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TRANSCRIPTION OF VIDEO FILE

11

NORTH DAKOTA SENATE

12

HB 1504 / JOINT REDISTRICTING

13

NOVEMBER 10, 2021

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1:39 P.M.

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EXHIBIT

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1     NOVEMBER 10, 2021

2                   LIEUTENANT GOVERNOR SANFORD:   Continuing  
3     on the 14th Order, House Bill 1504.

4                   Madam Secretary.

5                   SECRETARY:   Engrossed House Bill 1504.

6     A bill for an act to authorize the Secretary of  
7     State to modify election deadlines and  
8     procedures; to create and enact two new sections  
9     to Chapter 54-03 of the North Dakota Century  
10    Code, relating to legislative redistricting and  
11    staggering of terms of the legislative assembly;  
12    to repeal Sections 54-03-01.12 and 54-03-01.13 of  
13    the North Dakota Century Code relating to  
14    legislative districts and staggering of terms of  
15    members of the legislative assembly; to provide a  
16    statement of legislative attempt and to provide  
17    an effective date.

18                  LIEUTENANT GOVERNOR SANFORD:   Senator  
19     Homburg.

20                  SENATOR HOLMBERG:   Mr. President,  
21     members of the Senate, the bill you have before  
22     you today is the result of work of 16 members of  
23     this legislative assembly over a very short  
24     period of time, whereas in the past we would  
25     receive census data much earlier, March and

1 April. We did not get census data until August.

2 And then we did not have a lot of time.

3 We held hearings. We received input  
4 from around the state. And we had people that  
5 virtually testified before our committee.

6 We also, because of our interest in  
7 having -- because of request from the tribal  
8 nations, we had the committee -- the tribal  
9 committee visit those reservations. And at  
10 reservations, they received some input which they  
11 passed on to us.

12 Mr. President, the other part of the  
13 challenge this year is North Dakota's population  
14 exploded for 117,000 people I believe. And they  
15 did not intersperse themselves across the state  
16 equally. They went to just a few areas. And you  
17 ended up, Mr. President, with vast areas of the  
18 state, which didn't have the population for the  
19 number of districts that were there.

20 If you drew a line from Fargo, to  
21 Bismarck, to Minot, anything to the north and  
22 east of that was underpopulated with the  
23 exception of District 17 in Grand Forks.  
24 Everyone else needed people.

25 And again, as I have said before, it was

1 kind of like the Donner Party because to survive  
2 you had to get people from your neighbors. And,  
3 Mr. President, your redistricting committee came  
4 up with a 47-district plan.

5 The current plan is 47 districts. Ten  
6 years ago, it was 47. The time before it was 49.  
7 The time before it was 53. And the time before  
8 it was 50. So we've vacillated a little bit in  
9 the number. But your committee focused on 47.

10 There was a little looking by a few  
11 people at 49. But that did not make much  
12 difference as far as how the lines would be  
13 drawn. So we stayed with the number that we had.

14 The population of North Dakota was  
15 779,094, which was a 15 percent increase. And  
16 dividing that by 47 meant that the ideal district  
17 would be 16,576 people.

18 Mr. President, we did follow the  
19 constitution of North Dakota, which says  
20 continuity and compactness is very important. We  
21 preserved the political subdivision lines,  
22 particularly counties. And I think you will see  
23 later that the number was not too bad as far as  
24 the counites that were left whole.

25 We looked at preservation of communities

1 of interest. And that, Mr. President, really is  
2 very subjective. If you're happy with what is  
3 happening in your area, then you would say, yes,  
4 they followed communities of interest. If you  
5 were unhappy, you would say they weren't  
6 following communities of interest.

7 That, Mr. President, is the same kind of  
8 logic that we see or the same kind of discussions  
9 that we see when people use the term  
10 "gerrymandering." If you like the plan, it's  
11 good. If you don't like it, it's gerrymandering.

