference | 31:20 35:5 |
| 28:3,7 | 160:10 | 12:5,7 | 41:5 44:6, |
| $28: 3,7$ 32.2537 .8 | 161:11 | $24: 22$ 26:6 | 9 |
| $32: 25 ~ 37: 8$ $38: 6 ~ 39: 9$ | 162:8,19 | 35:13 44:5 |  |
| $38: 6$ 39:9 | 163:5,10 | 52:8 71:18 | dilutive |
| 42:19 44:1 | $163: 5,10$ $167: 19$ | 80:5 | 166:9 |
| 55:17 | 167:19 | 172:13 | direct 6:15 |
| 56:10 64:3 | 168:1,14, |  |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| directed | discrimination | 142: 4 | 37:6, 9, 11 |
| :---: | :---: | :---: | :---: |
| 83:5 | 30:2 45:7 | distance | 38:17 |
| direction | discriminatory | 88:6 | 39:15,23 |
| 25:1 43:12 | 32:9,10,12 | 156:19 | 40:9 |
| directive | 94:4 | distinct | 43:23,24 |
| 83:2 | discuss | 44:10 | 52:1,19, |
| directly | 101:1 | 135:8 | 20,21,22 |
| 128:23 | 126:8,10 | distinction | 53:3,13, 22 |
| 152:22 | 128:16 | 35:14 | 61:2,13 |
| 167:12 | 149:8 |  | 73:3 |
| 167.12 | 162:13 | distinctly | 76:12,13 |
| director | 176:13 | 80:21 | $85: 20.24$ |
| 128:23 |  | distorted | 85:20,24 |
| 163:16 | discussed | 68:10 | 86:4,12, |
| 168:22 | 177:14 |  | 14,17,19, |
|  | discussing | distortions | 20 87:9, |
| disadvantageou $\text { s } \quad 42: 15$ | 73:10 | 24:17 25:8 | 11,13,24, |
|  | 162:17 | distracting | 25 88:8,9 |
| disaster | 164:19 | $124: 22$ | 91: 6, 9,19 |
| 17:15 | 164.19 | 124.22 | 92:4,11 |
| 189:4 | discussion | distributed | 97:14,25 |
|  | 3:20 44:12 | 156:5 | 98:2, 3, 4, |
| disclosure 20:23 | 107:9 | district | 14,19 |
| 79:14 | 169:4 | 11:15 | 100:3,8,12 |
| 116:8 | 171:13 | 12:9,11 | 101:17 |
| 117:6,9 | 189:13 | 19:17 26:2 | 102:9,10, |
| 119:15 | discussions | 27:24 | 11,15,19, |
|  | 169:9 | 28:15,16, | 25 103:5, |
| discovery |  | 18,25 | 11,21,25 |
| 118:8,14 | disfavoring | 29:2, 4, 12, | 104:22 |
| 119:6,22 | 59:15 | $22,25$ | 105:20 |
| 122:2 | dismissed | 22,25 $30: 5$, | 109:1 |
| discrete | 68:14 | 31:23,24 | 112:2,5 |
| 25:11 69:4 | 129:2 | 32:14,15, | 114:17,19 |
| discretion | disputes | 16,20,21, | 116:25 |
| 83:12 | 122:2 | 24 33:19 | 123:2 |
| 156:10 |  | 34:5 | 129:3,6 |
| 156.10 | disregarding | 35:10,18 | 131:7,10 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 218 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: districted..door

| 135:23 | 20 28:2 | 144:25 | doctrine |
| :---: | :---: | :---: | :---: |
| 136:3,5,7, | 34:18, 20 | 145:3, 9, | 28:11 30:8 |
| 20,22 | 38:10,12 | 11,19 | $31: 951: 3$ |
| 138:21 | 40:2,7 | 146:16,20, | 61:20,22 |
| 141:12,14, | 51:9 52:24 | 21 147:16, | doctrines |
| 18,20 | 54:13 | 18,22 | 10:19 |
| 142:20,24 | 56:6,25 | 148:23 | 25:18 |
| 143:3,5, | 57:18,19, | 150:19 | 61:24 |
| 13,15,16, | 25 58:2,16 | 152:5,20 |  |
| 21 144:2, | 60:6,9,25 | 153:1, 2, | document |
| 5,9,10,13, | 76:15 83:8 | 10,13,14 | 115:18 |
| 14,16,18 | 84:17,18, | 164:13,14 | 124:8 |
| 145:13,14, | 21,24 | 165:6,8 | 125:18 |
| 22,23,24 | 85:18, 24 | 166:8,13, | 126:6 |
| 147:2 | 86:5 87:1, | 24 167:3 | 148:17 |
| 148:4 | 17 88:12, | 170:22,23 | documentation |
| 152:7,21 | 13 89:9 | 171:5,6, | 123:16 |
| 164:17 | 91:8 94:15 | 19,24 | 149:18 |
| 166:16 | 96:13,15, | 172:22 | documents |
| 167:2 | 16,17 97:6 | 173:6 | $50: 18$ |
| 173:24 | 98:12,18, | 177:21 | 114:5,22 |
| 177:16,25 | 22 99:2,4 | 179:2,18 | 115:21 |
| 178:2,4 | 101:3 | 180:3 | 120:15,20 |
| districted | 102:1,7,23 | 189:23 | 122:17, 20, |
| 33:12 | $\begin{aligned} & 105: 6,7,11 \\ & 106: 21,22, \end{aligned}$ | diverse 36:2 | 24 124:16 |
| districting | 24 109:15 | diversity | DOJ 48:20 |
| 20:20 26:7 | 111:13,17, | 40:22 | domino |
| 38:19, 23 | 18,19,20, | divided 10:7 | 137:21 |
| 39:2,5,6 | 22,25 | 28:1 62:24 | 138:5 |
| 96:4 | 112:3,6 | 63:1 84:16 | 138.5 |
| 101:21 | 125:16 | 189:15,16 | Donaghi |
| districts | 126:4,8 |  | 163:13 |
| 11:16 13:4 | 129:17 |  | donut 52:20, |
| 14:8,10 | 131:17 | 101:2 | 22,23 |
| 19:22 | 138:1,11, | Docket 123:2 | 53:1,2 |
| 26:1, 3 | 17 139:24 | Doctrinally | door 96:1 |
| 27:2,4,19, | 141:16 | 44:10 | 179:11,23 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 219 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: dorm..effect

| dorm 16:17 | 43:23 | dropped | early 16:19 |
| :---: | :---: | :---: | :---: |
| dormitory | 58:16, 20 | 140:13 | 18:11,23 |
| 71:17 | 60:9,20,25 | drove 159:21 | 19:24,25 |
|  | 61:1,13 | drove 159.21 | 172:1 |
| dorms 16:24 | 114:10 | drowned | 173:18 |
| dots 133:10 | 131:6,15 | 153:6 | 183:21 |
| double 17:5 | 133:2 | dual 66:25 | 184:1 |
| double 17.5 | 135:18 | due 15:23 | earmuffs |
| downloaded | 150:14,18 | 104:10,22 | 32:15 |
| 177:4,7 | 166:16 | $164: 25$ |  |
| dozen 159:18 | drawing 28:2 | 165:24 | $161: 12$ |
| dozens 128:6 | 29:2 42:14 | duplicate |  |
| 146:7 | 57:18 81:2 | $17: 9$ | easiest |
|  | 98:12 |  | 125:9 |
| draft 5:20 | 100:3 | duration 5:3 | easily 22:6 |
| 18:4,25 | 106:17 | Durham 28:23 | 163:3 |
| 116:16, 20, | 131:14 |  |  |
| 116:16,20, | 136:5 | dynamic | east |
| 21 122:17 | 137:21 | 152:24 | 123:2 |
| 162:16 | 138:25 | dynamics | easy 142:21 |
| 187:9,12, | 144:8 | 152:18 | 148:6 |
| 13 | 187:19 |  | 157:13 |
| drafted 47:9 | drawn | E | 163: 6 |
| 83:24 | rawn |  | 173:23 |
| drafters | $\begin{array}{ll}31: 24 & \\ 32: 17 & 50: 5\end{array}$ | earlier 6:24 | economic |
| 105:18 | 98:25 | 62:13 64:6 | 164:5 |
|  | 102:19 | 69:20 |  |
| drafts | 102:19 | 100:16 | economics |
| 117:24 | 104:12 | 107:2 | 166:23 |
| 163:2 | draws 13:3 | 111:2 | ed 186:16, |
| drag 133:3 | 137:25 | 120:8 | 19 |
| 135:20 | drew 19:1 | 135:22 | Education |
| dram | drive 154. | 141:25 | $62: 18$ |
| 25:15 | drive 154.8 | 161:16 |  |
| 25:15 | drivers | 173:10 | effect 32:7, |
| draw 13:20 | 164:6 | 176:1 | 9,12 89:20 |
| 29:24 |  | 189:19,20 | 90:3,11,12 |
| $32: 24$ 37:6 | drop 14:8 $132: 21$ | 189:19,20 | 137:21 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: effective..ensure

| 138: 6 | 41:16 | email 123:25 | 61:22 |
| :---: | :---: | :---: | :---: |
| 166:9 | 43:5,8 | emails | 78:21 80:6 |
| effective | 45:12 | 124:3,5,6 | 83:15 88:4 |
| 89:5,18 | 47:3,6 | 126:1 | 107:10 |
| $90: 2,9$ | 49:3,8,17 |  | 118:19 |
| 90.2, 9 | 50:14 84:8 | emergency | 119:21 |
| effects | 89:1, 7, 10, | 90:14,15 | 120:1 |
| 56:18 | 12 165:11, | emerging | 125:21,22 |
| effectuate | 14 | 59:17 | 126:1,9,13 |
| 106:25 | elections | Emily 2:2 | 161:13 |
| 107:1 | 41:10 44:8 | 4:10 7:24 | 174:19 |
| efficient | 49:12 50:1 | 15:17 | 180:3 |
| 113:12 | 60:15,17 | 73:25 75:6 | 183:10 |
|  | 88:25 | 80:9,18 | 187:1 |
| effort |  | 86:24 | 189:13 |
| 160:20 | electoral | 89:13,16 | endeavors |
| 161: 6 | 165:1 | 89:13,16 |  |
| 178:25 | electorate | 93:4 99:6, | 169:13 |
| efforts | 61:2 | 8 107:20 | ended 189:14 |
| 179:24 | electronic | 130:14 | ending 15:23 |
| elect 31:25 | 119:20 | 134:13,17 | 16:5,21 |
| 34:20,21 | 157:8 | 137:3 | enforce 94:5 |
| 36:13 | 159:23 | 139:16 | enfor |
| 61:5,6 | elementary | 146:6 | 94:1 |
| 164:14 | 164:2 | 176:21 |  |
| 167: 4 |  | 177:15 | engage |
|  | elements |  | 154:19 |
| elected | 13:9 36:19 | Emily's | 155:1 |
| 19:18 | 76:4 | 63:21 | 169:4 |
| 38:24 |  | enacted |  |
| 60:21 | eligible | 44:12 | engaged |
| 76:14 85:6 | 11:24 | 44:12 | 129:1 |
| 109:10 | 19:17 | 93. | enjoy 33:2 |
| 152:23 | eliminate | encourage |  |
|  | 95:5 | 153:18 | enrolled |
| election |  |  | 163:21 |
| 19:8 20:7, | Elkin 4:9 | encouraged $155: 19$ | ensure 84:1 |
| 8 32:5 | else's 22:18 | 155:19 | 165:14 |
| 37:16 |  | end 20:15 |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 166:14 | equally | estimates | 68:25 76:1 |
| :---: | :---: | :---: | :---: |
| entered | 58:20 | 18:10 | 77:17 |
| 165:4,21 | equipment | ethnic 25:8 | examples |
| entering | 157:8 | 33:22 | 26:17 |
| 165:9 | equitable | 37:19 | 68:22 69:4 |
| entire 5 | 166:14 | ethnicity | 71:9 102:5 |
| 49:20,22 | Erbele 3:2,3 | 22:16 | 116:12 |
| 53:2 61:23 | 182:16,17 | 105:2 | 122:3 |
| 126:23 | error 23:5, | evaluated |  |
| 129:19 | $2524: 8,10$ | 98:3 | exceed 85:25 |
| 184:22 | $53: 16$ | evening | 108:23 |
| entirety | 65:20 | 81:10 | exceeded |
| 143:23 | 72:12 | 183:22 | 86:17 |
| entities | 78:25 | eventually | excellent |
| 129:8 | essence | 129:18 | 24:4 71:22 |
| enumerator | 35:16 | everybody'd | exceptions |
| 16:17 | essentially | 177:7 | 27:8 |
| environment | 58:3 62:23 | evidence | excessive |
| 117:19 | 82:13 94:1 | 24:17 25:7 | 104:10 |
|  | 98:10,16 | 34:14 | excessively |
| $1626: 19$ | 103:19 | 37:24 | 103:19 |
| $30: 19$ | 105:19 | 97:20 | x |
| 49:3,7,17 | $143: 14$ $145: 16,25$ | 123: 4 | 98:7 99:6 |
| 61:3 85:18 | 148:3 | ex- 13:8 | 109:13 |
| 93:13 |  |  | 111:5 |
| 94:13,16 | establish | $22: 16,22$ | 114:15 |
| 106:10 | 85:4 94:15 | 22.16, 22 | 127:20 |
| 108:12 | 106:21 | 26:3,5 | 131:11 |
| equality | established | 33:18 | 133:15 |
| 83:11 | 11:13 65:8 | 34:3,9 | 143:4,15 |
| 85:22 86:7 | 86:9 89:8 | 40:13 | 146:17 |
| 94:12, 21 | 97:10 | 43:16 | 167:7 |
|  | 108:17 | 49:25 | 176:6 |
| 12:5,6 | establishes | 52:11 | executive |
|  | 89:3 | $60: 2561: 5$ | 163:15 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 222 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: exempt..Fargo

| 168:21 | expense | extra 84:2 | 62:21 |
| :---: | :---: | :---: | :---: |
| exempt | 159:8 | 109:20 | 166:16 |
| 116:18,22 | experience | 149:14 | fair 49:8, |
| 118:5 | 73:18 |  | 12 50:14 |
| 122:20 | 149:4 | F | 68:20 |
| exercise | experienced | face- 154:19 | 123:18 |
| 47:12 | 111:3 | face- | 164:9 |
|  |  | face-to-face |  |
| exhibit | expert 24:1 | 154:16 | fairly 47:14 |
| 104:6 | 69:9 70:23 |  | 96:5 |
| 126:14 | 75:16 | fact 15:19 | 118:25 |
| exist 30:10 |  | 30:5 54:24 | fairness |
| 43:3 49:9 | 149:6 |  | 107:24 |
| 76:19 | experts 9:1 |  | fall 16:12 |
| existed 47:9 |  | $30: 6 \quad 97: 24$ | 19:20 |
| 61:24 | explain 24.5 | 98:2 99 | 87:14 |
| 65:10 |  | 101:4 | 161:13 |
| existing |  | 102:23 | falls 84:22 |
| 105:12 | explanation | 104:15 | 86:19 88:7 |
| 109:1 | 29:17 | 138:16 | false 126:5 |
| 144:25 | explicitly | factors |  |
| 145:4,9, | 58:16 60:1 | 36:16, 20, | $116: 2$ |
| 11,23 | explore | 24 39:3 | 130:24 |
| exists 63:8 | 153:9,19 | 64:8,10, | 190:18 |
| 77:20 | export | 13,19,21 | family 22:12 |
| expand 86:25 | 181:14 | 65:15 | fancy 150:22 |
| 177:24 | extended | $84: 19$ $100: 1,11$ |  |
| expect 40:18 | 120:10 | 101:19 | fantastic $9: 10$ |
| 50:11 | extensive | 130:7 |  |
| 77:11 | 118:14 | 138:10,25 | far-left |
| 173:3 | extent 105:8 | 145:2,10 | 134:3 |
| expected | 145:3 | 174:25 | Fargo |
| 75:24 | extenuating | failing 62:4 | 158:17, 22 |
| expedite | $5: 9$ | 167:7 | 159:7,10, |
| 16:22 |  |  | 13,16 |
| 16.22 |  | failure | 160:1 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: Farmer's.floor

| 174:14,22 | federal 11:5 | fight | finalize |
| :---: | :---: | :---: | :---: |
| 183:22,24 | 15:22 16:3 | 164:22,24 | 141:12 |
| 184:4,10 | 18:21 | figure 24:7, | finalized |
| 186:4 | 25:20,21 | 10 43:7 | 67:14 |
| 188:16 | 30:9,21,23 | 66:23 |  |
| Farmer's | $31: 4,9$ | 70:14 | finally |
| 151:23 | 42:8 44:10 | 178:11 | 129:13 |
|  | 47:1,12 | 179:1 | find 17:9 |
| fast 15:15 | 50:9,15 | 179.1 | 37:5 45:4 |
| fastest | 51:8 62:1 | figures | 55:23 |
| 14:18 15:4 | 63:3 65:21 | 135:25 | 63:22 |
| 28:3 | 78:22 | 178:20 | 68:11 |
| 28 | 84:25 85:2 | figuring | 76:24 |
| favor 3:21 | 90:22 93:7 | 16:18 | 139:17 |
| 121:18,21 | 94:8 95:25 | file 20:4 | 153:1 |
| favorability | 96:10,12, | 127:16 | 173:8 |
| 44:19 | 19 101:20 | 130:3,5,10 | fine 180:21 |
| favorable | 108:17 | 181:14 | 184:5 |
| 41:13,14, | 123:3 |  |  |
| 20 | 127:18 | filed | nishes |
| 20 - | 129:3 | 128:7,11 | 14:3 |
| favored | federalism | 130:8 | Finley |
| 57:12 | 47:16 | filing 89:12 | 157:9,10 |
| favoring | federally | 128: 4 | fires 17:16 |
| 59:15 | 163:19 | filled 17:4 | fishermen |
| fear 115:6 | feedback | 114:20 | 59:10 |
| feature | 167:11 | filling | fishers |
| 134:7 | feel 129:22 | 24:14 | 105:1 |
| 135:17 | 152:3 | final 6:1 | fit 80:4 |
| features | 153: 4, 7, 13 | 7:3 46:20 |  |
| 131:23 | 170:7 | 51:2 63:10 | fits 15:5 |
| 133:2,5 |  | 89:17 | 56:13 |
| 142:19 | feeling | 105:25 | fixed 178:7 |
| 146:2 | 170:25 | 109:23 | floods 17.16 |
|  | feels 173:17 | 187:7,12, | floods 17:16 |
| February |  | 13 188:10 | floor 87:22 |
| 16:20 | $55: 2$ |  | 89:17 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021 Index: Florida..geographically