12 And one of the criteria that you are  
13 able to use is the protection of incumbents. And  
14 the people who say they don't look at incumbency  
15 are Pinocchios because they do.

16 I recall some years ago when there was a  
17 complaint. I think it was like '91 or eighty --  
18 I mean, well, anyway, it was a while ago.  
19 Someone from a particular political party  
20 chastised the other party for looking at the  
21 incumbent residencies. But what they forgot is  
22 we could see their acetate sheet that they had  
23 laid on top of the map. So they do look at it.

24 And, Mr. President, you might say, were  
25 there incumbents that were put into other

1 districts? And did we overdo it this time?

2 Remember, because of the population  
3 shift, there were three districts that were in  
4 rural areas that disappeared. And they were  
5 eastern areas of the state. And they came back  
6 up over West River, Williston area, and in the  
7 Fargo area.

8 Then years ago, there were 20 incumbents  
9 that were kind of put together with their  
10 friends. And this time, I believe it's 17 that  
11 were put together with their friends. And  
12 sometimes they're foes. But, Mr. President, your  
13 committee looked at the North Dakota State law.  
14 We looked at the constitution. We followed the  
15 best we could with the Voting Rights Act.

16 And the one area that had the most  
17 discussion was not necessarily the lines that  
18 were drawn as it was the fact that your committee  
19 was convinced that federal law, passed by  
20 Congress, signed by the President, and been held  
21 up in court on numerous occasions, that we should  
22 look at subdistricts in areas of the state that  
23 met the criteria that we understood.

24 And, Mr. President, the information, the  
25 advice we got from a lot of studying, including a

1 number of folks visiting with NCSL, and a few  
2 folks when to an NCSL meeting put on by NCSL  
3 specifically on redistricting, that particular  
4 area was discussed quite a bit.

5 One of the things they told us though  
6 that was interesting is not that many years ago,  
7 there were many more states that had multi  
8 districts. In North Dakota's case, it's one  
9 senator and two representatives.

10 Because of various court decisions,  
11 there are now only 10 states left that have the  
12 multi-district scheme that we have in North  
13 Dakota. And there are numerous occasions that  
14 the states have gone to court about the issue of  
15 multi districts.

16 And the courts have held, as we  
17 understand it -- now, we're not lawyers -- we  
18 listen to lawyers, not all of them, but we do  
19 listen to lawyers -- and we found that you can  
20 have a state that has multi districts and single  
21 districts in the same state.

22 Mr. President, the state of North Dakota  
23 has done very well. But as we put this map  
24 together, and it was a group project, as it was  
25 put together, it was done like typically, at

1 least I do, jigsaw puzzles, you start at the edge  
2 where the pieces are all flat, and then you move  
3 into the middle, which means that you end up with  
4 a couple areas of the state that are kind of  
5 pinched and not particularly or necessarily  
6 happy.

7 The end of the road, the map you have  
8 from the committee leaves 33 of our 53 counties  
9 whole. It divides eight counties because they  
10 were too big to be a single district. It divides  
11 four counties because of the location of  
12 reservations.

13 And our goal, which some years ago we  
14 didn't follow, but we have for the last, at  
15 least, 10, 15 years, we kept the reservations  
16 whole. We did not split the reservations, which  
17 meant that there were eight counties that were  
18 split.

19 And you can say for other reasons. It  
20 was for convenience because we had to have  
21 populations move. And sometimes 100 people made  
22 a big difference in whether or not a district  
23 would meet the criteria of one person, one vote.

24 And, Mr. President, when you get to some  
25 rural areas, and it's not just in the west, you



1 can go to western Walsh County, and you have to  
2 gamble or, you know, jump along a long way to get  
3 100 people. And the same way in some areas of  
4 Grand Forks County. But it's not just Kidder  
5 County. There are other counties that there are  
6 vast areas. So, in order to pick up 50 people  
7 for a district, sometimes you have to do a lot of  
8 work.

9 But, Mr. President, the committee has  
10 the recommendation of the map that was presented.  
11 And the committee would ask that we approve the  
12 bill as amended that came over from the House.

13 LIEUTENANT GOVERNOR SANFORD: Senator  
14 Marcellais.

15 SENATOR MARCELLAIS: Mr. President, may  
16 we be on the 8th Order for purposes of an  
17 amendment to the House Bill 1504, joint  
18 redistricting?

19 LIEUTENANT GOVERNOR SANFORD: Senate  
20 will be on the 8th Order.

21 SENATOR MARCELLAIS: Mr. President,  
22 Senate members, I move amendment 21.1113.03002.

23 LIEUTENANT GOVERNOR SANFORD: Does each  
24 senator have a copy of the amendment?

25 Senator Marcellais.

1           SENATOR MARCELLAIS: Mr. President,  
2 members of the Senate, this proposed amendment  
3 would change District 9A and 9B to District 9.  
4 The amendment would honor the request of the  
5 Turtle Mountain and Spirit Lake Tribal Nations as  
6 a legislative district that includes both tribal  
7 nations.

8           If approved, this district would be the  
9 first of its kind in North Dakota by allowed two  
10 tribal nations to share one voice in the State  
11 Senate and House elections.

12           There are some concerns about  
13 redistricting. Committees propose District 9A  
14 and 9B that encompasses the Turtle Mountain  
15 Reservation. The redistricting committee's  
16 proposed district would dilute the Native  
17 American vote, would not provide our tribal  
18 members with the ability to elect the candidates  
19 of their choice.

20           And, on the other hand, a single  
21 district with Turtle Mountain and Spirit Lake  
22 together would allow the tribal members from both  
23 tribes to elect their preferred candidates.

24           As the redistricting committee mentioned  
25 in hearing, this would be packing. I did hand

1 out a text and three maps attached to the text.

2 So there's four pages of the amendment.

3 If you look at the proposed maps for the  
4 District 9 and A and 9B, statistics show 81  
5 percent Native American. And proposed map for  
6 District 9 stats with Turtle Mountain and Spirit  
7 Lake combined show 72 percent Native American.  
8 So current redistricting bill would be packing,  
9 not the recommended amendment.

10 Turtle Mountain and Spirit Lake have  
11 many shared interests. Both are federally  
12 recognized Indian tribes in the eastern part of  
13 the state. Both want to strengthen their inter-  
14 tribal relations. Both have similar economic  
15 interests and both want to strengthen the tribal  
16 state relations.

17 Both deal with federal government on a  
18 government-to-government basis. They have  
19 similar culture values, similar education issues.  
20 Each have tribal colleges. And they both have a  
21 Federal Bureau of Indian Education schools. The  
22 state already treats these tribes as sister  
23 tribes in many respects, close geographically and  
24 only a little more than an hour away.

25 Mr. President, I am requesting a

1 recorded rollicall vote on this amendment.

2 LIEUTENANT GOVERNOR SANFORD: Is there  
3 any further discussion on the amendment?

4 Senator Holmberg.

5 SENATOR HOLMBERG: Mr. President, first  
6 of all, I'd like to thank Senator Marcellais for  
7 his presentation. He did the nice thing. He did  
8 let us know that he was going to bring this  
9 amendment that he brought before our committee  
10 the other day. And it was an amendment that was  
11 rejected in the committee. But, Mr. President,  
12 it was an interesting way to resolve an issue up  
13 in that particular area of the state.

14 And what I think I liked about -- and  
15 I'm not going to vote for it, and I hope you vote  
16 against it too -- but what I liked is that they  
17 came and looked at that particular area, and they  
18 made the changes that would resolve what they  
19 feel is in their best interest without making a  
20 big difference to other areas around that  
21 particular district. And that needs to be  
22 thanked and respected.