| Florida 36:3 | 48:3 58:18 | full 45:3 | gathered |
| :---: | :---: | :---: | :---: |
| 102:19 | Fort | 82:19 | 16:3 |
| 122:7 | 5 | 116:19 | gave 173:10 |
| fly 155:12 |  | 162:5 |  |
| f1y 155:12 | forthright | 174:10 | general |
| focus 10:25 | 64:17 | 186:3 | 10:15 27:8 |
| 30:16 | forward | fuller 31.14 | 29:13,20 |
| folks 8:9 | 55:22 63:7 | fuller 31:14 | 33:23 |
| 155:3 | 171:4 | fully 31:12 | 36:19,25 |
| 159:9 |  | fun 92:22 | 41:1 54:9 |
|  | Foster |  | 64:18 65:2 |
| follow 48:8 | 142:25 | functionality | 89:7 |
| 53:6 58:8 | found 21:13 | 134:11 | 104:18 |
| 60:7 82:14 | 26:11,17 | functions | 116:9 |
| 85:10 | 36:21 38:4 | 131:3 | 131:1 |
| 106:9,12 | 45:13 46:2 | Fund 62.18 | 151:2 |
| 169:11 | 50:23,25 | Fund 62:18 | 163:7 |
| forcefully | founding | fundamental $166: 1$ | generally |
| 54:24 | $50: 18$ |  | 5:5 6:5 |
| fore 18:13 |  | fundamentals | $74: 3$ |
|  | fourth | 10:17 13:3 | 106:15 |
| forefront | 104:14 | funnel 81:21 | 119:17 |
| 164:23 | 111:3 | funnel 148:3 | 121:21 |
| forgive 72:8 | free 49:3, |  |  |
| forgot | 7,8,12,17 | future 19:3 | generate 132.10 |
| 144:7,11 | 50:1,14 | 41:17, | 146:5,7 |
| 177:15 | 57:22 |  |  |
|  | 63:16 |  | generated |
| form 17:2 | 170:7 | 151:1 | 147:20 |
| 109:15 |  | 152:1 |  |
|  | freedom | 170:9 | geographic |
| formal 70:4 | 30:18 | 170.9 | 153:15 |
| format 70:22 | friendly | G | geographical |
| 71:3 | 70:22 |  | 152:8 |
| forms 24:14 | friends | game 123:18 | geographically |
| formula | 75:18 | gaming | 35:8 97:13 |
| 46:22,23 | front 150:4 | 163:15 | 98:21 |
| 47:7, 9, 13 | 155:14 | gate 82:25 | 102:8 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| geography | 72:18 | 65:21 | 24:18 25:2 |
| :---: | :---: | :---: | :---: |
| 72:18, 22 | 102: 4 | 78:22 | 26:24,25 |
| 76:7 77:24 | 117:18 | 120:18 | 27:2 67:19 |
| 179:14 | 121:25 | 171:2 | 164:6 |
| geolocated | 129:19 | 179:13 | greate |
| 19:11 | 130:17 | 185:15 | 86:17 |
|  | 148:8 | governments |  |
| gerrymander | 149:13,14, | governments | green 18:3 |
| 28:14 29:5 | 16 152:8 | 40:21 | 102:14 |
| 49:21 | 163:18 | 110:13 | 141:13,17 |
| 97:25 |  | 167:12 | 144:4 |
|  | giving 29:13 | governor |  |
| gerrymandering | 63:4 132:3 | 13:6 46:1 | Greensboro $28: 22$ |
| 28:12 | glad 150:1 | 84:5 88:25 |  |
| 32:22 | d | 89:23 | grew 145:13 |
| 49:18 |  | grab 33:15 | Griggs |
| 50: 9, 24 |  |  | 142:25 |
| 61:20 | 52.6, | grabbed | 2 |
| 95:21, 23 |  |  |  |
| 96:8 98:8 |  | granular | grounds |
|  | 137:12 | 23:23 | 26:20 |
| get all | 138:9 | 72:16,23 | 68:15 |
| 63:18 | 149:17,20 |  |  |
|  | 150:2 | gravitates | $16: 14$ |
| Gingles $35: 1$, | 160:2 | 152:17 | 16:14 |
| $36: 10,23$ | 163:9 | gray 13:11 | 25:11 |
| $37: 1$ 65:8 | 172:10 | 15:4 | 33:22 |
| 97:8 | 180:5 | 133:24 | 34:1,11 |
| give 16:10 | Google | great 9:3 | 35:7,16,25 |
| 17:24 | 124:19 | 14:17 | 37:19 38:3 |
| 20:10 | 150:16 | 17:14 44:3 | 40:14 59:8 |
| 26:16 | govern 4:21 | 81:18 | 67:7 71:12 |
| 29:16,19 | 10:20 | 122:9 | 72:4,14,15 |
| $31: 13$ 36:1 |  | 138:23 | 77:6,9 |
| 39:4 52:12 | governed | 160:19 | 78:7 |
| 59:13 | 164:1 | 169:8 | 80:13, 24 |
| 60:11 | government | greater | 81:1 95:6 |
| 69:11,12 | 62:24 63:1 | 10:25 | 96:25 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 97:3,10,19 | 104:6 | 104:7 | 107:12 |
| :---: | :---: | :---: | :---: |
| 98:11,14, | 108:3 | 120:3 | 113:5 |
| 15,21 99:1 | 109:7 | 121:2 | 126:20 |
| 151:6 | 110:3, 9 | 134:3 | 148:18 |
| group's | 137:9 | 174: 6 | 167:17 |
| 107:23 | 144:22 | handful | hard 27:8 |
|  | 154:5 | 13:14, 21 | 67:18 |
| groups 25:8, | 156:23 | 51:21 | 68:20 69:5 |
| 9,16 27:3 | 157:24 | 58:15 59:6 | 142: 6 |
| 72:20 | 158:22 | 160:4 | 142.6 |
| 73:20 | 159:6 | 160:4 | harder |
| 77:23 81:5 | 168:16 | handle 13:14 | 100:13 |
| 98:23 | 170:7,14 | handled | hate 128:7 |
| 104:20 | 174:5 | 127:13 | 176:20 |
| 151: 4 , 7 | 177:2 | handling | 179:21 |
| growing | 191:3 | handing | 183: 6 |
| 14:19 15:4 | guidance |  | 184:25 |
| 171:1,2 | 64:23 96:7 | handout | Hawaii 27:1 |
| 179:13,15 | 64.23 96.7 | 190:12 | Hawaii 27:1 |
| *n 160.25 | guide 127:3 | hands 44:2 | head 57:15 |
| grown 160.25 | guidelines |  | 80:4 |
| growth | 54:6,7 | handy 135:16 | 128:17 |
| 14:15,16, | 58:1, 8 | happen 162:4 | headache |
| 20,22 | 83:13,15 | 168:2,11 | 67:22 |
| 15:10,14 | 109:18 | happened |  |
| 75:23 |  | 44:22 | Headland |
| 152:13 | gun 153:22 | 44.22 50.20 | 2:11,12 |
|  | guy 164:19 | 50:20 | 76:8, 9, 17 |
| guarantee | guy | 64:14 | 173:1,9 |
| 74:7 | guys 164:20 | 67:12 | 178:20 |
| guaranteed |  | 158:17 | 180:5,20 |
| 93:13 | H | happening | 181:25 |
| guardrails | half 12:10 | 16:7 | 182:1 |
| 107:21,25 | 85:4,5 | happy 7:22 | 190:24,25 |
| 108:8 | 156:18 | 63:17,25 | 191:8 |
| guess 65:25 |  | 67:12 | headlines |
| 79:24 |  | 76:23 81:3 | 123:21 |
| 92:25 | 51:25 | 82:3,4 | 124:14 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 227 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: heads..hotel

| heads 149:16 | 97:5 | 159:14 | 14,18,23 |
| :---: | :---: | :---: | :---: |
| health 9:6 | hey 136:1 | history | 80:2 88:2, |
| 178:10 | 158:10 | 45:18 | 3,4 |
| hear 12:24 | high 12:8, | 76:10 | 100:14,15 |
| 39:19 | 13 28:22 | 79:16, 21 |  |
| 162:1 | 34:10 | 90:18 | 110:5,14 |
| 191:3 | 99:19 | 109:7 |  |
| heard 4:19 | 113:24 | hit 4:18 | 172:20 |
| 5:11 13:1 | 143:6 | 147:19 | 174:18 |
| 20:24 | high-level | 148:25 | 182:10,11 |
| 30:12 41:6 | 126:21 | 179:3 | 188:5,6,24 |
| 98:9 | 130:17 | hitting | 189:3 |
| 189:19 | 144:22 | 142:17 | 190:12,15, |
| hearings | higher 34:12 | hoc 21:19 | 18,23 |
| 167:11 | 178:15 | hold 104:13 | 191:10 |
| 191:6,8 | 186:16,19 | 164:17 | Holmberg's |
| heavily | highest |  | 181:17 |
| 38:11 | 87:10,14, | holding $167: 11$ | home 14:25 |
| held 4:20 | 24 142:10 |  | 16:25 |
| 6:25 7:7 | highlight | hole 52:22 | 111:6 |
| 50:3 75:10 | 16:10 31:8 | 53:1 | 178:20 |
| 76:2 89:1 | 52:10 | holes | homes 17:1 |
| 104:9 | 61:20 | 114:19,23 | honest 61:12 |
| helpful 7:19 | highlighted | holistic | honor 9:15 |
| 10:12 | 67:14 | 65:5 | honor 9.15 |
| 52:13 | 153:9 | Holmberg | hope 154:9 |
| 63:12,23 |  | 2:21, 22 | 179:5,10 |
| 65:16 | highlights | 4:6 7:23, | 180:11 |
| 80:20 | 4:18 131:4 |  | 186:8 |
| 80.20 | 140:22 | 4 | 190:3,5 |
| helpfully $54: 6$ | highway | $39: 9,12$, 15,19 | hopeful |
| 54 | 26:16 | 40:1,12 | 188:2 |
| helping | 72:17 | $71: 6,8,15$ |  |
| 117:25 | hired 49:23 | $73: 10$ | horizon 44:23 |
| heritage | historical | 78:11,12, | hotel 81:13 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 228 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: hour..impossible

| hour 9:16 | 24 55:3 | 30:3 | immediately |
| :---: | :---: | :---: | :---: |
| hours 157:7, | idea 11:21 | 146:19 | 89:19 |
| 10,11 | 20:11 | identify | 129:3 |
| house 17:3 | 59:13 | 125:15 | impact 25:16 |
| 39:6 47:23 | 65:19 66:1 | 165:24 | 42:10 |
| 67:10 | 72:18 | identities | 152:18 |
| 83:3,17 | 131:1 | 36:5 | impacted |
| 84:14 | 135:13 |  | 160:23 |
| 85:6,15 | 143:9 | identity |  |
| 101:3 | 173:2,7 | 27:6 | impacts 25:1 |
| 116:14 | 175:16,17 | 54:16,20 | impermissible |
| 153:10,14 | 180:12 |  | 29:5 |
| 164:15 | ideal 27:24, | IDS 165:23 | implement |
| 166:8,13, | 25 39:15 | ignore 13:20 | 95:3 |
| 16 | 55:24 | 167:13 | implementing |
| houses 94:18 | 86:2, 3, 12, | ill 155:20 | $165: 10$ |
| housing | 17,20 | legal | implications |
| 71:13 | 103:5,11 | 165:18 | 41:17 |
| hub 157:9 | 112:2,5 | ga | 67:19 |
| hung 81:14 | 135:23 | 26:22 | imply 42:14 |
| hung $\begin{aligned} & \text { hurdle } \\ & 37.1\end{aligned}$ | 136:3 | Illinois | important |
| hurdle 37:1 | 141:21,23 | 14:25 | 8:19 |
| hurricane | 142:24 | 18:8,18 | 23:15,18 |
| 17:18 | 143:2,5, | 19:2 20:12 | 27:6 30:20 |
| hurricanes | 13,15 | 32:23 | 31:16 |
| 17:18 | 145:14 | 62:14 | 54:17 65:4 |
|  | ideas 150:18 |  | 122:10 |
| I | 175:25 | $40: 15 \quad 57: 8$ | 153:24 |
|  | 190:4 | $65 \cdot 11$-8 | 167:13,16 |
| ice 40:4,9 | identical | 113 | 169:17 |
| 41:25 42:1 | 22:20 | 123:20 | 189:21 |
| 101:9 | 70:19 | 130:7 | imposing |
| icon 148:2 | identification | immaterial | 96:21 |
| icons 148:5 | 165:18 | 185:9 | impossible |
| Idaho 54:23, | identified |  | 61:14 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021 Index: improper..information

| 165:19 | 180:17 | 23: 6 | 44:17 |
| :---: | :---: | :---: | :---: |
| improper | 185:11,17, | increase | indications |
| 126:17,19 | 20 186:1, | 24:24 | 17:22 |
|  | 2,15,17,20 | 65:21 |  |
| in-person 155:19 | $189: 9$ $190: 23$ | 111:4,7,19 | individual $67: 878$ |
|  | 190:23 | 112:12,23 | 108 |
| inaccuracies | include | increased | 115: |
| 67:3 74:5 | 44:15 45:1 | $165: 12$ | $179: 11$ |
| inaccuracy | 86:16 |  |  |
| 69:13 79:8 | 88:20 | increases | individuals |
|  | 119:19 | 76:6 | 5:15 64:10 |
| inaccurate | 120:11 | increasing | 93:13 |
| 68:19,20 | 147:21 | 111:8 | 104:20 |
| 74:17 | 164:2 | 171:2 | 117:5 |
| inapplicable |  |  | 146:23 |
| 121:3 | included | incumbent | 150:13 |
|  | 21:20 | 59:15 | 156:1,8 |
| inaudible | 49:17 | 105:21 | 178:8 |
| 3:9, 20 | 52:14 |  |  |
| 4:8,11 | 71:17 | incumbents | industries |
| 27:10 | 101:22,23 | 59:21 | 15:8 |
| 33:13 37:3 | includes | 102:2 |  |
| 42:5 69:10 | includes | 105:17,19, | industry $59: 12$ |
| 78:10 | 47:5 48:1 | 20,23 | . 12 |
| 87:1,2,5 | 51:20 | 189:23 | information |
| 101:6,11 | 166:7 | independent | 8:18 |
| 110:2,7,15 | including | 123:6 | 10:11,18 |
| 121:7 | 22:5 32:6 |  | 16:3 18:17 |
| 128:21,23 | 42:18 | Indian 97:4 | 19:11 |
| 132:17 | 51:21 | 137:4,6,10 | 21:6,25 |
| 134:16 | 112:1 | 138 | 22:1,5,6, |
| 143:5,6 | 115:3 | 139:18 | 15,20 |
| 146:5 |  | 140:3,13, | 23:7,23 |
| 151:19 | incoming | 17,20 | 43:11,16 |
| $151: 19$ 157 | 17:21 | 141:1 | 77:11 79:2 |
| 161:14 | inconveniences | Indians | 82:2,22 |
| 168:22 | 160:18 | 139:4, 9,14 | 84:1 90:24 |
| 176:8 | incorrect | indication | 110:25 |
|  | incorrect | indication | 112:18 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 120:2 | insurance | 153:16 | Interstate |
| :---: | :---: | :---: | :---: |
| 138:23 | 178:10 | 164:12 | 28:25 |
| 141:18 | intact | 166:19 | introduce |
| infrequent | 103:23 | 167:1 | 3:25 |
| 58:6 |  | 189:22 | nt |
| initial | 107:24 | interested | 24:8,11 |
| 151:12 |  | 63:19 | 28:4 |
| 184:3 | intended | 160:5 | 28.4 |
| 184.3 | 117:1 |  | introducing |
| initially | intending | interesting $50: 8$ | 67:5 |
| 97:11 | 114:25 | 123:21 | intrusive |
| inject 23:3 | intent 32:10 | 160:6 | 47:15 |
| input 152:1 | 161:23 | interests | invalid 30:7 |
| 153:24 | intentionally | 26:11 | 37: 6 |
| 161:18 | 23:5 79:1 | 104:23 | invaluable |
| 162:5 |  | 114:7 | 114:13 |
| 164:17 | interact | 115:12 |  |
| 167:8 | 152:22 | 115.12 | invasion |
| 168:9 | 155:24 | interim | 47:15 |
| 181:12 | interaction | 4:17, 22 | invite |
| insert 65:20 | 154:16 | 91:5,25 | 164:21 |
| 75:3 | interchangeabl | 155:16 | involved |
| insight 80:9 | e 72:10 | internet | 81:18 91:1 |
|  | interest | 177.6 | 118:10 |
| instance | 14:15 | 177:6 | 123:15 |
| 86:16 | 26:10 | interpretation | 129:23 |
| 98:12,24 | 54:15,18 | 114:24 | 167:23 |
| 99:21 | 59:3,5,11 |  | 174:17 |
| 108:15 | 59:3,5,11 | interpreted | 174.17 |
| 138:13 | 98:6 | 41:19 | involves |
| 143:17 | 101:25 | interpreting | 23:2 |
| 155:3,11 | $104: 15,16$ | 50:17 | island 27:3, |
| instances | 105:3 | interrogatorie | 5 |
| 101:12 | 115:1 | s 119:2 | islands 27:5 |
| institutes | 122:13 | interrupt | 59:11 |
| 109:20 | 125:4 | 89:13 | issue 53:14 |
|  | 152:7 |  |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: issues..kind

| 54:3 | 16:20 | 127:21, 25 | Kim 159:4 |
| :---: | :---: | :---: | :---: |
| 101:13 | 163:21 | jurisdictions | kind 4:18 |
| 120:3 | Jeffers | 46:24 | 5:9 6:15, |
| 125:4 | 45:25 |  | 19 7:5,8 |
| 130:6 | 45.25 | Justice 46:6 |  |
| 153:8 | Jefferson | 47:2 | 14:12 |
| 185:23 | 54:18 | justiciable |  |
| 188: 6 | job 9:10 | 30:20 50:9 | 80:3 |
| issues 7:15 | 176:21 | 95:22 | 82:13,19 |
| 16:9,11 | jobs 164:7 | justification | 83:17 |
| 53:5 | John 63.18 | 29:23 | 85:21 |
| 113:22,25 | $128: 25$ | justifications | 86:15 91:1 |
| 127:19,23 | 128:25 | justifications | 94:23 |
| 128:4 | John's 81:11 |  | 95:25 |
| 167:17 | jokes 126:15 | 95.14 | 98:23 |
| 170:12 |  | justified | 99:20 |
| 176:13 | joking | 26:10 | 100:9 |
| 189:20 | 126:18 | justifying | 102:4,11, |
| item 3:24 | judge 45:8, | 95:9 | 17 103:10 |
| 9:2 103:17 | 21 47:1 |  | 104:17 |
| 104:14 | 50:2 | K | 106:13 |
|  | 120:24 |  | 107:9 |
| items 82:17 | 121:2 | keeping | 118:18 |
| 102:4 | judicial | 26:12,13 | 120:8 |
| 106:4 | 55:5 | 55:14, 21 | 130:17 |
| 131:20 | 55.5 | 57:19 | 132:13,25 |
| 189:6 | July 3:15 | 99:12 | 133:1,4, 9, |
|  | 20:13 | 112:3 | 17 134:1 |
| $J$ | jumble 86:15 | 121:19 | 135:10,12, |
|  | jump 181:11 | Kentucky | 15 136:19 |
| Jackson $54: 19$ |  | 53:15,16, | 137:15,21, |
| 54:19 | jumped | 19,21,23 | 25 138:9, |
| Jamestown | 153:22 | 19,21,23 | 15 139:15 |
| 143:18,19, | June 6:23 | 54.1 | 140:15,18 |
| 23 144:12, | 15:18 | key 31:14 | 141:2, 6, 12 |
| 18 |  | 113:25 | 142:15,18, |
| January | jurisdiction | 152:18 | 21 144:15, |
|  | 104.11 |  | 20 145:19, |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 232 of 271
Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Index: Klein..lay

| 23 148:17 |  | 97:12 | 101:20 |
| :---: | :---: | :---: | :---: |
| 150:13,17, | L | 100:24 | 108:17 |
| 18 155:24 | L2 66:15,22 | 165:1,5,10 | 125:14 |
| 158:21 |  | larger 25:9 | lawful |
| 169:8 | label 144:13 | 80:15 | 125:15 |
| 176:20 | Labor 183:6 | 152:20,21 |  |
| 177:10 | 184:11 |  | laws 45:12, |
| 178:18 |  | largest 16:1 | 14 47:3 |
| 180:18 | lacking | 87:9 | 51:3 61:17 |
| 189:17 | 165:25 | 111:3,7, | 116:7,8,10 |
| Klein 3:4,5 | lake 9:3,24 | 18,21 | 117:7 |
| Klein $3: 4,5$ | 33:3 69:25 | 112:12,14, | 118: 6 |
| $\begin{aligned} & 4: 6 \\ & 129: 10 \end{aligned}$ | 102:18 | 22, 25 | 122:19 |
| 25 154:1, | 158:18 | lastly | lawsuit |
| 2,10 | 159:15,19 | 105:17 | 26:19 |
| 158:15,16 | 163:16,17, | late 49:24 | 49:16,25 |
| 159:6,15 | 19,25 | 84:2 | 62:10,11 |
| 170:21 | 164:6,23 |  | 68:12,13 |
| 178:16,17 | 166:2,12, | Latino 32:18 | 69:20 |
| 180:7 | 25 168:7, | 33:18 | 118:3 |
| 182:18,19 | 19 169:2 | 36:2,3,6 | 119:9 |
|  | Lake's 165:2 | Latinos | 120:15 |
| Kle |  | 33:11,15 | 127:11 |
| 154:24 | land 47:19 |  | 130:3,11 |
| knew 17:7 | 76:11 | $18: 21$ | lawsu |
| 68:24 | language | 25:20, 22 | 28:18 |
| 190:18 | 58:4 | 41:16 42:2 | 50:12 |
| knocking | 96:14,25 | 45:9 47:6, | 51:24 |
| 175:24 | 97:2,7 | 19,23 | 61:25 |
|  | 100:7 | 48:19 | 62:2,14,20 |
| knowledge $77: 25$ | 166:22 | 49:2, 21 | 63:9 |
|  | laptops | 50:4 51:7 | 128:11 |
| Koppelman | 92:2,8 | 63:13 | 130:2 |
| 4:3 159:5 | 150:11 | 85:3,4 |  |
| KRAMER | large 35:8 | 93:7,14 | 118:22 |
| 110:22 | 38:25 | 94:11 |  |
| 113:11 | 66:15 | 96:12 | lay 173:23 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: layer..legislators