23 I think that one could argue that it  
24 does look -- now, because I don't like it, then I  
25 could call it gerrymandering. But I won't use

1 that term. I will just say it's an interesting  
2 configuration. There are a couple other  
3 districts in the state that have interesting  
4 configurations too not drawn by the senator from  
5 District 9 but by others.

6 But, Mr. President, I think that on  
7 behalf of the majority of the committee that what  
8 we had in the bill right now is a better  
9 alternative than putting the two reservations  
10 together. So I would hope we would vote no on  
11 this.

12 And thank you, Mr. President.

13 LIEUTENANT GOVERNOR SANFORD: Is there  
14 any further discussion on the amendment?

15 Hearing none, question will be on the  
16 proposed amendment to House Bill 1504. Secretary  
17 will open the key.

18 Have all senators voted?

19 Does any senator wish to change their  
20 vote?

21 Vote reveals 10 ayes, 37 nays, 0 absent,  
22 not voting. The amendment fails.

23 Returning to the 14th Order, House Bill  
24 1504, is there any further discussion?

25 Senator Heitkamp.

1           SENATOR HEITKAMP: Mr. President, from  
2   what I understand, there were 14 districts that  
3   had less population than the 26th District coming  
4   into the redistricting process. What do the  
5   voters want? To be represented by their vote or  
6   to be disenfranchised by the law?

7           Ten years ago, District 27 used to be my  
8   district. And it was dissolved and moved to our  
9   most populous city. In a few minutes, a betting  
10   man will tell you that District 26 will be  
11   dissolved and move to the land once known as the  
12   Island Empire.

13           How many times are the citizens of the  
14   southeast corner of the state supposed to take  
15   one for the team? How many times will rural  
16   residents lose their representatives?

17           The citizens of the southeast corner of  
18   the state slept well almost a year ago knowing  
19   that they would have the representation that they  
20   voted for in the 2020 election. Soon, none of  
21   those people will know who their representative  
22   is. Not even one senator or one of the two House  
23   members will be left to represent the proud  
24   citizens of the district, which is home of the  
25   Bobcat Skid Steer Loader. All this in less than

1 one session.

2 And I would like to address the split  
3 districts in this bill. Our current leader, 46,  
4 talks about saving the democracy when our federal  
5 government is obviously a constitutional  
6 republic. Is he confused, or is he just reading  
7 a teleprompter?

8 Now, in the great state of North Dakota,  
9 the real democracy, they're trying to split  
10 districts as if we need to do that to better  
11 represent the citizens. What happened to  
12 building coalitions? Isn't working together how  
13 a democracy is supposed to work? Even in what  
14 became known as "the perfect district," the new  
15 District 25 did not follow county lines as a lake  
16 full of fish was included from the adjoining  
17 county.

18 Although the senator from the 28th  
19 District made a motion to give the fish back, it  
20 was not approved. The fish are now going to be  
21 in District 25.

22 Democracy: ruled by a majority that  
23 enjoys unlimited power. Republic: follows a  
24 written constitution that protects the rights of  
25 the minority from being infringed upon the

1 minority.

2 Democracy: while all citizens supposedly  
3 have a say in government and are to be treated as  
4 equals, the majority often ends up ruling the  
5 minority. In fact, the United States is commonly  
6 confused for a democracy.

7 Ironically, democracy seems to work in  
8 the old District 27. The representative who  
9 claims to be from Mandaree -- and I did try hard  
10 to find something so I didn't have to say that  
11 word. So sorry about that -- was elected and has  
12 served without splitting districts. But I guess  
13 that's probably different.

14 But unlike the people made to wear the  
15 red shirts on the landing for the Starship  
16 Enterprise, we will live to fight another day.  
17 In fact, as I told a constituent last night, we  
18 have not yet begun to fight.

19 When the Bonhomme Richard sank, John  
20 Paul Jones acquired another ship. Like him, we  
21 will not quit.

22 If today you do not stand with us and we  
23 lose our district, we will not surrender or give  
24 up. We will acquire another vessel. Our  
25 neighbors to the south did not accept their map



1 during redistricting. And they are still working  
2 on it.