| layer 72:10, | leave 48:11 | 187:20 | 18,20 |
| :---: | :---: | :---: | :---: |
| 11,21 | 114:23 | legality | 113:21 |
| 73:2,3,5, | 170:14 | legality $26: 21$ | 114:14 |
| 8,978:9 | 183:20 | 41:16 | 116:16,17, |
| 80:13 | 184:1 |  | 19 117:16, |
| 139:24 | leaves 180:8 | legally | 20 120:5, |
| 140:2 |  | 107:22 | 7,9,14,21 |
| 143:10, 22 | leaving | legis- 18:25 | 121:12 |
| 145:6 | 52:19 53:3 |  | 122:8,11 |
| 148:24 | led 17:21, | $6: 2 \quad 70: 16$ | 123:8,9,10 |
| layered | 23 |  | 128:25 |
| 135:8 | Lefor 2:13, | legislative $4: 1,15$ | 130:19 |
| layers 29:18 | 14 3:17 | 5:10,16, 20 | $131: 7,25$ $145: 9$ |
| 99:19 | 4:5 77:1, | $6: 2,3,6$, | 149:5 |
| 134:2 | $2,6,8,16$ | 10,14,16 | 150:1 |
| laying 175:3 | 176:24 | $7: 2,6,10$, | 155:25 |
|  | 177:1,9 | 12,16 8:2, | 156:17,19 |
| LC 110:24 | 182:2,3 | 13 13:3 | 157: 6, 20 |
| 175:1 | left 22:2 | 14:2,7 | 162:12 |
| lead 101:1 | 23:9 51:12 | 20:17 26:7 | 164:13 |
| leaders | 54:10 | 27:2 | 166:6,24 |
| 169:5,9 | 71:24 | 29:15,16 | 167:1 |
|  | 81:10 90:6 | 38:25 | 168:3 |
| leadership | left-hand | $39: 23$ 40:7 | 178:2 |
| 14:3 162:4 | 125:8 | 54:25 | 180:17 |
| leads |  | 63:16 | 187:8,14 |
| 105:21,25 | legal 10:19 | 81:22 82:9 | 191:6,9 |
| League 49:15 | 25:18 | 83:4,5,19, | legislator |
| 151:5 | 46:14 | $2284: 4,6$ | 19:16 |
| leaning | 49:13,25 | 89:4 90:5 | 116:17 |
| 171:19 | 62:18 | 19 91:11 | 117:15 |
| learne | 76:19 | 93:22 | 172:8 |
| 154:12 | 79:15,21 | 94:15,25 | legislators |
|  | 107:25 | 107:2 | 10:5 20:8 |
| learning | 125:10 | 110:21 | 63:16,22 |
| 63:23 | 164:9 | 111:13,17, | 81: 4 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 234 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: legislature..live

| 115:5,7,9 | 151:3 | limited 46:8 | literacy |
| :---: | :---: | :---: | :---: |
| 118:14 | level 23:19 | limits 121:4 | 94:7 |
| 122:16 | 35:11 50:2 | 135:7 | literature |
| 123:12,17, | 67:8 69:8 |  | 76:23 |
| 18 124:24 | 72:15,16 | lines 18:15, $2050: 7$ | litigated |
| 131:1 | 74:18 | 88:14 | 28:16 |
| 166:12 | 75:9,14 | 98:12 | 113:23 |
| 173:13 | 76:4 | 133: 6, 9 | 122:5 |
| 178:3,12 | 77:20,21, | 145:8 | 124:15 |
| legislature | 9 | 152: 6 | litigating |
| 13:5,7,11, | 99:19 | 159:25 | 79:10 |
| 14,18,24, | 108:4 |  | litigation |
| $2514: 10$ | 113:25 | link | 12:22 32:3 |
| 18:4,12 | 127:12 | 155:16,21 | 61:19 63:8 |
| 26:23 | 141:9 | 163:2 | 67:2 78:16 |
| 41:14 | levels 77.12 | linked | 79:20 |
| 48:19 50:6 | vels 77.12 | 162:21 | 90:24 91:1 |
| 63:4 92:20 | Lexington | 163:3 | 115: 6 |
| 94:18 | 53:25 | list 16:16 | 116:3 |
| 129:13 | liability | $64: 24.25$ | 118:2,3,8, |
| 152:9 | 65:11 | 106:8 | 10,13 |
| 153:15 | librarie | 110:3 | 119:21 |
| 166:4 | 132:17 | 134:3 | 122:23 |
| 173:17 | . 17 | 140:17 | 124:17 |
| legislature | library | $190 \cdot 1$ | 125:22 |
| $26: 21$ | 132:21 | 190.1 | 126:14 |
|  | life 156:16 | listed 52:2 | 128:3 |
| legislatures |  | 98:8 | 129:2,12 |
| 11:6 18:18 | light 71:4 | 131:20 |  |
| 19:16 31:2 | 129:24 |  | littlest |
| 48:9,10 | 133:24 | listen | 142:14 |
| egitimate | 140:15 | 164:16 | live 19:16 |
| 95:15 | limit 106:20 | listening | 68:17 |
| 100:5 | 119:23 | 188:9 | 152:25 |
| 109:18 | limitation | lists 112:20 | 155:7,25 |
| letters 67:9 | 87:16,19 | 113:3 | 158:12 |
| letters 67.9 |  | 189:6 | 159:2 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 235 of 271

|  | Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021 |  | Index: lives..make |
| :---: | :---: | :---: | :---: |
| lives 16:18 | longer 30:20 | 118:10 | 123:22 |
| livestream | 149:11 | 119:6 | 124:3,16 |
| 162:24 | 167:21 | 121:22 | 138:21 |
|  | 175:8 | 122:5 | 172:21 |
| living 17:3 | 187:17 | 123:20 | main 10:19 |
| 163.24 | looked 17:2 | 125:5 | 94:13 |
| 163.24 | 48:2,3 | 133:5,9 | 106:8 |
| load 135:21 | 80:19 | 150:4 | maintain |
| loaded | 109:14 | 154:13,15 | 85:21 |
| 144:14 | 129:16 | 161: | 105:10 |
| local 19:8 | 146:22 | 180:6 | 114:5,9 |
| 20:7 | 173:10 | 184:11 | maintained |
| 104:11 | $178: 1,9$ | 185:25 | maintained $105: 7$ |
| located | 191:5 | 189:12 | maintai |
| 163:20 | Los 48:25 | lots 15:7 | 113:19 |
| location | lose 46:15 | Louisiana | major 28:11 |
| 189:17 | $134: 7$ | 62:22 | 30:16 60:6 |
| locations |  | Louisville | 157:9 |
| 107:7 | loses 14:1 | 53:25 | 164:5 |
| lockdown | losing 45:24 | lower 34:23 | majority |
| 16:8 | 111:11 | 88:9 95:15 | 11:24 13:4 |
| lodging | loss 100:19 |  | 32:19 |
| $178: 10$ | 152:10 | lowest 14:16 | 34:11 |
|  | lost 14:24 | 7:1 | 35:9,17, 22 |
| logic 41:21 | $45: 7$ | 4 142:11 | 43:22 65:2 |
| 44:19 | 152:15 | luxury | 97:16,18 |
| long 23:24 |  | 171:22 | 98:16 |
| 49:10 | lot 16:9 |  | 130:8 |
| 55:12 81:8 | 18:2,22 | M | 165:7 |
| 88: 6 | 20:5 25:5 |  |  |
| 110:16 | 36:3,4 | ma- 35:9 | make 10: |
| 117:18 | 44:12 | made 3:20 | 18:16,20 |
| 171:22 | 82:15 | 14:2 18:7 | 19:10,13 |
| 187:8 |  | 35:15 | 33:24 |
| 191:23 | $113: 23$ | 92:20 | 37:5,7 |
|  | 113.23 | 114:16,19 |  |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 236 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: makes..Matt

| 38:12 | 162:4 | manner 103:9 | 131:7,14 |
| :---: | :---: | :---: | :---: |
| 56:19, 23 | 187:12 | mantras | 132:8,10 |
| 60:5 73:15 | MALDEF 62:19 | 55:22 | 137:22 |
| 80:5 81:4 |  |  | 138:7 |
| 87:4 108:1 | MALE 4:8 | map 13:16 | 140:16 |
| 115:5,25 | 92:14,16 | 18:25 19:1 | 150:14,18 |
| 129:9 | 93:2 | 20:7 42:16 | 162:13,20 |
| 132:20 | 101:11 | 58:22 73:1 | 163:2 |
| 134:4 | 110:7 | 96:4 |  |
| 136:7 | 132:2,16, | 102:10 | Maptitude |
| 143:17,21 | 19,23 | 104:9,12 | 73:1878:1 |
| 148:6 | 133:15 | 105:13 |  |
| 157:5,14 | 139:16,22 | 114:10 | $130: 13,18,$ |
| 160:20 | 140:8 | 117:16,21 |  |
| 161:6 | 185:25 | 122:15,25 | 146:6 |
| 162:12 | 186:6,10, | 123:14 |  |
| 165:19 | 11,15,23 | 131:15,21, | markers |
| 170:24 | 188:21 | 23,25 | 145:12 |
| 171:4,7 | mall 53:11 | 132:12,14, | Martinson |
| 172:12,23 |  | 25 133:2, | 93:2 |
| 179:1 | man 37:13 | 4,17 |  |
| 184:6,8 | management | 134:2,4 | mass 76:11 |
| 185:1 | 4:1,16 | 140:19 | massive |
| 187:18 | $5: 10,16,21$ | 144:24 | 16:16 |
| 189:1 | 6:2,3,10, | 145:4,5 | master 49:22 |
|  | 14,16 7:2, | 147:13 | 104:13 |
|  | 6,10,17 | 148:21 | 170:22 |
| 127:13 | 83:5,19,22 | 152:12 |  |
| 160:2 | 84:4 | 165:24 | materials |
| makeup 34:4 | 187:14 | 178:22 | 82:12 |
| 60:10,16 |  | 179:17 | 115:10 |
| 188: 4 | manager | 187:12,19 | 119:24 |
| making | $18,22$ | maps 13:17, | math 7:8,16 |
| 114:8,10, |  | 19,20 | 25:10 87:8 |
| 12 115:11 | mandates | 18:2,4 | 142:21 |
| 120:12 | 21.1 66.25 | 19:3 80:14 | Matt 151:22 |
| 122:9 | mandatory | 81:2 | 154:2 |
| 138:11,17 | 84:19 | 106:17 |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: matter..members

| matter 99:10 | 21:17 | 174:14, 21 | 4:23 |
| :---: | :---: | :---: | :---: |
| 162:11 | 51:18 | 175:17 | member-driven |
| matters | 52:9,14 | 183:21 | 152:2 |
| 10:16 | measuring | 184:4 |  |
|  | 139:7,8 | 185:16 | members $2: 1$ |
| Mcintosh |  | 191:15 | 3:25 5:1 |
| 112:15 | media 9:10 |  | 10 9:4,14 |
| Mckenzie |  | meetings | 10:10 |
| Mckenzie | meet 6:8 | 4:20, 22 | 63:12 |
| 111:7 | 8:15,16 | 5: 12, 23 | 84:13,15 |
| 112:13 | 81:11 | 6:23 9:11 | $85: 5,15$ |
| meaning | 103:5 | 153:21 | 104:25 |
| 49:13 | 105:15 | 156:23 | 107.1 |
|  | 107:6,7 | 159:15,17 | 107:1 |
| meaningful | 115:18 | 164:17 | 110:22 |
| 36:8 | 173:3,5 | 169:10 | 113:16 |
| means 8:7 | 183: 6 | 173:20 | 115:19 |
| 19:6,8,19 | 185:14 | 174:7,9, | 120:4 |
| 23:4 26:3 | meeting 3:15 | 13,23 | $128: 25$ $130 \cdot 22$ |
| 29:10 | 5:3,19,23, | 184:16 | 131:1 |
| 31:21 32:4 | 24 6:18,25 | 185:22 | 149:3,22 |
| 34:22 | $7: 1,6,10$ | 188:16 | $150 \cdot 20$ |
| 51:12 58:3 | 9:3,24 | member 5:13, | 150:20 |
| 59:10 | 15:16,19 | $179: 10$ | 152.20,24 |
| 62:23 | 107:10,20 | 179:10 | $153: 3$ |
| 118:14 | 110:15 | 39:2,5 | 154.9,17 |
| 159:23 | 115:21,22 |  | 154:9,17 |
| 183:25 | 123:14 | $51: 9 \quad 60: 20$ | $\begin{aligned} & 155: 6,9, \\ & 20.23 \end{aligned}$ |
| meant 17:4 | 132:3 | 92:8 96:25 | 163:10,21 |
| 21:22 59:9 | 150:25 | 97:14 | 164:8,9 |
| 163:7 | 151:12 | 123:8 | 165:2,16, |
| 189:17 | 154:3 | 153:14 | 19,25 |
| measure | 155:7 | 155:20 | 166:3 |
| $51: 17$ | 156:8 | 164:14 | 167:4,15 |
| 52:11 86:6 | 158:6,7 | 165:6 | 168:21 |
| 89:3 94:20 | 161:20 | 166:13,16 | 170:2 |
| 96:3 | 162:11,24 | 179:8 | 176:4 |
|  | 168:3, 6, 12 | member's | 180:2 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: membership..Minot

| membership | 130:20 | 22:3 66:3, | mindful |
| :---: | :---: | :---: | :---: |
| 84:12 | 131:8 | 4 | 96:11 |
| 163:21 | 135:22 | methods | minimal |
| memo 82:20, | 137:20 | 12:15 | 75:14 |
| 22 88:18 | 141:25 | 79:14 | $38 \cdot 4$ |
| 90:25 | 150:15 |  | minimum $38: 4$ |
| 106:1 | 155:17 | metro 34:14 | 85:20 |
| 110:23 | mentioning | Mexican | Minnesota |
| 111:12 | 44:4 59:2 | 62:18 | 62:22 |
| 113:3 | 62:3 | MHA 169:2 | mino- 38:13 |
| 128:16,17, | menu 148:11 | mi- 98:23 | minorities |
| 19 145:17 | 189:18 | mi- 98.23 | 96:14 97:7 |
| 189:5 |  | Michigan | 96.14 97.7 |
| 190:2,16 | mergeable | 30:15 | minority |
|  | 177:13 | 48:24 | 31:22,25 |
| memorandum 82.9 | message | mid-march | 33:25 |
| 82:9 | 119:14 | 16:24 | 34:8,10,13 |
| memory |  |  | 35:7,16,25 |
| 128:20 | messages | middle 87:3 | 37:4,10,13 |
| memos 106:2 | 124:9 | mileage | $38: 3,11,13$ |
| 163:1 | 126:2,12 | 178:10 | 40:14 |
|  | met 15:18 | miles 53:11 | 43:19 94:9 |
| Memphis | 64:10 | miles 53:11 | 96:25 |
| 37:12 | 191:17 | million | 97:2,10, |
| mention 7:25 |  | 156:18 | 12,13,14, |
| 30:11 | $187 \cdot 15$ | 178:12 | 19 98:11, |
| 80:11 |  | mind 8:19 | 13,15,17, |
| 138:9 | method 12:18 | 34:21 | 21,23 |
| 150:10 | 13:13 | 78:15 | 99:1,3 |
| mentioned | 21:21 | 115:13,15 | 100:7 |
| mentioned $6: 17$ | 58:23,25 | 117:11 | 153:5 |
| 62:13,16 | 60:12 66:6 | 119:16 | 165:7 |
| $64: 682: 24$ | 67:1 | 120:24 | 166:10 |
| 86:9 94:23 | methodologies | 126:23 | minority's |
| 95:7 | 12:20 21:9 | 131:14 | 97:17 |
| 104:17,24 | 42:24 | 173:2,7 |  |
| 105:2 | methodolog | 174:11 | Minot |
|  |  | 190:4 | $3: 14,1$ |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 134:8 | 126:16 | monthly | moving 15:7 |
| :---: | :---: | :---: | :---: |
| 135:3 | Mm-hmm 34:25 | 178:9 | 69:22 78:9 |
| minus 27:22 | 38:9 | months 15:19 | 80:20 |
| 55:24 | 39:11,18 | 82:5 | 166:7 |
| 142:4 | 55:25 | 158:19,20 | multi-member |
| minute | 69:21 | 161:8 | 153:13 |
| 135:21 | 132:24 | mor- 98:23 | multimember |
| minutes | mock 135:18 | motion 3:19, | 38:19,23 |
| 3:15,19 | mode 128:3 | 23 170:24 | 39:1,5 |
| 9:18 113:7 |  | 171:4,8 | 96:13,14, |
| 124:19 | modify $131:]$ | 174:5 | 16 97:6 |
| 162:21 |  | 178:19 | multiple |
|  | modifying | 179:6 | 28:17 |
| $124: 6,7$ | 145:25 | 181:17 | 98:21 |
|  | moment 31:9 | 183:1 | 164:13 |
| misinterpretat | 34:2 41:20 | motions | 167:3 |
| ion 126:12 | 42:2 | 128: 4,7 | mutual |
| misinterpretat | 128:20 | 130:5 | 165:21 |
| ions 125:25 | 144:7 | 130.5 |  |
| misinterpretin <br> g 114:21 | money 119:7 | $\begin{gathered} \text { Mountain } \\ 55: 9 \end{gathered}$ | N |
| missed 72:8 | Monson 2:15, | mountains | narrow 28:23 |
| 132:3 | 16 68:4,6, | 120:1, 2 | 158:21 |
| 163:8 | 14 99:7,8, | 168:25 |  |
| 168:17 | 18 171:13 | Mountrail | 98:5 |
| Mississippi | $174: 3,4,13$ | 112:13 | Nathan |
| 13:22 | 180:24,25 | move 3:16 | 168:21 |
| 14:25 | 181:5 | 20:1 25:17 |  |
| Missouri | 182: 4,5 | 55:23 69:8 | Nathe 2:17, |
|  | 190:9,10, | 105:21 | 18 32:25 |
| 53:20 61:9 | 13,17 | 113:13 | 33:1,5,9, |
| misunderstandi <br> ng 114:21 |  | 151:14 | 15,18,22 |
|  | month 161:21 |  | 34:24 |
|  | 184:22 | 17 | 35:11 |
| misunderstandi ngs 125:25 | 187:2 | moved 3:17 | 37:3,9 |
|  | 188:11 | 22:22 39:1 | 42:19, 20 |
| misunderstood |  |  | 69:17,19, |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 240 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: nation..north

| 22,25 | 165:7,12 | neighboring | 128:24 |
| :---: | :---: | :---: | :---: |
| 70:3,8 | natural | 98:18 | noise 23:3 |
| 89:15,16, | 17:15 | 138:1 | 24:16 |
| 22 128:12, | 189:3 | 139:12 | 65:20 67:3 |
| 13,19 |  | 145:24 | 71:10,18 |
| 159:11,12 | naturally | neighbors | 73:12 |
| 172:20 |  | 51:5 | 75:3,11, |
| 175:4,5 | nay $3: 23$ |  | 14,24 76:6 |
| 176:2,15, | naï ${ }^{1 / 2 / v e}$ | Ness 113:14,16 | 77:20 78:7 |
| 18,20 $182: 6,7$ | 174:16 | 117:23 | 80:3 |
|  | nCsL 8:24 | 127:4,14 | non-citizen |
| nation | 9:24 10:3, | 128:15 | 12:8 |
| $163: 17,19$ $164: 1,22$, | 8 50:11 | 129:25 | nondiscriminat |
| $164: 1,22$, $23168: 7$ | 58:3 59:1, | 146:6 | $\text { ory } 45: 14$ |
| 23 168:7 | 16 67:9 | 150:9 |  |
| nation's | 81:17 | 155:6 | nonpartisan |
| 10:3 | NCSL's 63:15 | 162:19 |  |
| national 9:1 | NDFU 151:24 | net 95:17 | normal 13:5 |
| 36:5 41:7 | 152:10 | newly 89:8 | north 4:15 |
| nationally | NDFU's 152:2 | 112:2 | $\begin{aligned} & 9: 15 \quad 11: 1, \\ & 10 \quad 13: 1 \end{aligned}$ |
| 14:22 | NDSU 160:3 | news 49:5 | 14:17,21 |
| nations |  | 51:5 | 15:3,5 |
| 169:4 | necessarily | 185:21 | 20:16 24:3 |
| nationwide | $36: 7 \quad 37: 21$ | newspaper | 25:5 28:15 |
| 10:25 | 146:18 | 156:16 | 29:2 30:14 |
| 14:15 32:2 | Nedrose |  | 39:12 |
| 111:10 | 135:5 | $102: 14$ | 40:23 42:8 |
| 149:19 | negative | 103:20 | 48:4 49:6, |
| native 35:20 | 142: 6 | 135:10 | 24 50:5,22 |
| 39:19 40:3 | negatively | 141:10 | 51:12,14 |
| 97:5 | 160:22 | 180:18 | 54:4 55:4, |
| 100:18 |  | Nicole | $6 \text { 57:6,13, }$ |
| 101:8 | neighborhoods | 163.13 | 168:58:7,24 |
| 138:14 | 53:8 | 167:18 | 68:23 |
| 163:14,24 | 104:20 | 167:18 | 71:12 $72: 1$ |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 241 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: note..Ohio

| 74:11,21 | noticed | 14:8 | 11:7 |
| :---: | :---: | :---: | :---: |
| 82:19,24 | 110:1 | 16:14,15, | occur 11:13 |
| 83:2 84:9, | notify | 19 21:2 | 19:14 87:7 |
| 20 85:10 | 158:24 | 23:11,12, |  |
| 86:3,12 |  | 22,25 | occurred $38: 21$ |
| 88:15 | November | 24:11,12, | 38:21 |
| 90:18 | 6:6,11 | 13 25:14 | October 6:25 |
| 92:17 | 7:7,13 | 70:5,8,9 | 185:12 |
| 96:15 | 8:20 83:19 | 86:21 | 187:24,25 |
| 106:14 | 89:18 | 87:25 |  |
| 109:2,7 | 91:11,21 | 112: 6 | $104: 3$ |
| 110:9 | 92:5,12 | 142:15 |  |
| 111:3 | NPL $92: 22$ | 147:3 | offense |
| 120:4 | number 11:14 | numerical | 99:11 |
| 133:23 | 17:10 | 26:3 35:9 | offhand |
| 137:18,19 | 23:20 28:1 | 43:22 | 177:9 |
| 140:23 | 33:20,23 |  | office 19:18 |
| 151:5,6,23 | 39:13 | $\bigcirc$ | 81:11 |
| 152:25 | 45:16 61:5 |  | 127:2 |
| 153:12 | 66:19 69:2 | oath | 169:12,20, |
| 163:13,20, | 71:15 72:4 | 118:20,24 | 24 176:18 |
| 16 165:17 | 74:8 75:4 | 119:2,18 | 186:15 |
| 166:3 | 83:3 88:5 | Oban 3:6,7 | official |
| 168:2,10 | 100:24 | 162:7,8,9, | 70:10 |
| 172:11 | 106:21 | 19 171:9 | officially |
| 180:22 | 116:14 | 184:19,21, | 68:12 |
| note 6:17 | 128:5,9 | 25 185:15, | officials |
| 12:23 | 139:8,13 | 19 | 19:9 20:8, |
| 14:14 | 141:14 | objective | 9 152:23 |
| 23:15,18 | 142:22 |  |  |
| 30:20 | 150:11 | 96:3 | oftentimes |
| 36:22 96:6 | 159:16,17 | observations | 124.6 |
| notes 9:11 | 171:16 | 40:2 | Ohio 30:15 |
|  | 173:6 | observe | 60:11,14, |
| notice 88.20 91:11 | 175:13 | 154:25 | 19 62:3,5 |
|  | numbers 12:2 | occasionally |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021 Index: Ohio's..overwhelmingly

| Ohio's 62:10 | opinion 29:7 | 13:17 | outlier |
| :---: | :---: | :---: | :---: |
| oil 15:6 |  | 83:15 | 11:11 |
| oil 15:6 | opportunities | 106:14 | 15:10 |
| Oklahoma | 154:18,19 |  | 50:23 |
| 13:22 | 154:18,19 | options |  |
| 18:8,18 | 164:7 | 134:4 | outline |
| 19:2 20:12 | 173:4 | 157:2 | 10:14 |
| 40:20 | opportunity | orange 14:5 | 133:13 |
| older 11:24 | 31:25 | 49:1 | 134:8 |
|  | 34:20,21 | order 2:2 | outlined |
| online | 50:6 | $89: 11$ | 88:17 |
| 150:23 | 151:21,25 | 89:11 |  |
| 162:17 | 152:22 | 98:13,17, | outlines |
| onramp 72:17 | 153:20,23 | 110:20 | 88:24 |
|  | 154:7 |  | outset 18:13 |
| oops 106:17 | 161:25 | ordered 42:7 | 155:17 |
| 148 | 169:21 | organization | outweighed |
| open 12:19 | Opposed 3:23 | 10:4 89:6 | 122:13 |
| 114:23 | Opposed 3:23 |  |  |
| 115:22 | opposing | organize | overconcentrat |
| 116:1,7,9, | 118: 6 | 25:19 | ng 98: |
| 20,22 | 121:24 | organized | overhead |
| 117:3,6 | 123:19 | 114:12 | 162:23 |
| 118:1,4,5 | 124:17 | original | override |
| 119:8 | opposite | 28:14 29:3 | 13:7 |
| 122:19,22 | 98:23 | 100:25 |  |
| 123:13 | 98.23 | 100.25 | overriding |
| 132:1 | optimistic | originally | 108:7 |
| 144:24 | 188:3 | 62:7 70:1 | oversight |
| 180:12 | option 5:14 | ostensibly | 94:8 |
| 183:4 | 13:16 | 28:20 | overview |
| operating | 66:11 | outcome 41:3 | 8:25 10:15 |
| 8: 6 | 140:12 | 52:13 | 29:14,20 |
|  | 148:14 | 60:3, 4 | 113:25 |
| Operation | 155:8 | 61:1,14 | 126:22 |
| 4:14 | 156:6 | 61.1,14 | 130:17 |
| operations | 163:4 | outgoing |  |
| 164:2,5 | optional | 17:20 | overwhelmingly |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| P | 53:22,23, | 96:8 | 32:11 |
| :---: | :---: | :---: | :---: |
|  | $2554: 1$ | partisan-wise | 179:6 |
| pack 98:13 | 56:19 | 100:23 | past 10:3 |
|  | 77:10 | partisanship | 20:24 |
| packed 98:18 | 89:3,22 |  | 26:12,18 |
| packet | 90:17 | 31:3 59:22 | 30:1,12 |
| 190:13 | 104:10 | parts 52:25 | 34:15 |
| packets | 124:11 | 53:1 54:16 | 38:5,20 |
|  | 131:9 | 110:9 | 55:21 58:9 |
| 82:20 | 137:15 | party 40:22 | 63:7 70:24 |
| 110:24 | 147:23 | P3.19,21 | 78:25 83:3 |
| packing | 149:1 | 59:15 | 108:13 |
| 98:8,10 | 158:6,14 | 62:17 | 116:15 |
| 99:11,13, | 168:7 | 118:6,11 | 121:9,25 |
| 16 | 177:17 | $119: 4,25$ | 125:4 |
| paid 123:7 | participate | 121:19,24 | 156:25 |
| pain 184:25 | 154:4 | 122:18 | 170:20 |
|  | 156:9 | 123:7,19 | 189:7 |
| pairing | 161:5 | 124:17 | 190:7 |
| 59:21 | 162: 6 |  | pay 178:10 |
| 105:19,23 |  | pass 31:2 |  |
|  | participated | 45:14 | peer 51:18 |
| pandemic | $156: 18$ | 89:18,24 |  |
| $16: 217: 23$ $154: 13$ | participating | passage | pending 135:16 |
| 50.2 | 156:2 | 90:10 | 136:17 |
|  | participation | passed 13:5 | 143:1,24 |
| papers | 156:11 | 46:23 |  |
| 124:21 | parties 60:6 | 47:24 | $49: 15,19$ |
| parameters | 89:6,8 | 48:19 | 50:22 |
| 106:6 | 165:21 | 61:17 | 62:23 |
| 170:20 |  | 90:1,13 | 104:1,9 |
| parents 17:1 | partisan | 93:12 |  |
| 22:12 | 0.8,12 | 116:15 | people 11:14 |
| 22.12 | 32:22 | 129:14 | 15:7 17:5 |
| part 12:12 | 49:18,21 |  | 19:21 |
| 20:22 | 50:8, 24 | passes 83:3 | 21:4,18 |
| 39:22 | 59:25 60:2 | 183:1 | 22:20, 21 |
| 52:18 | 95:21, 23 | passing 20:6 | 24:6,14 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 25:15 | 24:24 | percolating | 157:24 |
| :---: | :---: | :---: | :---: |
| 26:15 | 25:14 | 48:7 51:4 |  |
| 39:16 40:8 | 26:9,19 | 61:15 | 110:3 |
| 41:12 | 27:9,13, | performance | 118:10 |
| 49:10 56:8 | 14,15,21, | 61:7 | 174:12 |
| 66:16 | 22 38:2 |  |  |
| 71:17 | 43:18 52:8 | perimeter | persons 12:5 |
| 74:10 | 66:17 | 53:2 | 97:3 |
| 81:22 | 74:10,19 | period 91:2 | perspective |
| 100:25 | 75:8 86:8, | 178: 6 | 79:20 |
| 101:7 | 18,20,23 | permissible | 159:14 |
| 124:15 | 88:7 94:9, | permissible | 167:13 |
| 135:4,5,23 | 23 95:2,9, | 26:9,18 | petition |
| 136:16 | 13,17 | 38:5 47:12 | $89: 2$ |
| 138:19 | 98:15 | 56.20 |  |
| 139:20 | 99:1,3 | 56.2 | ph 93:2 |
| 141:2,22 | 108:16,19, | permission | phone 5:5,6 |
| 143:12 | 21,24 | 46:25 | 119:15 |
| 144:18 | 109:14 | permitted | 125:24 |
| 149:4,24, | 111:8 | 58:14 | 150: 6 |
| 25 154:7, | 138:21 | 5.14 |  |
| 25 155:1 | 142:5,6, | person 5:14 | physical <br> 165.25 |
| 156:15,18 | 10,12,17 | 11:3,17, | 165:25 |
| 159:24 | 144:17,20 | 18,21 | pick 74:25 |
| 160:4, 6, 7, | 145:14 | 18 | 99:10 |
| 13 161:5 | 158:13 | 25:23 26:5 | picked 191:1 |
| 172:5,9 | percentage | 55:16 | picking |
| 175:15 | 33:10,11, | 66:18, 24 | 142:21 |
| 179:4,21 | 19 87:10, | 78:2 |  |
| 181:7 | 12 111:3, | 125:23 | picture |
| 184:11 | 18, 21 | 125:23 | 102:10,17, |
| 187:23 | 112:12,14, | $156: 4$ $161: 25$ | 22 103:9, |
| people's | 23,25 | 169:24 | 24 104:8 |
| 58:11 | 138:14 |  | 118:17 |
|  | 142:3 | personal 9:2 | 145:17,19 |
| percent | 142.3 | 108: 4 | 179:16 |
| 14:16,19 | percolate | 119:13,14, |  |
| 15:14 | 61:25 | 20 149:4 | Piedmont $55: 9$ |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| Pierce | 61:13 | 122:17 | 15:17 |
| :---: | :---: | :---: | :---: |
| 112:16 | 83:6,8,14, | 131:6 | 130:1 |
| pin 74:13 | 18,21 | 132:16,17, | 176:1 |
| 80:4 | 84:3,7 | 18 149:18 | pointer |
|  | 85:13 86:5 | 171:23 | 136:13 |
| place 9:9 | 89:4,17,20 | 172:5 | 140:3,14, |
| 65:9 94:3 | 91:6, 9, 19, | 173:13 | 140.3,14, |
| 120:6 | 20 92:4,11 | 183:7 |  |
| 124:20 | 95:1, 3, 4, | play 51:9 | points 28:23 |
| places | 12 97:11 | play 76.13 | 121:14,16, |
| 157:21 | 104:2, 8, 12 | 105:2 | 7,20 |
| placing | 106:25 | 109:4 | polarization |
| 105:20 | 108:7 | 171:17 | 34:10 |
|  | 126:9 | 173:23 | 35:25 |
| plaintiff | 130:9 |  |  |
| 35:4 | 132:4,5, | played 177:9 | polarized |
| 36:14, 22 | 18,22 | pleasant | 34:16 |
| 45:8 55:1 | 170:22 | 124:23 | 37:15 |
| 127:15 | 171:5 |  | 100:17 |
| 130:2,10 | 180:15 | plenty 9:18 | 101: 4,5 |
| plaintiffs | plane 81:8,9 | pocket 8:11 | policed 55:3 |
| 12:1,4 |  | point 11:5 | polices |
| 32:9 36:18 | planning | 28:22 | 54:23 |
| 45:16 | 151:2 | 47:18 |  |
| 46:12,16, | 174:10 | 60:18 | policies |
| 18 62:24 | 181:4,17 | 61: 4,6 | 6: |
| 122:24 | plans 8:1 | 67:16, 21 | policy 10:10 |
| 127:19 | 13:2 26:25 | 128:10 | 17:19 21:5 |
| 129:5 | 32:6 38:19 | 129:12,22 | 95: 4, 8 |
|  | 44:20 47:5 | 130:11 | 104:23 |
|  | 50:5 55:11 | 138:9 | 105:22 |
| 4,10,11,20 | 91:22 | 154:24 | 137:16 |
| 26:22,24 | 95:15 | 158:12 | 152:2 |
| 32:11, 12 |  | 158:12 |  |
| 46:3, 5 | 106:7,20 | 172:13 | political |
| 49:20,22 | 107:4,5 | 179:10,25 | 34:4 |
| $50: 4$ 54:25 | 108:10 | 180:14 | 40:14, 24 |
| 55:11 | 109:19 | pointed | 43:1 54:8, |
|  | 116:16 |  | 11 60:3,4, |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: politically..practical

| 10,15 61:8 | 11:8 12:2, | 134:19 | portion 7:2 |
| :---: | :---: | :---: | :---: |
| 76:20,22 | 8,13,16, | 135:3, 9, | 53:15 |
| 89:6,8 | 17,21 | 11,23 | 138:19 |
| 95:10, 24 | 14:20,22, | 136:22 | 140:22 |
| 96:4,21 | 24 15:2,14 | 137:10 | portions |
| 99:24 | 21:2 23:19 | 138:12,15, | 104:4 |
| 101:24 | 24:16,20, | 22 139:13 |  |
| 103:18,19, | 25 25:12, | 140:4,5, | possibilities |
| 22 123:7 | 13 26:20 | 24,25 | 153:9 |
| 133:18 | 28:1,21 | 141:9,20, | possibility |
| 189:10 | 35:19,20, | 21 142:11, | 63:2 74:5 |
| politically | 21 38:13 | 13,14,21 | 113:20 |
| 36:1 | 40:3,16 | 143:12 | 153:19 |
| 40:17,22 | 43:19,20 | 144:3 | possibly |
| 42:21 | 55:24 | 145:11,15, | 29:8 61:13 |
| 97:14 | 56:14 | 17,20 | 98:13 99:2 |
|  | 74:11,23 | 146:13,20, | 106:3 |
| politics 39.8 | 75:1, 5, 9, | 23 147:6, | 131:18 |
| 39:8 | 11,23 | 15 152:14, | 143:20 |
| poll 181:10 | 83:10 | 16,17 | 184:23 |
| Polsby-popper | 85:19,22, | 153:4 | 187:11 |
| 51:21 | 23,24 | 158:13 |  |
| 52:2, | 86:2,6,12, | 165:12 | post 21:19 |
| 52.2, | 17,19 | 189:16 | 124:1 |
| Poolman 3:8, | 87:9,11,24 | populations | potential |
| 9 182:22, | 94:9,12, | 32:18 | 41:3 |
| 23 185:3 | 16,19,21 | 39:20 |  |
| 188:8,14 | 100:19 | 87:14 | $126: 14$ |
| pop 55:5 | 101:8,16 | 110:4 |  |
| 170:10 | 103:4,8,11 | 113:5 | power 14:1 |
|  | 105:9,15 | 134:20,23 | 47:12 |
| populate | 106:10 | 134.20,23 | 98:22 99:5 |
| 140:4 | 108:12,16 | populous | 165:2 |
| populated | 111:4,6,7, | 86:13 |  |
| 27:23,24 | 8,9,11,13, | 111:11 | $85: 6,19$ |
| 58:20 | 19,21,24 | 142:1,2 | 108:13 |
| 76:12 | 112:12,17, | popup 133:1 |  |
| population | 23 131:19 |  | practical |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 190:8 | 13:13 | 155:14 | preserve |
| :---: | :---: | :---: | :---: |
| practice | 29:11 30:6 | 161:24 | 100:4 |
| 123:24 | 48:21 | 176:16 | 108:25 |
|  | 97:24 98:2 | 177:18 | 109:5 |
| practices | 99:21 | 181:9 | 143:19 |
| 94:4 96:22 | 100:6 | presentation | preserving |
| $125: 7$ $189: 25$ | 101:18 | 8:23 15:17 | 54:8 57:25 |
|  | predominantly | 20:23 | 59:3 95:10 |
| praise 162:3 | 100:21, 22 | 82:8,14,16 | 100:8,12 |
| precinct | predominate | 83:16 | 105:11 |
| 19:9 43:12 | 29:22 | 90:17 | 131:10,17 |
| precincts |  | 97:9, 21 | 145:2 |
| $43: 5,7$ | preeminent | 104:24 | re |
| 89:9 | 10:3 | 110:20 | 38:11 |
|  | prefer 83:21 | 113:10,13, | 175:10 |
| preclear |  | 24 130:21 |  |
| 32:5 46:3 | preferences | 141:25 | presume 42:7 |
|  | 134:5 |  | 50:19 |
| preclearance | preferred | presentations | 79:5,7 |
| 46:7,8 | 97:17 | 4:1 | presuming |
| 47:19 | preliminary | presented | 41:15 |
| 48:18,24 | 62:15 63:7 | 95: | 56:20 |
| precleared | preloaded | 116:18 | presumption |
| 46:6 48:20 | 132:12 | 145:18 | 26:21, 22 |
| preconditions | premature |  | 44:19 |
| 35:2 | 171:15 | 155:9,13 | pretty 8:20 |
| 36:15, 23 | prepare 8:3 |  | 39:22 40:9 |
| 37:1 65:9 |  | presents | 42:1 52:6 |
|  | 14 | 13:16,17 | 57:7 68:7 |
| predict $66: 17$ | preparing | preservation | 80:23 |
| 66:17 | 83:13 | 100:2 | 99:12 |
| predicted | 106:7 | 101:24,25 | 152:13 |
| 62:21 | present 4:11 | 102:1 | 162:24 |
| predominance | 47:8,14,16 | 103:17 | 173:23 |
| 29:10 | 95:24 | 104:14 | 178:14 |
| predominant | 109:15 | 105:6 | 181:1 |
|  | 116:20 | 189:10,22 |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: previous..progressed

| previous | 102:1 | 160:1 | 120:12 |
| :---: | :---: | :---: | :---: |
| 21:13,16 | 105:6,7,11 | 180: 4 | 125:2,19 |
| 93:18 | 107:19 | 184:14 | 126:23 |
| 116:21 | 189:23 | problems | 127:9 |
| 181:12 | prioritizing | 17:15 | 128:2 |
| primaries | 100:2 | 35:23 | 129:21,23 |
| 19:13,24 | prison 68:24 | 158:11 | $\begin{aligned} & 130: 11 \\ & 152: 4,12 \end{aligned}$ |
| primarily | prisons | procedural | 153:24 |
| 28:13 | 68:25 | 4:16 | 156:19 |
| 66:13,14 |  | procedure | 160:17 |
| 100:3 | privacy | 4:15 85:4 | 161:9 |
| 153:1 | $20: 25$ $21: 3,9$ | 107:3 | 166:4 |
| primary 14:6 | 16,21 | 119:25 | 167:9,13 |
| 19:23 | 22:24 | 155:17 | 169:19 |
| 20:1,2 | 23:2,7,12 | procedures | processes |
| 84:7 89:7, | 62:13 | 88:24 | 160:15 |
| 12 115:23 | 66:4,12 | 96:22 | processing |
| principle | 67:1,19 | proceed | 19:14 |
| 51:15 | 68:2 74:3, | 29:14 35:6 |  |
| 52:16,17 | 17 75:2 | $44: 1 \quad 106:$ | produce |
| 53:7 57:3, | 77:17 | 44:1 106: | 115:10 |
| 11,25 | private | proceeding | producing |
| principles | 123:10,23 | 105:14 | 121:18,22 |
| 10:23 | privilege | proceedings | product |
| 47:16 | 120:9,14 | 46:14 | 25:10 |
| 49:25 51:8 | $16,19$ | 120:7 | 117:5 |
| 82:15 | 121:13 | process | 120:21,22 |
| 83:13 | 122:8,11, | 13:12 | program |
| 101:22 | 12 | 14:12 | 21:15 73:1 |
| 106:17 |  | 16:20,22 | 80:19 |
| 109:11 | privileges | 19:7 29:20 |  |
| 152:3,5 | 121:1,4,5, | 107:15,22 | progress |
|  | 8 | 109:8 | 18:7 |
| $20: 13$ | problem 17:8 | 114:6,10 | 129:15 |
| 57:25 | 19:5 59:4 | 115:2,14, | progressed |
| 79:13 | 159:13 | 17 117:2 | 17:25 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: progresses..purpose

| progresses | 119:15 | 93:21 | pt4 151:17 |
| :---: | :---: | :---: | :---: |
| 49:6 | protected | 109:18 | public |
| prohibiting | 116:8 | 116:11 | 115:21,24, |
| 94:3 | 117:17,22, | 118:23 | 25 123:22 |
|  | 25 120:21 | 119:3, 9, | 124:3,16, |
| prohibition | 121:12,19 | 10,17,24 | 24 125:3,4 |
| 49:18 |  | 122:17,21 | 131:1 |
| 50:24,25 | protecting | 123: 4 | 150:20 |
| 59:14,25 | 21:9 | 149:5 | 151:20 10 |
| prohibits | 115:2,16 | 152:1 | 151:2,10 |
| 31:20 | protection | 153:14, 24 | 156:9,12 |
| 96:20 | 21:17, 21 | 156:3 | 158:1,4 |
| promote | 30:19 | 159:2 | 159:17 |
| 105:24 | $31: 22$ 36:9 | provided | 162:14 |
|  | 94:13 | 5:15 | 163:7 |
| promotion | 102:2 | 64:23,24 | 180:15 |
| 78:12 | 105:17 | 69:7 85:9 |  |
| prong 36:10 | 189:23 | 94:7 97:1 | publicly |
| proof 32:8 | protections | 116:23 |  |
|  | 93:13 | 119:18 | published |
| proper 107:3 | 109:21 | 121:8,10, | 21:7 |
| properly | 116:12 | 24 122:24 | pull 132:24 |
| 129:23 | 119:23 | 123:18 | 173:21 |
| prophylactic | 121:1,3,6 | 124:17 | purchased |
| 32:4 | protects | 154:6 | 130:19 |
| proportionalit | 117: 4 | providing | Purdue |
| y 59:24 | prove 32:10, | 23:6 120:1 | 151:20,22 |
| 60:8,22 | 11 35:5 | 162:10 | 154:10 |
| proposed | 36:14,18, | 164:6 | 155: 4 |
| 107:3 | 20,23,24 | provision | purple |
|  | 55:1 | 60:22, 23 | 133.10 |
| 42:16 | 64:13,19 | proximate | 134:7 |
|  | 97:11,18 | $54: 1$ | 145:7 |
| protect 21:3 |  | 54.1 | 145:7 |
| 22:24 23:7 | provide | prudence | purpose 6:9 |
| 66:11 75:1 | 10:9,11 | 124:10 | 23:7 57:1 |
| 117:2, 8 | 21:24 | pt2 56:3 | 66:5 91:15 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 250 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: purposely..racially

| 94:6 |  | 127:9, 22 | quicker |
| :---: | :---: | :---: | :---: |
| purposely - |  | 128:8 | 171:12 |
| 65:20 68:9 | qualifications | 134:14 | quickly |
| purposes | 96:22 | 136:24 | 93:10 |
| 16:22 26:4 |  | 156:22 | 140:11 |
| $\begin{array}{ll}16: 22 & 26: 4 \\ 57: 11 & 74: 9\end{array}$ | qualifies | 161:17 | 144:24 |
| $57: 11$ $131: 22$ | 31:22 | 175:1,7,21 | 171:21 |
| 141:8,15 | qualify 36:8 | 18 | quorum 3:13 |
| 142:20 | 40:24 | questioned | 115:17,19, |
| 148:10 | qualifying | 120:5 | 20 117:19 |
| 153:10 | 35:13 | questions |  |
| 181:4,18 | quality 26:3 | 7:22 9:18, | R |
| push 139:19 | 105:15 | 20 30:23 |  |
|  | quarter 72: | 64:1, 3 | race $22: 1$ |
| pushed 80:11 | quarter 72. | 70:11 | 29:11,21 |
| pushing | quarters | 78:10 | 30:6 39:7 |
| 129:17 | 16:14 | 81:6,17,21 | 42:18 43:6 |
| 178:18 | question | 82:3 95:24 | 45:7 93:18 |
| put 7:25 | 11:2,17 | 107:12,13, | 96:24 |
| 8:2,5 | 12:14,19 | 15 113:6,8 | 97:24 98:1 |
| 14:21 | 27:13 | 114:1,4 | 99:21 |
| 27:21 | 28:10 | 118:22 | 100:7,11 |
| 71:19 | 29:21 | 119:1,5 | 105:2 |
| 78:1,6 | 36:11 | 126:21,24 | races 146:22 |
| 90:15,23 | 39:10 | 127:2 | racial 25:8, |
| 118:17 | 55:18 | 130:12 | 11 28:11, |
| 123:25 | 65:18 68:5 | 148:18 | 14 29:5 |
| 124:5,8,11 | 69:18 71:7 | 149:2 | 30:1 34:10 |
| 125:7 | 74:2 77:10 | 153:25 | 35:25 |
| 141:15 | 79:9,10 | 154:1 | 37:19 |
| 170:20 | 81:23 | 157:16 | 42:5,25 |
| 190:4 | 92:17 | 167:17,19 | 61:20 |
| $\begin{aligned} & \text { putting } 79: 2 \\ & 119: 13 \end{aligned}$ | 95:21 |  | 96:13 |
|  | 107:20 | quick 6:17 | 97:7,25 |
|  | 109:21, 23, | 74:1 |  |
|  | 24 117:10, | 170:10 | racially |
|  | 14 125:12 | 188:14 | 37:15 |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

Index: radio..recordkeeping

| 42:25 | 86:15 | reauthorize | 158:16 |
| :---: | :---: | :---: | :---: |
| 100:16 | 136:15 | 47:25 |  |
| radio 164:3 | 151:9 | reauthorized | $56: 4$ |
| random 53:24 | 190:11 | 65:1 | recommendation |
|  | ready $8: 21$ | recall | s 10:10 |
| Randy 110:14 | 171:20 | recall |  |
| range 56:14 | 181:16 |  | recommended |
| 84:12,14, | real 11:17 | recalls | 5:20 6:1 |
| 22 85:16 | 14:23 37:1 | 128:22 | reconcile |
| 86:6,11,22 | 78:20 95:8 | recap 188:14 | 18:15, 20 |
| 91:8 | 170:10 | receive | 19:9 |
| 94:20,24, |  | 107:5 | reconvene |
| 25 95:1,12 | realize 42:11 $65: 6$ | 155:15,21 | 90:5,8 |
| 106:23 | $153: 22$ | received |  |
| 142:1,16 | 153:22 | received | reconvened |
| 144:3,20 | rearrange | 70:6 | 89:23 |
| 177:25 | 185:5 | 181:12 | 91:10,12, |
| rank 57:16 | reason 9:6 | receiving |  |
| ranks 57:13 | 11:3 42:13 | 18: 4 | record 22:18 |
|  | 78:20 | recent 125:9 | 67:12 |
| rare 44:25 | 100:6 |  | 107:18 |
| 46:9 | 118:17 | recess | 114: 9, 15, |
| rate 14:15, | 126:6 | 110:18 | 18,20 |
| 16 | 135:10 | recognition | 115:24 |
|  | 137 | 165:23 | 116:7,22 |
| rational | 137 |  | 118:5,7 |
| 95: 4, 8 | reasonable | recognize | 119:13,15 |
| 178:22 | 50:19 | 9:7 154:12 | 121:12,16, |
| rationale | 178:22 | recognized | 18,22 |
| 58:10 | reasons | 85:25 | 122:22 |
|  | 15:19 16:1 | 163:19 | 125:20 |
| rea- 78:20 | 21:5 65:7 |  | 126:5 |
| reach 95:25 | 125:15,17, | 151:24 | 168:23 |
| 159:24 | 18 126:4,8 |  | 169:14 |
| 168:7 | 155:21 | recognizing | 170:2 |
| 169:18 |  | 161:7 |  |
| $\text { read } 76: 19$ | reauthorizatio $\text { n } 48: 1$ | recollection $48: 2$ | $\begin{gathered} \text { recordkeeping } \\ 113: 18 \end{gathered}$ |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 126:22 | redistricted | 70:23 | 181:13 |
| :---: | :---: | :---: | :---: |
| records 17:9 | 12:2 92:21 | 82:10 | 190:16 |
| 22:22 | redistricting | 83:2,6 | redistrictor |
| 51:23 | 2:2 6:9, | 85:11,13 | 56:12 |
| 113:20 | 21,22 7:4, | 88:23 | redraw 14:9 |
| 115:22 | 9,15 8:25 | 89:4,5 | redraw 14.9 |
| 116:1,7, | 10:15, 20, | 90:18, 20 | 50:7 |
| 10,12 | 21,23,24 | 91:4,22,24 | redrawn |
| 117:4,7,8 | 11:13 | 92:3,9 | 49:22 |
| 118:1,4,6 | 12:16,18 | 93:22 95:1 | refer 10:22, |
| 119:3,5,8, | 13:15 | 97:11 | 23 89:2 |
| 9,10,12, | 14:3,6 | 106:15 |  |
| 17,19,22 | 17:25 | 108:14 | reference |
| 120:11 | 18:7,8,9, | 109:7 | 98:9 |
| 121:2,24 | 11,13,23 | 113:19,22 | 153:21 |
| 122:19 | 19:7,21 | 114:6 | referendum |
| rectangular | 20:6,11, | 116:6,9, | 89:2 |
| 52:1 | 13,18 | 118.13 | referred |
|  | 31:3,15,21 | 118:13 | 20:24 |
| red 63:13, | 32:6 35:6 | 119:11,14, | 32:15 |
| 18,20 | 41:5,11, | 22 121:11 |  |
| 103:10 | 18,22 | 122:9,15 | referring |
| 139:9,13, | 42:18 | 123:5 | 189:5 |
| 14,19 | 44:9,16, | 124:4,22 | refers 98:10 |
| 141:6 | 20,21 | 125:2 | reflect 60.9 |
| 143:1 | 45:24 | 126:19 | reflect 60:9 |
| redistrict | 46:3,5 | 130:18,21 | 76:10 |
| 11:2, 6, 7 | 47:5 49:6 | 131:5 | 6.18 |
| 13:25 14:1 | 50:4 51:20 | 147:7,9 | refresh |
| 19:6 | 52:12 | 148:10 | 128:20 |
| 20:15,21 | 55:2,11 | 150:16,17 | refresher |
| 23:24 26:4 | 56:17 | 152:4,11 | 177:22 |
| 52:15 | 58:4,22 | 161:21 | regard 96.14 |
| 55:7,8,9 | 59:16,19, | 163:10 | regard $96: 14$ $101: 20$ |
| 62:21 79:7 | 23 61:25 | 164:16 | 111:9,17 |
| 103:2 | 62:5 63:3, | 166:4,21 | 111:9,17 |
| 178:7 | 5,13,15, | 167:6, 9,11 | regime 47:19 |
|  | 17,24 67:6 | 177:10,23 |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021 Index: region..representation

| region 25:13 | 76:23 | relief 93:21 | Reock 51:21 |
| :---: | :---: | :---: | :---: |
| 34:5 43:18 | 120:8 | rely 79:6 | 52:3,6 |
| 55:8, 9 | relating 7:3 | remain | reorganize |
| regional | 112:9 | 116:21 | 89:9 |
| 15:9 | relations | 167:1 | repealed |
| 153:21,23 | 161:20 |  | 61:10 |
| 154:19 | 162:3 | remainder $113: 3$ | replace |
| regions 55:7 | 169:1,18 |  | 104:12 |
| registered | 170:8 | remarks |  |
| 94:10 | 191:15 | 25:19 | report 6:1, |
|  | relationships | remedy 35:13 | 4,10 7:3 |
| registratio | 58:11 | 45:3, 8 | , |
|  |  | 46:12 | 16.13,15 |
| regression | relative | 64:18 | 21:1 43:9 |
| 37:16 | 12:11 | 67:16 | 64:25 |
|  | 16:19 | 103:7 | 77:24 |
| regressions | 55:20 | 103.7 | 146:14 |
| 43:4 | 117:16 | remedying | 147:6,15, |
| regular 6:6 | release | 30:1 | 20,24 |
| 36:13 | 66:21 | remember | 148:13,14, |
| 47:14 85:1 | 67:18 | 91:7 | 22,25 |
| regulations | 69:22 | 128:17 | reported |
| 31:3 | 70:3,12 | 158:5 | 12:3 |
| reiterate | 71: 4 | 159:19 | 16:19,20 |
| reiterate $86 \cdot 1$ | released | 160:16 | 23:10,20 |
| 86.1 | $15: 25 \quad 18: 4$ | 171:6 | 24:13,16 |
| reject 6:3 | $67 \cdot 17$ | 172:19 | 43:8 69:2, |
| 58:16 | 68:16,18 | reminder | 3 71:16,20 |
| relate 10:24 | 70:24,25 | 5:21 6:19 | 147:22 |
| related | releasing | remote 5:14 | reports |
| 17:17 | 71:3 | remotely | 21:24 |
| 46:14 |  | 5:2,4,18, | 123:21 |
| 91:18 | relevant |  | 146:4,7,9 |
| 115:10 | 51:10 | 19 | 147:10,11, |
| 119:10 | 120:2 | Reno 29:3 | 14 148:12 |
|  | 121:7 | 97:23 |  |
| relates | 174:5 |  | representation |
|  |  |  | 39:20 |

## Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/26/202Index: representative..reservation

| 76:14 | 158:9,23 | republicans | requirements |
| :---: | :---: | :---: | :---: |
| 105:10,24 | 159:11 | 10:7 | 19:15 |
| 152:11 | 160:2,10 | 60:18, 21 | 83:10 |
| 153:11 | 161:11 | 61: 4,5 | 84:10 85:9 |
| 166:15 | 162:8 | request 84:5 | 94:17 |
| representative | 167:4 | 109:25 | 105:16 |
| 2:7, 9, 11, | 171:11,13 | 116:1,6,23 | 109:9 |
| 13,15,17, | 172:3,17, | 118:1,4,12 | 165:18 |
| 19 4:2,3,5 | 20,25 | 119:8,22 | requires |
| 9:8 10:1 | 173:9 | 120:14 | 32:2 34:4 |
| 32:25 | 174:3,12, | $r$ | 61:1,7 |
| 33:17 | 18 175:4,6 | requested 117.8 | 84:12 |
| 35:11 37:8 | 176:2,24 | 117:8 | 85:13 89:8 |
| 38:6,15 | 177:9 | 155:14 | 94:14 |
| 42:19 64:3 | 178:20 | requests |  |
| 65:17 66:2 | 180:5,20, | 82: 4 | research |
| $68: 4,7,14$ | 24 181:19, | require | 55:10 |
| 69:17 70:7 | 21,23,25 | 60:2,25 |  |
| 76:8,17 | 182:2, 4, 6, | 105:7,18 |  |
| 77:1,15 | 8 190:9,24 | 115:9 | resembles |
| 78:11 | 191:19 |  | 102:18 |
| 89:15,22 | representative | required 5:2 $21: 1 \quad 29: 24$ | reser- 110:4 |
| 99:7,18 | s 47:24 | 21:1 29:24 |  |
| 107:16 | 58:12 | 34:19 | reservation |
| 108:3 | 67:11 | 34:19 | 39:23 |
| 109:22 | 96:17 | 35 | 0 |
| 110:14 | 164:15 | 51:13 | 99:12,23, |
| 117:11 | 166:9 | 58:14 | 25 100:4, |
| 127:7,14 | 168:18 | 60:20 65: | 5,19 |
| 128:12,18 | 178:4 | 83:8 | 101:15 |
| 131:11 | represented | 84:16, 18, | 137:5,6,18 |
| 134:25 | $37: 12$ | 90:16 | 140:3,5 |
| 137:2,14 | 38:14 | 118:15 | 13,17,20, |
| 139:7 |  | 123: 4 | $22 \text { 141:1,5 }$ |
| 149:11 | republican | 123:4 | $22141: 1,5$ $163: 25$ |
| 150:6 | 60:16 | requirement | 163:25 |
| 154:21 | 62:17 | 11:5 34:3 |  |
| 157:9,22 |  | 60:8 90:20 | 168:10 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: reservations..roughly

| reservations | responds | review 4:11, | 57:21 65:1 |
| :---: | :---: | :---: | :---: |
| 39:13,21 | 21:7 | 17 93:10 | 93:25 94:6 |
| 40:6 | responsibility | reviewed | 96:19 |
| 110:1,2,4 | 14:6 115:7 | 51:18 | 165:3,15 |
| 137:10 |  | 84:19 | 166:7,18 |
| 164:18 | responsive | 165:14 | 190:1 |
| residence | 119:19 | Reynolds | rigidly 55:3 |
| 165:24 | rest 53:9, | 94:12 | ripe 68:15 |
| residency | 19 167:22 | Richland | risk 78:16 |
| 19:15 | 180:23 | 135:22 | risks 42:17 |
| resident | result 96:23 | 136:2,14 | river 102.18 |
| 11:21 | 121:23 | 137:3,7 | river 102:18 |
| residents |  | 138:18 | 129:7 |
| 122:14 | resulted 123:20 | 141:10,23 | Rock 129:5 |
| resort | 124:14 | Richland's | 169:7 |
| 163:16 | results 15:2 | 136:5 | Rocket 123:2 |
| 164:3 | 37:17 | richly 34:15 | role 2:3 |
| resource | 43:5,8 | ridiculous | 105:2 |
| 24:4 | 111:14,16 | 57:9 | Rolette |
| 63:15, 21 | 112:1,10, | rightness | 102:9 |
| resources | 11 | 130:6 | 103:1,4,21 |
| 66:10 | retain 14:9 | rights 28:20 | 110:2 |
| respect | 109:12 | 29:25 | 112:15 |
| 176:10 | 137:17 | 31:12,15, | rollcall |
|  | 152:6 | 23 32:3, | 177:20 |
| respective $191: 1$ | 153:16 | 17,19 | rolling |
|  | retained | 34:19 | 136:20 |
| respond 21:4 | 104:21 | 35:22 | rollout 70:4 |
| responded | retaining | 37:11 |  |
| 66:24 | 109:14 | 38:18, 23 | room 16:17, |
|  |  | 44:7,11 | 18 81:15 |
| respondent | retired | 45:2,7,19 | 115:5 |
| 66:12 | 105:22 | 46:10,15, | 162:25 |
| respondents | reverse 25:1 | 22 47:25 | roughly 9:16 |
| 21:20 23:8 |  | 55:15 | 11:14,15 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: row..secretary

| 12:10 | 111:9 | 54:2 116:3 | 164:2 |
| :---: | :---: | :---: | :---: |
| 39:17 | 152:11,18 | 119:7 | science |
| 43:18 | 153:1,2,4 | scenarios | 76:20,23 |
| 60:9,18, 21 | 161:1 | 115.23 |  |
| 172:9 | 172:8,10 |  | scientist |
| row 174:23 | 180:21 | Schaible 4:3 | 66:9 |
| Rucho 30 | rush 173:5 | Schauer | scientists |
| Rucho 30 |  | 2:19,20 | 43:1 |
| 95:19 | Ruso 113:1 | 9:8 10:1 | cope 46:4,9 |
| rule 50:20 |  | 38:6,7,10, | $63: 8$ |
| 52:18 | S | 16 64:4,5 |  |
| 54:24 | -109:4 | 65:17,18 | scores 52:2 |
| 57:4,20 | 109:4 | 66:3 68:7 | scramble |
| 58:16 | safely 75:4 | 107:16,17 | 75:2 |
| 60:19 | 178:14 | 108:3 |  |
| 79:11 | safer 108:19 | 127:7,8,15 |  |
| 89:25 |  | 158:9,10 |  |
|  | safety 95:1 | 160:2 | screen 45:23 |
|  | salaries | 182:8,9 | 51:25 |
| rules 4:14, | 178:13 |  | 53:24 |
| 16,21 55:5 |  | schedule | 136:18 |
| 59:23 | salary | 6:13 9:20, | 141:19 |
| 90:9,14 | 178:10 | 22 16:12 | 146:12 |
| 118:3 | Salt 9:3,24 | 62:5 |  |
| 155:17 | 33:2 69:25 | 149:7,22 | scrutiny |
|  |  | 167:6 | 9:4 125:5 |
| run 19:17 | Sam 145:18 | 173:10 | searching |
| 37:23 43:4 | Sargent | 176:11,13 | 124:19 |
| 147:12,19 | 139:12 |  |  |
| 148:12,13, |  | scheduled 155:10, 12 | $\begin{aligned} & \text { season 17:19 } \\ & 90.27 \end{aligned}$ |
| 25 157:19 | $\begin{array}{cc} \text { satisfy } & 36: 9 \\ 52: 24 & 53: 4 \end{array}$ | $\begin{aligned} & 155: 10,12 \\ & 168: 4 \end{aligned}$ | $92: 22$ |
| running | 52.24 53.4 | 191:12 | seats 28:9 |
| 19:22 | save 136:11 | 191.12 | 38:24 |
| 148:22 | saver 81:2 | schemes | seconded |
| uns 147:4 | scale 17:14 | 38 | 3:20 |
| rural 24:18 | scales $52: 4$ | Schmidt 4:2 | secret 8:11 |
| 23 25:2,5 | scales 52.4 | school 54:13 | secretary |
| 76:12 | scenario | schools | 151:4 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 165:17 | 145:22 | 100:14 | 5:22 6:18 |
| :---: | :---: | :---: | :---: |
| secretly | 147:13,14 | 110:5 | 55:10 |
| 115:18,19 | 150:10 | 117:11,23 | 99:2,4 |
|  | selected | 126:24 | 134:20,22 |
| section | selected | 127:4 | 135:8 |
| 31:17,20, | 83:23 | 129:10,25 |  |
| 23 32:2,3 | 132:21 | 132:2 | September |
| 35:5 36:9 | 139:9,10, | 154:1,10 | 62:8 70:1, |
| 37:2 41:9, | 11 146:15 | 154:1,10, | 4,6,20,21 |
| 10,18 | 148:25 | 24158:15 | 77:12,18 |
| 43:23 | 149:1 | 159: | 168:13 |
| 44:7,24 | selection | 162:8,19 | 173:19 |
| 45:11,20 | 143:22 | 167:20 | 174:19,22 |
| 46:4, 9, 19, | 147:24 | 170:17,21 | 183:5,10 |
| 21 47:11, | 148:4,9, | 3,16 | 184:22 |
| 18,20,21 | 15,20 | $178: 3,16$ $181: 17$ | 186:4 |
| 48:1,15 | self-defined | 182:10, 12, | 188:11,15, |
| 49:2 51:7 | self-defined $104: 25$ | 14,16,18, | 17,18,19 |
| 53:18 |  | 20,22, 2 | 191:2 |
| 65:10 | senate | 183:18 | serve 98:5 |
| 85:11 | 36:16,20, | 184:9 |  |
| 88:16, 24 | 24 48:13 | 185:24 |  |
| 89:7 | 64:8,21,25 |  | service 43:2 |
| 96:12,18 | 67:11 | $24$ | services |
| 186:11 | 84:12 85:5 |  | 91:18 |
| 190:1 | senator | senatorial |  |
| 191:10,11 | 2:21,23,25 | 84:21 | serving |
| ections | $3: 2,4,6,8$, | senators | 87:24 |
| 21:23 | 10 4:3,5, | 84:17, 22 | servitude |
| 31:14,15, | 6,9 7:23 | 85:15 | 93:19 |
| 19 46:20 | 27:10,17 | send 126:11 | session 6:6 |
|  | 28:4,6,10 |  | 7:13,14,17 |
| seek 152:6 | 39:9 55:17 | sense 31:14 | 18:15,19 |
| select | 56:10 71:6 | 56:23 | 20:19 83:4 |
| 136:8,12 | 72:6 73:10 | 69:13 | 84:5 85:1 |
| 140:11,12 | 80:17 87:6 | 133:8 | 89:24,25 |
| 143:10,23 | 88:3 92:15 | 178:17 | 90:1, 4, 7, |
| 144:7,8,9 | 96:16 | separate | 14 91:10, |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 12,13,14, | 95:22 | 53:10 | 147:3 |
| :---: | :---: | :---: | :---: |
| 20 92:5,12 | settling | 159:10 | 148:17 |
| 116:16 | 171:15 | short 30:7 | 178:21 |
| 155:25 |  | 86:19 | sic 27:11, |
| 156:15,17 | severely | 141:23 | $18$ |
| 157:20 | 15:20 | 141.23 |  |
| 158:2 | shake 57:15 | 175:11 | sick 4:25 |
| 159:3 | shape 29:6 |  | side 23:9, |
| 162:18 | $102: 14.24$ | should've | 11 51:25 |
| 177:17 | $181: 14$ | 64:6 | 54:10 64:8 |
| sessions |  | shout 133:16 | 103:12 |
| 91:23 | shapes 98:13 | show 20:5 | 125:8 |
| set 13.25 | share 59:12 | 41:3,4 | 134:3 |
| $21: 19 \quad 23: 6$ | 115:18,21 | 44:5,15 | 137:18,24 |
| 43:17 | 175:19 | 67:13 | 139:12 |
| 66:17 | shared | 101:5,6 | 140:6 |
| 67:18 | 104:22 | 114:16,22 | signed 13:6 |
| 77:22 81:5 | Shaw 29:3 | 131:3,23 | significant |
| 108:15,16 | 97:23 | 140:10 | 19:5 115:7 |
| 155:23 |  | 141:10 | 152:13 |
| 156:8 | shed 129:24 | 143:8 |  |
| 157:7,10 | sheer 76:11 | 146:9 | significantly |
| 158:25 | t 144:15 | 147:8 |  |
| 160:15 |  | 148:19 | signify 3:21 |
| 164:20 | shift 14:7 | showed | signs 142:4 |
| 168:13 | 44:21 | 147:21 |  |
| 169:9 | 61:2,3,4,6 |  | similar 42:5 |
| 183:8 | shifting | showing | 49:25 |
| 184:21 | 39:5 | 114:18 | 60:24 61:7 |
| 186:5,18 |  | 133:11 | 62:11 92:9 |
| 186.5,18 | shifts 11:8 | 139:15 | 112:9,20 |
| setting | 14:1 26:20 | shown 34:14 | 150:17 |
| 169:6 | 36:16 | $98: 4$ | 158:8 |
| 170:9 | shooting | 109:19 | 166:22 |
| settle 165:4 | 142:23 | shows 43:17 | Similarly |
| 173:6 | 144:21 | $109: 6$ | 126:15 |
| settled 62:6 | shopping | 112:17 | simple 87:8 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 259 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 98:16 | 136:3 | 136:18 | 105: 4 |
| :---: | :---: | :---: | :---: |
| simply 83:23 | 142:24 | smaller | solid 42:1 |
| 90:7,17 | 143:3,5, | 38:20 74:4 | 79:22 |
|  | 13,16 | 76:6,7 |  |
| Sims 94:12 | 145:14 | $143: 10$ | sooner 174:2 |
| single 34:22 | 172:5 |  | sophisticated |
| 36:19 | 180:2 | smallest | 21:15 |
| 39:2,5 | slam 179:23 | 86:19 | 66:22 |
| 51:9 58:17 |  | snaking | sort 32:21 |
| 61:21 | slamming | 102:22 | $38: 3 \quad 43: 10$ |
| 97:14 | 179:11 | snippet | $114: 24$ |
| 98:14 | slate 131:15 | 124:7 | 172: 6 |
| 102:24 | slide 23:16, |  |  |
| 103:1 | 1724:15 | snippets | Sorvaag |
| 104:22 | $28: 14$ | 125:25 | 3:10,11 |
| 105:20 | 29:13,19 | snowstorm | 27:12 |
| 153:14 | $33: 934: 1$ | 5:8 | 28: 4, 6, 10 |
| 164:14 | 41:4 44:4, |  | 86:24 |
| 165:6 | $41: 464: 4$, $1546: 11$ | society $115: 8$ | 87:7,16, |
| 166:13,16 | 82:2 102 | 115:8 | 19,21 |
| 167:1 | $103: 3$ | socioeconomic | 182:24,25 |
| Sioux 169:7 | 105:25 |  | sound 124:13 |
| sit 118:19 | 116:11 | (1) | sounds 77:21 |
|  | 118:17 | software |  |
| sitting | 146:24 | 51:20 |  |
| 5:16,18 |  | 52:12,14 | 13:22 |
| 8:16 149:5 | slides 31:13 | 78:3 92:3, | 15:12 |
|  | 82:12,21 | 9 130:18, | 17:17 |
| situation 40:15 | 84:11 93:9 | 23 131:2,4 | 28:13 36:3 |
| 10:15 | 100:15 | 134:12 | 40:5 42:5 |
| 118:25 | 102:3 | 146:5 | 48:16, 22 |
| situations | slightly | 147:7 | 137:19 |
| 53:5 153:8 | 23:6 74:23 | 150:11,21 | 171:6 |
| size 86:3, | slope 74:22 | $177: 2,6,11$ | 179:15,16 |
| 4,18,20 |  | 179:8 | southeast |
| 101:18 | small 25:8, | 181:14 | 15:12 |
| 103: 6, 8, 12 | $\begin{aligned} & 1172: 18, \\ & 2274: 22 \end{aligned}$ | sole 13:12 | 58:21 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: sovereign..start

| sovereign | 116:9 | spot 136:2 | 166:20 |
| :---: | :---: | :---: | :---: |
| 164:1 | specifically | spring 20:2 | standardizatio |
| Spanish 97:5 | 61:19 |  | n 50:16 |
| sparingly | 155:13 | 102:14 | standards |
| 4:25 | speech 30:18 | squares | 44:6 86:1 |
| sparsely | 120:7 | squares $58: 20$ | 96:8,22 |
| sparsely 76.12 | speed 177.11 | 58:20 | 166:20 |
| 76:12 | speed 177:11 | staff 63:16 | 167:22 |
| speak 8:24 | spent 156:15 | 81:24 82:9 |  |
| $31: 11$ |  | 107:14 | standing |
| 163:17 | Spirit | 118:15 | 68:15 |
| 163.17 | 163:16,17, | 118.15 | 129:5 |
| 168:19 | 19,25 | 120:18 | 169:7 |
| 170:11 | 164:23 | 123:8 |  |
| speaker | 165:2 | 124:24 | standout |
| 125:9 | 166:2,11, | 130:22 | 14:18,23 |
| 175:5 | 25 168:7, | 156:5 | standpoint |
|  | 19 169:2 | 158:24 | 157:24 |
| special 7:5, |  | 160:19 |  |
| 13,14,17 | split 27:4 | 176:2,14 | stands 42:3 |
| 18:15,19 | 53:12 55:1 | 180:17 | star 51:11 |
| 49:22 84:5 | 56:6,8 | 184:15 | 102:12,15 |
| 88:25 | 99:2 | 187:18 |  |
| 89:1,23,24 | 101:16 |  | Stark 112:13 |
| 90:1, 4, 7 | 133:20 | staffer 10:8 | start 6:24 |
| 91:13, 20, | 137:16 | stage 29:24 | 8:23 25:20 |
| 22 92:5,12 | 138:3,5 | 180:13 | 58:19, 22 |
| 97:15 | 143:9,14 | tages 63.7 | 61:21,24 |
| 104:13 | 153:2 | stages 63:7 | 63:5 |
|  | 164:12 | staggering | 110:20 |
| , | 167:23 | 88:16 | 129:21 |
|  | 168:9 | 107:1 | 131:15,17, |
| 54:21 |  | stand 54:14 | 23 132:7 |
| 64:16 | 98:20 | 153:25 | 136:4 |
| 81:20 | 100:5 | sta | 137:21 |
| 82:18, 25 | 103:19,22 | 29:8,9 | 138:7 |
| 84:9 90:18 | 104:11 | 41:15 86:8 | 145:4 |
| 108:15 | 109:16 | 117:3 | 169:19 |
| 114:4 | 167:2 |  | 173:20,21, |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 261 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: started..states

| 24 175:3, | 52:15 | 158:14 | 21:3,4 |
| :---: | :---: | :---: | :---: |
| 24 180:19 | 53:6,16 | 159:21 | 23:23 24:6 |
| 181:17 | 55:7,12 | 161:21 | 25:3 26:4, |
| started | 56:19,21, | 163:20 | 7 27:21 |
| 161:12 | 22 57:3 | 164:15 | 28:17 |
|  | 58:9,20,21 | 165:17 | 30:14 32:4 |
| starting | 60:2,5,8, | 166:3, 8 | $34: 9$ 39:1 |
| 58:22 | 10,12,14, | 169:1,19 | 42:4 43:15 |
| 105:11,12 | 19 61:8,13 | 175:15 | 44:14 |
| 112:19 | 62:16 63:2 | 178:2 | 45:17 |
| 180:14,15 | 68:11,18 |  | 46:14,25 |
| 187:23 | 69:12 | state's 49:17, 20 | 47:17,22, |
| 191:16 | 70:15 | 50:1,3 | 23 48:7, |
| starts 61:15 | 75:5,10 | 74:8 104:1 | 14,17 49:6 |
| 137:24 | 84:16 | 111:5 | 50:12,13, |
| 173:12 | 85:10 | 152:14,17 | 19,23,25 |
| state 10:5, | 86:19, 23 | 165:18 | 51:16 |
| 9,11 11:22 | 90:21, 24 |  | 52:17 |
| 12:1,12 | 91:3, 4, 14 |  | 54:14 57:8 |
| 13:5 14:25 | 93:12,18, | stated 95:23 | 58:7,13,15 |
| 19:24,25 | 22 95:2,4, | 96:2 | 59:6,14,21 |
| 20:8 23:19 | 8 96:6,10, | 168:23 | 60:7 61:9, |
| 24:1,15 | 21 98:5 | 175:8 | 16 62:25 |
| $25: 13,22$ | 100:17 | states 10:22 | 63:2 65:13 |
| 26:7,10,11 | 101:12,15 | 11.9 | 66:8,18,24 |
| $28: 1 \quad 29: 24$ | 104:18 | 12:2,25 | 67:5,10,22 |
| 31:1,8 | 105:14 | 13:4, 8, 10, | 69:14 |
| $32: 10,23$ | 109:17 | 11,13,14 | 70:11 |
| 37:22 39:6 | 112:18 | 211 | 71:25 |
| 41:14 | 113:4 | 19,21, 23, | 75:18,19 |
| 43:18 | 127:17 | 24 15:3, | 79:6,9 |
| 45:4, 6, 10, | 128:14 | 10,11, 13, | 93:7,11, |
| 22 46:2,8, | 137:23,25 | 10,11,13, | 14,16,17 |
| 15 48:9,19 | 149:1 | 16:8,14 | 94:14 |
| 49:2,9,21 | 152:19 | 17:5 18 | 96:6,15 |
| $50: 4,16$, | 154:8 |  | 104:15 |
| 17,18 | 156:18,23 |  | 105:7,18 |
| 51:1,2 | 157:13,15 |  | 115: 4 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: statewide..subjective

| 131:8 | 106:11 | 109:4 | Stutzman |
| :---: | :---: | :---: | :---: |
| 152:2 | 109:9,18 |  | 143:11 |
| 153:12 | 190:7 | d 42:12 | subdistricting |
| 164:25 | stay 33:6 | stream | 40:4 64:17 |
| 167:10 | 56:7 63:10 | stream 155:25 | 65:14 |
| statewide | 87:1 | streamed | subdistricts |
| 48:18 | 107:22 | streamed | 40:6 41:2 |
| 55:11 | 108:19 | 155:7 | 64:9,11, |
| 60:15,17, | 125:10 | street | 12,13 |
| 19 69:5 | 154:13 | 165:25 |  |
| stations | steal 145:23 | strength | subdivide |
| 164:3 | steel 13:11 | 12:11 95:5 |  |
| statistical | $15: 4$ | stressful | subdivision |
| 66:6 97:20 | Steele | 118:25 | 96:21 |
| statisticians | 112:15 | strict 98:3 | 99:24 |
| 21:13 | step 72:21 | strike 17:10 | 101:24 |
| statistics | 169:8 | struck 29.4 | 103:18, 20, |
| 66:6 147:4 |  |  | 22 133:19 |
| 66.6147 .4 | stepped 65:8 | 45:10 | 189:10 |
| status 11:22 | steps 20:6 | 46:10 47:7 |  |
| 96:25 | 148:16 | 49:19 | subdivisions $26: 13$ |
| statute | 166:5 | 54:25 | 26:13 $38.12,20$ |
| 15:22 51:8 | stick 106:22 | 102:20 | $54: 9,11$ |
| 85:10 | 137:7 | structure | 95:11 |
| 88:15 | 175:23 | 10: 6 | 109:16 |
| 108:5 |  | student 17:3 |  |
| 117: 4 | sticker | student 17.3 | subject 9:1 |
| 120:23 | 104:7 | students | 10:16 |
| 121:7 | stone 181:1 | 16:25 | 45:10 |
| 187:21 |  | 71:23 | 48:14,16, |
|  | stop 132:14 |  | 18,23 |
| statutes | stored | studied | 95:13,18 |
| 25:21, 22 | 119.12 | 188:3 | 96:9 |
| 96:7 109:2 |  | study 151:9 | 126:12 |
| 117:7 | straight |  |  |
| 122:22 | 23:17 | stuff 75:22 | subjective |
|  | 74:14 | 81:10 | 114:24 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: submission..swapping

| submission | 127:10 | summer 20:3 | 55:12 65:7 |
| :---: | :---: | :---: | :---: |
| 71:11 | 128:2,14 |  | 70:15 |
| submit 6:1 | 164:25 | 4:14 | 79:5,11 |
| 83:21 | 165:17 |  | 93:20 |
| 83:21 |  | supplies | 95:22 |
| submitted | sufficient | 96:3 | 104:9 |
| 83:19 89:2 |  |  | 106:11 |
| 187:14 | 26:10,11 | support 125:20 | 115:4 |
| submitting |  | 175:16 | 122:7 |
| 107:3 |  | 178:19 | surplus |
| substantial | sufficiently | support | 17:10 |
| 39:22 | 97:12 | 122:17 | surprised |
| substantially | suggest | suppose | 46:13 51:4 |
| 94:15 | 40:10 | 129:23 | 61:15 67:2 |
| 145:13 | 90:25 | supposed | surround |
| subtract | suggesting | 15:22 21:3 | 32:19 |
| 145:24 | 179:7 | 62:8 | 36:12 |
| succeed 27:1 | suing 118:7 | suppress | surrounded |
| 46:18 |  | 21:25 | 53:20 |
| succeeded | $127: 16$ | suppression | surrounding |
| 95:8 |  | 21:22 22:2 | 52:23 |
| succeeding | sum 86:11 | supremacy | survey 18:10 |
| 63:3 | summaries | 25:19 | 163:23 |
| successful | 135:11 | supreme | surveying |
| $37: 2$ 79:21 | summarize | 11:4,12 | 53:16 |
| 98:1 | 94:25 | 12:14 26:8 | 66:10 |
| successfully | summarizes | 27:7 29:9 | suspect |
| 31:7 | 111:24 | 30:16, 21 | 156:20 |
| sudden 78:20 | summary | $35: 14 \quad 41: 9$ | swap 22:15 |
| 100:20 | 82:19 | 47:4, 6,8 |  |
|  | 111:12 | 47:4,6,8 | swapped |
| sued 51:5 | 113:25 | 49:19 | 22:19 |
| 62:4 79:17 | 144:15,22 | 50:17 51:2 | swapping |
| 113:21 | 146:14 | 53:21 | 22:8 66:22 |
| 114:13,14 | 147:5,6,15 | 54:23,24 | 79:1 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| switched | 187:8,17 | 140:18,19 | 53:20 |
| :---: | :---: | :---: | :---: |
| 28:9 92:1 | taking 25:14 | target | tentative |
| symmetry | 79:1 87:23 | 144:7,8 | 186:16 |
| 59:24 | 135:24 | task 151:24 | tentatively |
| 60:23 | 171:22 | kba | 169:6 |
| system 39:16 | talk 24:2 | 144:15 | 187:10 |
| 42:6 73:15 | 68:2 69:11 |  | terms 14:22 |
| 165:1,6, | 80:2 | tax 191:13, | 56:25 58:6 |
| 11,14 | 113:17 | 14 | 81:1 |
| systems | 115:11 | teal 15:13 | 88:17,21 |
| 21:13 | 116:5 | Teams 4:23 | 102:15 |
| 164:10 | 156:14 | 155:8,16, | 107:1 |
|  | 163:7 | 21,24 | 160:14 |
| T | talked 31:11 | 156:8,11 | territory |
|  | 55:21 | 162:23 | 79:15 |
| tab 147:19 | 100:16 |  |  |
| table 111:23 | 120:8 | technology | test 34:1 |
| 112:4,8, | 154:5 | 161 | 65:10 98:3 |
| 16,20 |  | 161 | 99:20 |
| 16,20 | talking | 162:22 | 100: 9 |
| 113:2 | 29:6,7 | teens 92:20 | 121:11 |
| 114:3 | 33:10 | teens 92.20 |  |
| 118:19 | 50:13 68:1 | teeth 94:5 | testify |
| tabulations | 69:25 | tells 139:3 | 151:21 |
| 138:8 | 72:9,19 |  | 153:20 |
| 138.8 | 78:13 | template | 155:4,5 |
| tailor 45:21 | 93:1,5 | 131:21,24 | 160:15 |
| tailored | 94:11 | templates | 169:21 |
| 10:25 47:8 | 109:25 | 80:11 | testifying |
| 98:5 | 161:22 | 132:9,15 | 151:22 |
| takeaways | 162:14 | ten 50:13 | testimony |
| 14:13 | 177:3 | 163:5 | 156:3,5 |
|  | 187:11 | 175:6 | 158:5,25 |
| takes 8:1,8 $17: 11$ | 188:9 | tend 40:21 | 159:2 |
| 135:20 | tally 136:20 | 53:5 | 163:18 |
| 148:3 | 139:13 | Tennessee | tests 94:7 |
| 157: 6 | $\tan 48: 17$ | 37:12 | 102:13 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: Texas..time

| 121:23 | 150:17 | 81:3 82:11 | thoughts |
| :---: | :---: | :---: | :---: |
| Texas 12:1,9 | 157:14 | 87:6,18, | 157:18,19 |
| 13:22 | 158:23 | 20,23 | 162:12 |
| 19:24 | 159:7 | 88:11 | thousand |
|  | 161:15 | 89:14,21 | 103: 6 |
| text 124:9 | 175:11 | 93:6 99:17 | 103.6 |
| 126:1 | 176:10 | 101:14 | threatened |
| texting | 187:8,20 | 108:2 | 127:10 |
| 119:14 | things | 128:18,22 | threshold |
| that'd 7:19 | 17:12,24 | 130:15 | 34:3, 9, 13 |
|  | $31: 2$ 48:10 | 132:8,18, | 35:4,11 |
| That'll | 55:21 | 20,24 | 38:2,4 |
| 141:15 | 78:15 | 133:16 | 74:12,21, |
| theoretically | 116:4 | 134:15,24 | 25 75:3 |
| 100:18 | 118:10,16 | 135:2 | thrown 68:10 |
| theories | 119:20 | 137:1,13 | hu |
| 30:17 31:6 | 123:23 | 139:6 | thumb |
|  | 124:5,12 | 140:7,10 |  |
| theory 47:11 | 128:5 | 177:8,22 | Thursday |
| 51:19 | 161:22 | 181:11,19, | 183:21 |
| 68:17 | 162:23 | 21,23,25 | 184:1 |
| 79:12 | 170:19 | 182:2,4,6, | 185:8 |
| thin 40:3, | 178:9 | 8,10,12, | 186:21 |
| 8,10 101:9 | 187:4 | 14,16,18, | 188:17,18 |
| thing 14:14 | 189:8,18 | 20,22,24 | 191:4 |
| 25:5,24 | 190:2 |  | thwart 36:12 |
| 33:5 36:22 | thinking 8:9 | 188:13,22 | tides 61:8 |
| 41:23 | thinks 157.3 | 191:13,21 |  |
| 54:17 58:3 | thinks 157:3 | 191:13,21 | Tidewater |
| 63:11 | Thompson | Thornburg | 55:8 |
| 74:21 | 2:4,7,9, | 35:2 97:7 | tidy 141:10 |
| 81:19 | 11,13,15, | thought 7:19 | tied 20:18 |
| 87:20 | 17,19,21, | 156:16 | $43: 5 \quad 70: 12$ |
| 125:11,15 | 23,25 3:2, | 171:25 | 13.5 70.12 |
| 131:13 | 4, 6, 8, 10, | 173:15 | till 110:16 |
| 139:23 | 12 4:13 | 184:12 | time 9:19 |
| 147:17 | 54:5 74:1, | 185:13 | 17:11 |
|  | 7 80:10 |  |  |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: timeframe..touched

| 19:6,13 | 24 177:15, | 155:7,12, | 141:18 |
| :---: | :---: | :---: | :---: |
| 20:4 21:8 | 23 178:25 | 23 157:2 | 146:15 |
| 23:1,24 | 179:1 | 160:6,7 | 148:11 |
| 29:5,8 | 187:5 | 161:17 | 3 |
| 34:22 | 188:5 | 163:5 |  |
| 45:12 46:1 | 189:12 | 168:17 | total 12:2, |
| 47:4 49:10 | timeframe | 172:24 | 15,17 21:2 |
| 55:12 | imeframe | 175:2 | 22:20 |
| 60:13 | 172:4 | 178:15 | 23:18 |
| 61:23 | 175:8 | 189:19,20 | 24:16, 20 , |
| 63:22,24 | timelines | 190:3 | 25 27:22, |
| 66:19 72:2 | 6:20 | 191:18 | 25 35:18 |
| 79:12 | times 6:14 |  | 45:16 |
| 80:23 81:2 | 12:10 | today's | 75:10 |
| 82:3 84:2, | 121:22 | 10:14 | 84:14 |
| 7 91:9,13 | 163:6 | 154:3 | 85:23 |
| 92:1,3,10 | 173:3 | told 9:16 | 90:16 |
| 100:13 | 174:17 | 24:8 35:10 | 95:17 |
| 107:9 | 175:17 | 37:25 38:1 | 135:14,15 |
| 109:12 | 179:5 | 59:10 | 140:24 |
| 117:1 | 184:7 | 61:18 | 141:19 |
| 119:6 |  | ton 43:3 | 142:11 |
| 128:14 | iny | 50:13 | 159:16 |
| 130:3 | Tioga 112:24 | tool 80:20 | totality |
| 136:9,11 | titles 31:18 |  | 36:17 |
| 143:24 |  | 136:13 | 64:20 |
| 149:7,14 | to-face | 138.24 |  |
| 150:25 | 154:20 | 138:24 | totals |
| 155:22 | today 4:1 | 140:14,21 | 138:16 |
| 156:7 | 8:24 18:1 | 150: | touch 103:13 |
| 157:11 | 82:13 | tools 143:10 | 146:4 |
| 158:22 | 107:10 | 150:12 | touched |
| 159:7,8,22 | 113:18 | top 14:21 | 86:10 93:9 |
| 163:12 | 146:19 | 43:10 | 95:20 |
| 171:22 | 149:24 | 51:12 | 96:20 |
| 174:10 | 151:11,13, | 75:13 87:2 | 97:8,21 |
| 175:9,11 | 22 153:20 | 88:7 112:8 | 107:2 |
| 176:11,13, | 154:4 | 128:17 | 128:19 |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

| 131:11 | traditional | 163:20 | Tuesdays |
| :---: | :---: | :---: | :---: |
| touches | 51:15 | 164:5,9,21 | 185:23 |
| 82:17 | 101:21 | 165:16 | turn 61:9 |
|  | 189:25 | 168:4 | 122:22 |
| touching 10:15 | traditionally | 169:7,18, | 134:10 |
|  | 3:25 | 21 | 139:12 |
| tough 8:21 | transpar | tribe's | 141:7 |
| tougher | 107:24 | 164:11 | 146:3 |
| 173:24 | , | tribes 129:6 | 188:9 |
| toughest | 103:13 | 161:22,24 | turns 23:13, |
| 115:8 | 183:7 | 162:1 | 14 136:14 |
| town 53:11 |  | 164:21 | 141:17 |
| $134: 7,22$ | treats 96:4 | 167:8 | Turt |
| 143:23 | trend 111:10 | 168:8,9 | 168:25 |
| township | trends | 191:16 | Twenty-eighth |
| 133:24 | 111:10 | tricky | 188:22 |
| 134:20,21 | trial 50:2 | 147:23 | two-day |
| 135:5,6 | Triangle | trigger | 174:7 |
| townships | 55:10 | 13 | two-week |
| 133:22 | tribal 40:20 | trouble | 187:20 |
| 134:18,19 | 110:13 | 125:10 | type 26:1 |
| track 91:4 | 129:8 | true 17:11 | 47:6 |
| 135:15 | 161:18,19 | 68:9 124:9 | 146:14 |
| 138:10 | 162:3 | 139:16 | 148:13 |
| 141:2 | 164:1,2,8, | Trump 17:20 |  |
| 180:9 | 17 23,24 | trust 68:8 | $98: 7 \quad 128: 7$ |
| tracked | 16,24 14 |  | 146:7 |
| 111:10 | 166:11,14 | Tuesday | 147:11,14 |
| 139:14 | 167:4,8, | 184:2,12, |  |
|  | 12,1 | 15 185:7, | typically |
| tracker 58:5 | 169:1,4,5, | 10,12,16 | 38:25 |
| tracks 59:1 | 9,18 170:8 | 186:21 | 43:24 59:4 |
| tracts 72:23 | 191:15 | 187:3 | 119:4 |
|  | tribe 161:20 | 188:19 |  |
| Tracy 73:20 | 162:5 | 191:1 |  |

Charles Walen, et al. vs Doug Burgum, et al. Committee Meeting on 08/26/2021

| U |
| ---: |

ultimately
10:12 50:5
127:13
un- 21:17
unable 45:14
unanimously
50:3
unassigned
147:16
uncertain
83:25
uncertainty
65:21
uncheck
134: 6
unconstitution
al 49:21
104:10
underlying
22:15
undermine
125:1
underneath
111:23
understand
21:5 22:5
77:3 150:6
158:22
161:4
171:21
172:2,8

179:13
180:1
185:23
$179: 13$
$180: 1$
$185: 23$
understandably 15:7
understanding
75:7,9
76:3 77:8
137:11
undertakes
166:4
unheard
46:18
Union 151:23
unit 72:22
76:7
United 13:13 14:19
15:10,11, 21 16:14
17:5 21:2, 4 28:17
46:25
47:17,22,
23 48:7
66:8,18,24
67:10
93:7,11,
14,16,17
115:4
164:25
universities
16:13
University
71:11 72:1
unlawful

$126: 4,6,8$,
19

Index: ultimately..versus

|  | $\mathbf{v}$ |
| :--- | :--- |
| vague | $65: 11$ |
| valid | $80: 8$ |
| valor | $124: 11$ |

## variance

85:23
108:16,24
109:13
variant
75:10 76:2
variation
58:1
varies 26:1
vary 34:9
36:4
vast 13:4
130:8
vendor 78:3
vendors
66:15
Venturia
112:24
venue $31: 5$
version
123:10
versions
116:21
171:18
versus 33:12
41:5 76:12

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 269 of 271 Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| veto 13:8 | 162:10 | 129:13 | 46:10,15, |
| :---: | :---: | :---: | :---: |
| vetoed 13:6 | 169:23 | voter 94:8 | 21 47:25 |
| vetted 30:3 | visual 102:5 | 96:21 | 55:15 |
| vetted 30:3 | 112:5 | 165:18 | 57:21 65:1 |
| Vice 9:14 |  |  | 73:2 93:24 |
| 40:12 | voluntarily | Voter's | 94: 6, 7 |
| 78:23 | 109:10 | 151:6 | 95:5 96:19 |
| video 5:2 | voluntary | voters 11:16 | 97:16,18 |
| 118:21 | 109:20 | 12:6,10,12 | 98:22 99:5 |
|  | vote 11:4, | 19:11,12 | 100:17 |
| view 132:25 | $19,24$ | 34:7,16 | 164:9 |
| 135:16 | 12:11 | 35:22 | 165:2,3,15 |
| vigorously | 13:18 | 36:11 | 166:7,17 |
| 166:2 | 18:16 | 49:15 | 190:1 |
| violate 57:3 | 25:23 | 61:11 |  |
| 166:17 | 31:20 | 122:13 | W |
| violated | 34:8,11 | 151:5 | wait 172:15 |
| 45:4 50:4 | 35:5 36:4, | 152:18 | wait 172.15 |
| 45:4 50:4 | 7 40:22 | 165:23 | waiting |
| violation | 41: 4, 5 | votes 43:19, | 75:15 |
| 165:3 | 44:5,7,9 | 20 66:18 | 111:1 |
| violations | 55:16 | 98:16,17 | Wales 113:1 |
| 93:23 | 90:16 | 100:21 | walk 52.25 |
|  | 93:16 | 166:10 |  |
| Virginia | 94:10 |  | 53:2 102:3 |
| 15:1 39:4 | 96:24 99:5 | voting 12:21 | 148:1,18 |
| 123:3 | 100:23 | $28: 20$ 29.25 | walking 8:19 |
| virtual | 101:8 | 31:12,14, | walkthrough |
| 154:17 | 163:14 | $23 \text { 32:3. }$ | 132:13 |
| 157:2 | 164:22 | 23 32:3, |  |
| 158:11 | 165:20 | 17,19 | wanted 9:7 |
| 164:21 | 166:1,17 | 34:7,17,19 | 31:8 45:1 |
|  | 177:20 | 35:19, 22 | 56:21 |
| virtually | 177:20 | 37:11,15 | 57:17 |
| 154:14 | 181:16 | 38:3,18, 22 | 69:15 |
| 155:5 | voted 43:9, | 42:25 43:5 | 73:15,19 |
| 157:13 | 11,12 | 44:7,11 | 84:1 90:12 |
| 161:24 | 101: 6,7 | 45:2,7,19 | 103:7 |

Case 3:22-cv-00022-PDW-ARS Document 98-7 Filed 05/22/23 Page 270 of 271
Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021

| 107:18 | website 58:5 | 15:11 | 75: 6 |
| :---: | :---: | :---: | :---: |
| 121:25 | 70:9 | 53:15 | 76:10,16 |
| 125:7 | Wednesday | whatsoever | 77:5,7,15 |
| 136:3 | 183:4 | 49:14 | 78:17,23 |
| 137:6 | 184:2,10, |  | 80:7 81:7, |
| 143:17,18 | 13,16 | white 25:12 | 9 82:1,18 |
| 145:3 | 185:7,8, | 34:7,11,16 | 83:11 86:8 |
| 149:21 | 10,13 | 36:11 | 95:7,20 |
| 163:4 | 186:4,21, | 37:13 | 96:20 |
| 168:22 | 22 187:3 | 43:20 | 104:16 |
| 169:14 | 188:16,17, | 141:7 | 111:1 |
| 170:10 | 18,20 | whoa 99:11 | 112:13 |
| 177:24 | 191:2,3 | wholly 14:10 | 130:1 |
| 184:8 |  | wholly 14.10 | 131:11 |
| 188:24 | week 90:12 | wide 28:25 | 137:20 |
| wanting 6:19 | 168:4,25 | 45:18 | 155:11 |
| 21:6 |  | Williams | Williams' |
| Washington | 175:17 | 8:24 9:13 | 82:14 93:9 |
| 47:1 124:1 | 183:9,20, | 28:6,8 | Williston |
| wasting | 24,25 | 33: 4, 8, 14, | 112:24 |
| 98:16 | 184:17 | 17,25 | win 27:8 |
| watching | 187:25 | 34:25 37:8 | 34:22 99:9 |
| 160:6,8 |  | 38:8, 9, 15 | winding |
| water 53:14 | weeks 8:2 | 39:11,14, | 104:3 |
| water 53.14 | 18:20 82:5 | 18,25 |  |
| Watford | 174:14 | 40:12 | window |
| 112:23 | 187:11 | 42:23 44:3 | 147:9,10 |
| ways 51:17 | weigh 121:18 | 55:25 | 158:22 |
| 63:10 |  | 56:10 | wins 79:17, |
| 104:18 | weight 11:1 | 64:6,15 | 18 |
| 128:9 | 78:5 | 66:2 68:13 | Winston-salem |
| 153:7 | weird 75:22 | 69:21, 24 | 28:22,24 |
| 154:13 | west 14:25 | 70:2,7 |  |
| weak 120:19 | 17:16 39:4 | 71:14,21 | Wisconsin 30:14 |
| webinar 67:4 | 53:11 | 73:4,8,13, | 62:22 |
|  | western | 17,24 74:6 | wise 158:13 |

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/26/2021
Index: wishes..zoom

| wishes 3:15 | 169:20,24 | - | 160:9 |
| :---: | :---: | :---: | :---: |
| 162:5 | 174:19 | Y |  |
| Women 49:15 | 175:18 | Yankton |  |
| 151:5 | 176:8 | $170: 11$ |  |
|  | 179:10,12 | 170:11 |  |
| wonderful | 184:3,12 | year 6:11 |  |
| 33:4 63:21 | 185:1 | 7:21 15:23 |  |
| wondering | 187:3 | 16:5,21 |  |
| 97:2 | 188:1 | 18:10 |  |
| 186:25 | worked 22:4 | 19:17 |  |
| Woohoo | 123:14,16 | 20:14,15 |  |
| Woohoo 133.15 | 123.14,16 | 41:8 45:18 |  |
| 133:15 | working | 83:20 |  |
| word 125:8 | 116:13 | 88:21 |  |
| words 64:12 | 120:17 | years 6:8 |  |
| 120:6 | 151:7 | 12:23 18:1 |  |
| 121: 6 | 170:22 | 50:11 |  |
|  | 176:21 |  |  |
| work 9:8 | 180:17 | 59:19 |  |
| 10:8 15:8 | 181:7 | 81:18 |  |
| $24: 7$ 25:21 | 191:7 | 158:17 |  |
| 43:25 45:6 | 191.7 | 159:14 |  |
| 48:9 63:17 | works 29:20 | 160:9 |  |
| 81:4,18 | 169:23 | 172:22 |  |
| 82:1 | world 42:12 | 175:6 |  |
| 117:5,25 | worth 62:2 | 177:14 |  |
| 120:20,22 |  | yellow 51:25 |  |
| 124:22 | writing | 52:1 145:8 |  |
| 127:9,11 | 119:2 |  |  |
| 129:15 | 124:12 | York 48:22, |  |
| 137:15 | 146:11 | 23 |  |
| 149:16,17, | 151:8 |  |  |
| 23 150:2 | written | Z |  |
| 157:16 | 156:3 | zoom 133:3, |  |
| 158:20 | 187:16 | 10,14,25 |  |
| 160:19 | wrong 143:4 | 135:2, 20 |  |
| 161:8 | 172:21 | 143:18 |  |
| 162:9 |  | 159:23 |  |

## EXHIBIT 7

NO. 25700-B-675

## SUPREME COURT OF THE STATE OF WASHINGTON

ORDER REGARDING THE WASHINGTON STATE REDISTRICTING COMMISSION'S LETTER TO THE SUPREME COURT ON NOVEMBER 16, 2021.

SWORN
DECLARATION OF SARAH AUGUSTINE, CHAIR OF THE WASHINGTON
STATE
REDISTRICTING COMMISSION

I, Sarah Augustine, declare as follows:

1. I am over eighteen years of age and competent to testify as to the matters herein, and I make this declaration based on my personal knowledge. I serve as Chair of the Washington State Redistricting Commission, a position I have held since February 5, 2021.
2. I submit this declaration in response to the Court's Order of November 18, 2021, requesting a detailed timeline of the events of November 15, 2021, and November 16, 2021, relevant to the Commission's compliance with its constitutional and statutory obligations.
3. Regretfully, the Commission failed to deliver redistricting plans to the Legislature by the statutory deadline of 11:59 p.m. on Monday, November 15, 2021. I sent a letter to this Court on Tuesday, November 16, handing over the work of the Commission and humbly requesting that it be given this Court's consideration, since it was based on a bipartisan consensus and historic level of public input.
4. Between public commentary at the Commission's 17 public outreach meetings and 22 regular business meetings, more than 400 state residents delivered live public testimony about maps or about the Commission's process. Commissioners received more than 2,750 comments on their draft maps or on the 2010 redistricting maps. The Commission received more than 3,000 emails, website comments, letters, and voicemails. The public created 1,300 maps, of which 12 were formally submitted as third-party maps. And after adopting the first-ever Tribal Consultation Policy for a redistricting commission, commissioners and staff communicated with individual Tribes to
learn about their interests in the redistricting process. I am proud of this historic level of public involvement.
5. I am also proud of the bipartisan nature of the Commission's work. Washington is unique among states in that I, as the Commission-appointed nonpartisan chair, do not vote on the plan. Rather, the four legislatively-appointed Commissioners must come to a bipartisan agreement to adopt a plan. I am thankful for the work, mutual respect, and dedication of all four Commissioners.
6. I will provide a short explanation of the Commission and caucus staff referred to in the remainder of my declaration. The Commission employs its own non-partisan staff, including Executive Director Lisa McLean and others under her supervision. I also refer below to caucus staff. These are individuals who are not employed by the Commission and over whom I have no authority. Rather, they are affiliated with the House and Senate Democratic and Republican Caucuses and assisted the voting Commissioners in their roles. Caucus staff
were responsible for creating maps based on the Commissioners' instructions. I did not have any role in creating the maps and did not see the maps until they were uploaded onto the Commission's website on November 16. My knowledge of events occurring subsequent to the Commission's November 15 meeting comes from my communications with Commission staff, who were in turn communicating with caucus staff as these tasks were completed.
7. As part of the Commission's redistricting work, the Commission licensed redistricting software called EDGE Professional Desktop Redistricting as the primary tool for the formal creation of final maps and associated data. Caucus staff also used Dave's Redistricting, which is public access districting software, for the creation of preliminary maps. With the caveat that this is not my area of expertise or responsibility, it is my understanding that the Commission used EDGE for final maps because it had more capability, such as exportation to shapefile
format and other granular analyses, while Dave's was a quicker and more accessible tool.
8. The Commission held a regular business meeting on November 15,2021 , which was the date on which the statutory deadline fell for transmitting the plan to the Legislature. The meeting began at 7:00 p.m.
9. At 11:59:28 p.m., the Commission voted to approve a congressional districting plan. It is my understanding that the congressional districting plan that the Commission voted to approve constituted a final agreement resolving all areas of dispute.
10. At 11:59:47 p.m., the Commission voted to approve a legislative districting plan. It is my understanding that the legislative districting plan that the Commission voted to approve constituted a final agreement resolving all areas of dispute. My understanding is that when the meeting began at 7:00 p.m., there were three outstanding issues of dispute: the composition of
legislative districts 28,44 , and 47 . The Commission's vote on the final agreement resolved these outstanding issues.
11. At 12:00:08 a.m., the Commission voted to approve a formal resolution adopting the redistricting plan. The Commission had previously discussed the resolution at public meetings on September 20, 2021, at which Commissioners discussed and proposed changes to the wording of a draft resolution, and on October 18, 2021, at which Commissioners discussed an updated version of the resolution substantially identical to the version approved on November 15, except that the November 15 version included designations of electronic files referenced in the text. At the October 18 meeting, the Commissioners had no objections to the updated language, but agreed that they would reserve final approval until the meeting on November 15. The resolution was signed by myself prior to transmittal and was also signed by the voting Commissioners at the following times: by Paul Graves at 11:51 p.m., by Joe Fain at

11:59 p.m., by April Sims at 12:02 a.m., and by Brady Piñero Walkinshaw at 12:04 a.m.
12. At 12:01:21 a.m., the Commission voted to approve a transmittal letter, which is the cover letter to the Senate and House Majority and Minority Leaders enclosing the Commission's redistricting plan. The Commission had previously discussed the transmittal letter at a public meeting on September 20, 2021. The letter approved on November 15 was modified from the draft discussed on September 20 in accordance with the Commission's discussion of equivalent language in the resolution at the September 20 and October 18 public meetings. The letter was signed by myself prior to transmittal and was also signed by the voting Commissioners at the following times: by Paul Graves at 11:52 p.m., by Joe Fain at 12:01 p.m., by April Sims at 12:01 a.m., and by Brady Piñero Walkinshaw at 12:11 a.m.
13. At 12:01:36 a.m., I adjourned the meeting.
14. At 12:13 a.m. on Tuesday, November 16, 2021, the Commission's Executive Director, Lisa McLean, transmitted by email the transmittal letter and resolution to the Secretary of the Senate and the Chief Clerk of the House.
15. Ms. McLean's email did not attach final maps, or the written legal description of each district, because the maps had not yet been finalized at that time.
16. It is my understanding that, after the public meeting ended, caucus staff finalized the congressional district map in accordance with the Commissioners' agreement, which included converting it from Dave's Redistricting to the EDGE software. At 4:37 a.m. on November 16, caucus staff sent the congressional map as an EDGE file to the Commission's Geographic Information Systems (GIS) Analyst, Executive Director, and Public Outreach Coordinator. The GIS Analyst created text descriptions of each district on the basis of this data. That process was completed, and the GIS Analyst sent the map and data to the Commission's web developer, at 5:46 a.m. on November 16. My
understanding is that Commission staff then posted the congressional map on the Commission's website for a short period of time, but took the map down and instead waited to upload both the congressional and legislative maps simultaneously when both were ready.
17. It is my understanding that, after the public meeting ended, caucus staff finalized the legislative district map to conform to the Commission's agreement, which involved finalizing the boundaries of the three districts referenced in paragraph 10. During this process, caucus staff took a short break to rest. Caucus staff sent the completed map as a Dave's Redistricting export to the Commission's GIS Analyst at 4:01 p.m. on November 16, but there were technical errors with the data transfer requiring caucus staff to resend the map at 6:36 p.m. in the EDGE format. The GIS Analyst created text descriptions of each district on the basis of this data. The GIS analyst then sent the map and data to the Commission's web developer at 8:29 p.m. on November 16.
18. At 8:34 p.m. on November 16, Ms. McLean transmitted to this Court, via email, my letter to Chief Justice González, the transmittal letter to legislative leaders, the resolution, the congressional and legislative maps and associated data, and text descriptions of the districts.
19. At approximately $9: 15$ p.m. on November 16, Commission staff uploaded the legislative and congressional maps to the Commission's website, along with Shapefiles. These maps are available at: https://www.redistricting.wa.gov/finalmaps.
20. To the best of my knowledge, no negotiation occurred between the Commissioners after our meeting was adjourned. My understanding is that caucus staff were empowered to implement the technical tasks remaining in accordance with the plans approved by the Commissioners.

I swear under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my
own knowledge, and that I executed this declaration at Yakima, Washington on November 21, 2021.


Sarah Augustine, Chair
Washington State
Redistricting Commission

## EXHIBIT 8

## ND reports

1 message
clark@polidata.org [clark@polidata.org](mailto:clark@polidata.org)
Thu, Jan 5, 2023 at 2:33 PM
To: Trey Hood [treyhood@gmail.com](mailto:treyhood@gmail.com)

OK, I fixed up about a dozen obvious issues, i.e., most likely caused by the SHP files as the source.

I don't recall anyone involving any population.

Of course, there are some similar issues but as they generally did not involve population I left those alone, mostly in the BENCH20 (i.e., the 2012 plan with 2020 data).

The attached are just the compactness (the first 4 measures in MTR) and the splits by COUNTY. I need to do the other splits outside of MTR, so, tomorrow.

I will send some more reports shortly.

POLIDATA $\circledR$ Political Data Analysis | polidata.org | Distillers of Official Data $\circledR$ since 1974
Clark Bensen | POLIDATA LLC | Tel: 703-690-4066 | eFax: 202-318-0793 | clark@polidata.org

## 8 attachments

ndSD-2022-ILLUS-2_fix-shps_wa05a__Measures of Compactness Report.pdf 91K ndSD-2022-ILLUS-2_fix-shps_wa05a-cy__Political Subdivison Splits Between Districts.pdf 143K
ndSD-2022-ILLUS-1_fix-shps_wa05a__Measures of Compactness Report.pdf 91K
ndSD-2022-ILLUS-1_fix-shps_wa05a-cy__Political Subdivison Splits Between Districts.pdf 143K

Q
ndSD-2021-APPROVED-fix-shps_wa05a__Measures of Compactness Report.pdf 92K
ndSD-2021-APPROVED-fix-shps_wa05a-cy__Political Subdivison Splits Between Districts.pdf 144K ndSD-2012-BENCH20-fix-shps-wa05d__Measures of Compactness Report.pdf 92K

[^36]
[^0]:    ${ }^{1}$ At the time Perez was decided, Rule 807 included a requirement that the admission of the relevant evidence "will best serve the interests of justice." See Ex. 1 at 2. In 2019, Rule 807 was amended and this portion was deleted as "superfluous" to Rule 102. See Fed. R. Evid. 807 Advisory Committee Notes, 2019 Amendments.

[^1]:    ${ }^{3}$ In Plaintiffs' counsels' experience, it is uncommon for defendants even to lodge any objection to the admission of expert reports in redistricting bench trials, for the reasons stated above.
    ${ }^{4}$ For example, Defendant's expert Dr. Trey Hood made a number of assumptions and conclusions in his expert report that he admitted at his deposition to be methodologically incorrect. See, e.g.,

[^2]:    ${ }^{5}$ Notably, Caliper, which sells Maptitude, does not view DRA as an unreliable source of data. Rather, it markets itself as an "Alternative to Dave's Redistricting App" on its website, not because it reports more accurate Census data, but because it has additional "benefits" such as various features and customizable printouts. See Caliper Maptitude for Redistricting, Alternative to Dave's Redistricting App, https://www.caliper.com/maptitude/solutions/alternative-to-daves-redistricting-app.htm.

[^3]:    ${ }^{6}$ Indeed, the only difference between the numbers reported by the Legislature and Dr. Hood and those that Dr. Collingwood used from DRA is that the Legislature and Dr. Hood cited the "single race" Native American figure; that is, they exclude from their figures people who identify as both part Native American and, e.g., part White. See, e.g. ECF No. 60-35 (Hood Report) at 2 n.4. This is legal error, as the Supreme Court has held. See Georgia v. Ashcroft, 539 U.S. 461, 473 n. 1 (2003) (holding that, in a case (like this one) that "involves an examination of only one minority group's effective exercise of the electoral franchise. . . . we believe it is proper to look at all individuals who identify themselves as [that minority]," not just those who identify as a single race (emphasis in original)). Nevertheless, as Dr. Collingwood explains, by comparing Maptitude’s "any part" Native American VAP data to his data obtained from DRA, he determined that the two sources report the precise same VAP figures.

[^4]:    ${ }^{7}$ Dr. Grofman's use and reliance on DRA is notable because he is among the preeminent redistricting experts in the country. Indeed, Dr. Grofman is largely considered the architect of the Gingles preconditions for assessing Section 2 claims. In Gingles, the Supreme Court cited his expert report and academic work extensively (his name appears 18 times in the decision), expressly adopting Dr. Grofman's definition of racially polarized voting as part of the Gingles preconditions. See Thornburg v. Gingles, 478 U.S. 30, 53 n .21 (1986). There is no better evidence that DRA is a reliable source of redistricting data, accepted among experts in the field, than Dr. Grofman's use of DRA in his court-appointed expert work.

[^5]:    ${ }^{8}$ Plaintiffs believe that both Maptitude and DRA are reliable sources of redistricting data for expert witnesses.

[^6]:    ${ }^{9}$ Dr. McCool, like the Court, will observe this testimony at trial.

[^7]:    ${ }^{10}$ This situation is similar to that of Defendant's newly disclosed witness Erika White, who was only recently named Elections Director replacing one of Defendant's previously disclosed

[^8]:    witnesses. See Pls. Mot. in Limine at 9 n.6, ECF No. 97. Defendant has indicated that he reserves

[^9]:    *With typos and clerical errors corrected thereafter as discovered.

[^10]:    ${ }^{1}$ We would have preferred to have available the 2021 data. In most counties and independent cities, the data on mail-in and absentee votes in the 2021 election are centrally collected in each county and has not yet been projected back into that county's voting precincts. Indeed, given that ballots were frequently not marked with the precinct in which the voter who cast them resided, that task may never be accomplished with precision. Because of this, we were unable to use the 2021 election results to assess partisanship in the districts we drew. However, because the proRepublican vote swing in 2021 affected (increased) both the statewide mean and the statewide median Republican vote, we expect that our analyses of the mean minus median gap would not be substantially different from those we calculated using earlier statewide odd-number year elections.
    ${ }^{2}$ We chose to focus on this metric because it is easily understood and does not require computerbased simulations of counterfactuals. We have also examined the most widely accepted (but more complex) measures of partisan bias, the Tufte-King approach to measuring partisan symmetry (see e.g., Grofman, Bernard and Gary King. 2007. Partisan Symmetry and the Test for Gerrymandering Claims after LULAC v. Perry. Election Law Journal, 6 (1):2-35) and reached the same conclusion about the political neutrality of the three maps we drew. Although the partisan symmetry approach is the only one to have been given an axiomatic mathematical justification, no single measure is perfect. Accordingly, we examined a variety of other metrics as well, but all we have examined lead to similar conclusions that the maps we draw were neutrally drawn. We would also note that we are evaluating the degree of neutrality from a political science standpoint, with respect to what might be expected, in principle, were a computer programmed to draw a huge set of possible maps for Virginia without any political information in its data set and relying entirely on standard good government redistricting criteria for map-making. Such simulation results are based upon the actual electoral geography of the state and will be affected by the degree to which the two party's electoral strength is differentially concentrated with respect to geography. (See e.g., Nicholas Eubank \& Jonathan Rodden (2020) Who Is My Neighbor? The Spatial Efficiency of Partisanship, Statistics and Public Policy, 7:1, 87-100, DOI:10.1080/2330443X.2020.1806762). Thus, we would not expect a mean level of zero partisan bias even in a set of neutrally drawn computer drawn maps. But, of course, the legal judgement as to whether any map satisfies the state's constitutional requirement (§ 24.2-304.04) that "[a] map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party" is one that must be made by this Court.

[^11]:    ${ }^{1}$ For the City of Virginia Beach the differences between the adjusted and non-adjusted population data are minuscule, with estimates generally identical to two or more significant digits.

[^12]:    ${ }^{4}$ The other elements needed to substantiate a Section 2 claim were addressed by Judge Jackson in his Opinion of March 31, 2021.

[^13]:    ${ }^{5}$ This count would be eleven if we included Mr. Wray, who lost an election to Ms. Wooten in 2018. His minuscule support among minority voters, estimated by Dr. Spencer to be $8.5 \%$, led me to characterize him as not a viable candidate from the perspective of minority voters, and I did not include his votes in Table 2.

[^14]:    ${ }^{6}$ Goodman, Leo. 1953. "Ecological Regression and the Behavior of Individuals." American Sociological Review, 18(6): 663-664; Goodman, Leo. 1959. "Some Alternatives to Ecological Correlation." American Journal of Sociology, 64: 610-625.

[^15]:    ${ }^{9}$ There are special problems, in projecting results from multi-seat at-large contests into singleseat district-level contests, especially when the multi-seat election has more than one minority candidate. I discuss these in Appendix A to this Report . These complexities in interpreting projection results from two-seat elections into single-seat elections have led me not to employ the projection method using data from past elections in two-seat at-large districts involving multiple minority candidates. Nonetheless, clear inferences may be drawn about racially polarized voting patterns within these two-seat elections (see below).

[^16]:    ${ }^{10}$ Bernard Grofman, "Report of the Special Master in Personhuballah v. Alcorn." Civil Action No 3: 13 cv 678 E.D. Virginia (Report filed November 16, 2015 - dated November 15, 2016)

[^17]:    ${ }^{15}$ I have several reasons for limiting myself in Table 2 to voting estimates for the minority community consisting essentially of African-Americans plus Hispanic plus Asian-Americans treated as a whole. First and foremost this is the voting rights group which brought this lawsuit. Second, it is the voting group whose voting behavior Judge Jackson asked me to examine in the context of determining an appropriate remedy for the voting rights violation found in the previous City Council map. Third, it is the only voting rights community with a large enough and geographically concentrated enough minority population to meet the 50\% CVAP test of Bartlett v. Strickland 556 U.S. 1 (2009) for when a Section 2 claim can be brought. Fourth, and perhaps most importantly from a social science rather than a legal perspective, given the demographic and geographic case facts in the City of Virginia Beach I simply do not believe that is statistically possible to determine the voting behavior of African-American, Asian-American, and Hispanic populations individually (see Appendix B). Thus I have placed no reliance on conclusions by experts for Defendants or experts for Plaintiffs about differences in voting behavior between the three groups or between any single group and the combined group.
    ${ }^{16}$ Appendix A addresses the complication of interpreting Table 2 results for "vote for two" elections where there are more ballots cast than there are voters. There is one further caveat that must be noted. The data in this table are drawn from ecological inference of the votes cast at the precinct level. In the City of Virginia Beach votes that are submitted by mail are tallied at a central counting location, and the same appears to be true for provisional ballots. As I understand Dr. Spencer's analyses, these non-precinct votes are not included in the estimates based on ecological inference or ecological regression. My own cursory inspection of the election returns in the city suggests that the in-person ballots are, on average, at least marginally less favorable to minority candidates than mail ballots. If correct, this would suggest that the tallies shown in Table 2, when projected into new single seat remedial districts, would at least slightly understate the expected vote share of the minority candidate. But the differences should be minimal.

[^18]:    ${ }^{17}$ In this contest, Ms. Wooten is the overwhelming candidate of choice of the minority community. There is another minority candidate in the contest, Mr. Eric Wray. However, his support of minority voters is minuscule (estimated at $8.5 \%$ ). Accordingly, I do not treat him as a viable candidate from the perspective of minority voters. However, his support among White voters is estimated at 43.3\%. (See Douglas M. Spencer, "Expert Report: Racially Polarized Voting in Virginia Beach," July 15, 2019, at p. 12).

[^19]:    ${ }^{18}$ Also, in this contest, the only candidates are minority candidates so White support must go to a minority candidate.

[^20]:    ${ }^{19}$ The 2018 contest of which Ms. Wooten was a winner was between two minority candidates, and a third White candidate, but that White candidate was not viable, so in effect, the majority of the White vote had to go to one of these minority candidates.

[^21]:    ${ }^{20}$ As noted earlier, I also exclude Mr. Wray from this Table, since his minuscule support from the minority community indicated that, from the perspective of the minority community, he was not a viable candidate, even though he did win White support.

[^22]:    ${ }^{22}$ In situations where voters may cast more than one ballot because more than one winner in the district will be chosen, in principle, voting for multiple candidates need not harm a group's chance of electing one or more candidates of choice as long as the number of candidates among whom the group's votes are split is less than or equal to the number of seats to be filled. However, in practice, in considering candidates of the same race or ethnicity, voters may choose to vote for only the one of this set whom they most prefer if they believe that only one candidate of a given ethnicity has a plausible chance to be elected and they would want such a candidate to be the one they most prefer. Comparing "total ballots cast" in the "vote for two" elections to turnout in the "vote for one" contests that same year reveals that the total number of ballots case in "vote for two" elections is substantially less than twice the number of voters at the poll, i.e., some voters do not cast both of their ballots, but "bullet vote" for a single candidate.

[^23]:    ${ }^{23}$ See Appendix B.
    ${ }^{24}$ Also relevant may be data from exogenous elections which are of comparable type to the city council elections and which take place in a geographic unit in which the proposed district is wholly embedded.

[^24]:    ${ }^{25}$ For the reasons given earlier in the Report I find the Ms. Ross-Hammond 2016 contest against a single White opponent to be more probative of future election results in newly configured single seat districts than her 2012 plurality victory against multiple White opponents.
    ${ }^{26}$ Like Dr. Spencer (numbered paragraph 20 at p.7) I believe that the Sheriff's race is the most probative of the exogenous elections in Table 2 of his July 30, 2021 Declaration because it not only featured a Black candidate who was the minority candidate of choice, but "it was for a city-wide office as opposed to state or federal office." However, like the other exogenous elections in his Table 2, but unlike city council elections, it was a partisan contest.
    ${ }^{27}$ These projection are for the three most heavily minority districts in the Plaintiffs' map, and the four most heavily minority districts in the Defendants' map. To assure parallel structure, I also calculated the projections into the fourth most heavily minority district in the Plaintiffs map. And in Table 3 below I also report data for the four most heavily minority districts for the illustrative equ-population remedial map I provide the Court below. These new analyses directly parallel those done by Dr. Spencer.

[^25]:    ${ }^{29}$ I have reported in this Table the percentages shown in Plaintiffs' calculations of the CVAP in their proposed remedial district. When I calculate these percentages using Dave's Redistricting App (DRA), I get slightly different estimates -- ones that are slightly higher for the heavily minority districts. I believe these minor differences may arise from how CVAP estimates at the block level are interpolated based on the VAP percentages in the block. The CVAP numbers I found on DRA were accessed on September 25, 2021 and are based on the latest 2020 VAP figures rather than the 2010 VAP figures used for the CVAP estimates generated in July 2021 before the 2020 Census data was available. There may also be minor differences in how population from split VTDs was allocated. In any case, regardless of which estimates one adopts, there are three $50 \%+$ CVAP districts in the Plaintiffs' map.

[^26]:    ${ }^{30}$ To compare the Plaintiffs' and the Defendants' 10 -district remedial plans for the six elections shown in Table 2. I use the projection data from Table 1 (p. 4) and Table 2 (p.7) of the Declaration of Dr. Douglas M. Spencer, July 30. 2021. Dr. Spencer reports projection results for the three most heavily minority districts in the Plaintiffs' map and for the four most heavily minority districts in the Defendants' map. For completeness I also report projection data for the fourth most heavily minority district in Plaintiffs' map. These are projections which I do based on election data provided me at the VTD level. In the case of split precincts the projections are approximated from the degree to which VTD CVAP is located within a district, using block level data.. To the best of my knowledge, Dr. Spencer does not report projection data for the 2018 contest won by Sabrina Wooten. I replicate his methodology for that election. To verify that Dr. Spencer and I are using the same methodology, I directed my research assistant to replicate Dr. Spencer's calculations for the elections reported in Table 4 for election projection which were previously provided by Dr. Spencer. For both Defendants' and Plaintiffs map, the projections done by my research assistant gave results essentially identical to those previously found by Dr Spencer. Whatever trivial differences there are appear to be due to minor changes in VTD structure over the period 2010-2018 or the treatment of split VTDs. For projections into the districts in my own proposed illustrative map, introduced at the end of this Report, I again use this same methodology.

[^27]:    ${ }^{31}$ Taking into account the language of Alabama Black Caucus cited to above, recently, district courts accepting claims brought under the Shaw v. Reno 570 U.S. 529 (1993) test for a racially preponderant motive have also implemented as a court-ordered remedial plans some districts with less than a $50 \%+$ Black (citizen) voting age population in area of the state where a $50 \%+$ CVAP district might have been drawn, despite recognizing the Court's obligation to also satisfy the strictures of Section 2 in a court-ordered map. In such instances the Court has recognized a less than $50 \%+$ CVAP district as one providing the minority community a realistic opportunity to elect candidates of choice See e.g., Personhuballah v. Alcorn." Civil Action No 3: 13cv678 E.D. Virginia (filed January 7, 2016); Golden Bethune-Hill v. Virginia State Board of Elections" Civil Action No 3: 14cv852 E.D. Virginia (filed February 14, 2019). In City Council elections

[^28]:    in Virginia Beach. after carefully assessing the minority opportunity to elect in the specific parts of the city where the district is being drawn, prudence in assessing minority opportunity to elect suggests the appropriateness of drawing districts with a $50 \%+$ CVAP. (See Table 4 and Table 6 later in the Report.)

[^29]:    ${ }^{32}$ Acting under my instructions, my research assistant geocoded the residences of 2021 incumbents based on their street addresses provided to me by the parties to locate their district placement on the various maps. I believe that this geocoding is accurate. If there are errors, I will of course, make the necessary corrections to this Report.

[^30]:    ${ }^{33}$ Even though this is not a plan I could recommend to the Court, for informational purposes only, I show below the incumbent pairings (as of September 2021) in the Defendants' map. The third pairing shown in the table below, in District 7, is hypothetical but, as defined by the residence of the former incumbent a third pairing would be likely were a tenth individual be given a City Council appointment to the seat that is vacant before the Court ordered a new plan to go into effect in 2022.

[^31]:    ${ }^{35}$ See e.g., Niemi, Richard G., Bernard Grofman, Carl Carlucci, and Thomas Hofeller. 1990. Measuring compactness and the role of a compactness standard in a test for partisan and racial gerrymandering. Journal of Politics, 52(4):1155-1181.

[^32]:    ${ }^{36}$ While we expect CVAP percentages to be lower than VAP percentages, and this is almost uniformly true for the data in this table, the CVAP estimates are for a different time period and population shifts can be taking place. Also, the CVAP estimates are based on sampling and thus have a wider confidence bound around them then the census enumeration, and there were important changes in the format of the questions which led to the measurement of the size of the Hispanic population in the 2020 census as compared to earlier censuses or to the way in which data was compiled in the American Community Survey (ACS) pre 2020

[^33]:    ${ }^{38}$ In the event that errors in my Report are detected I will, of course, make the necessary corrections.

[^34]:    ${ }^{38}$ See discussion of how to assess racial bloc voting in elections with more than one minority candidate in Grofman, Migalski and Noviello (1985), op cit. Special care in interpreting results is needed in situations where there is both a multi-seat district and more than one minority candidate. For more on this point see Grofman, Bernard and Michael Migalski. 1988. Estimating the extent of racially polarized voting in multicandidate elections. Sociological Methods and Research, 16(4):427-454, and the erratum to that article in Grofman, Bernard and Matt A. Barreto. 2009. A Reply to Zax's (2002) Critique of Grofman and Migalski (1988): 'Double Equation Approaches to Ecological Inference When the Independent Variable is Misspecified.' Sociological Methods \& Research, 37(4): 599-617.

[^35]:    ${ }^{39}$ In general, political scientists expect what is called roll-off, such that lower ticket races do not have as many (fully) filled in ballots as " top-of-the ticket" contests.
    ${ }^{40}$ In this 2021 table, the percentage of voters Dr. Spencer reports as having cast votes for Mr. Rouse is $54.5 \%$, with the difference between my calculation and that of Dr. Spencer probably due to his having included votes not cast in person.

[^36]:    ndSD-2012-BENCH20-fix-shps-wa05d-cy__Political Subdivison Splits Between Districts.pdf 143K