3 I ask for you no vote on this bill. It  
4 is time to save the real democracy. It's time to  
5 make a new map. Vote red.

6 LIEUTENANT GOVERNOR SANFORD: Senator  
7 Holmberg.

8 SENATOR HOLMBERG: Mr. President,  
9 members of the Senate, I certainly thank the  
10 senator from District 26 for his presentation.  
11 And I can sympathize. He comes from the  
12 southeast part of the state. Ten years ago they  
13 lost District 27. This time the southeast lost  
14 26.

15 Where I come from 10 years ago, we lost  
16 District 16. And we're losing District 19. Why?  
17 Because of one person, one vote. Even if you  
18 don't like it, it is the law of the land. So we  
19 had to go with where the people were.

20 Now, we can, you know, move the lines  
21 around. But there are other areas of the state  
22 that also lost their district or lost the area.  
23 And that is because of the number of people in  
24 their particular district.

25 So, Mr. President, I would hope that we

1 would pass this bill as it is and recognize that  
2 change is not always easy. But sometimes, the  
3 higher order is the law of the land, which again  
4 is one person, one vote.

5 The districts had to go where the people  
6 are, not where they were.

7 LIEUTENANT GOVERNOR SANFORD: Senator O.  
8 Larsen.

9 SENATOR O. LARSEN: Mr. President, as  
10 one of the enrolled members of a federally  
11 recognize tribe, I find it interesting that I was  
12 left out of the conversation of most all of this.

13 When we were talking about we have to do  
14 a separation and a subdistrict because there's a  
15 certain amount of people -- ethnicity of people  
16 that they meet the numbers. And, as I was  
17 looking into that a little bit, I never had heard  
18 about a polarization or -- yeah, a polarization  
19 study of the work that was done to see if, in  
20 fact, that that had standing or it had merit in  
21 it, that there was some racial disparity there.  
22 That study was never talked to us, talked to me.  
23 I didn't hear anything about it.

24 So I kind of went into a little bit more  
25 information on that. And Bethune-Hill vs.

1 Virginia did the same thing we're doing here  
2 today if this passes. There was a group of  
3 people that they figured there was a number  
4 enough that they could have their own district or  
5 subdistrict. And it didn't -- as it went to  
6 their courts, it didn't meet the mustard because  
7 they too did not have that polarization study.

8 And I think just because there's a set  
9 of numbers, a set of racial numbers that would  
10 make up that, where do we stop from there?  
11 What's the next number? What's the next group?  
12 What's the next ideal?

13 So I didn't see that or hear if that was  
14 done. I think that was called a Shaw violation  
15 because they didn't do that polarization study.  
16 And I certainly didn't hear about it.

17 Another thing that I am confused about  
18 with that, I know that as Natives coming off the  
19 reservation, signing up to join the military,  
20 which many of our people do, they take an oath to  
21 the Constitution of the United States. And they  
22 do their duty, and they go about.

23 But then when they return home, I'm not  
24 sure that all of the reservations in North Dakota  
25 follow -- of course, they have our Constitution

1 -- but I don't believe they've adopted our  
2 constitution because they're sovereign states,  
3 sovereign nations. So they have their own  
4 constitution. And when we look at our state  
5 constitution and we looked at the U.S.  
6 Constitution, there are certain items that have  
7 been picked out for the Native peoples.

8 But I still believe that this isn't  
9 correct because we can't be having a subdistrict  
10 based solely on somebody's ethnicity.

11 You know, in growing up and even in  
12 North Dakota, I know what it's like to be the  
13 token Indian. My son went to UND to go into a  
14 program, psychology, that was set aside because  
15 they needed to have so many Native folks in  
16 there. So he went there. He was going to go and  
17 do that university.

18 They took that group of people, set them  
19 aside, did their own dinners, their own  
20 orientation, their own scoring on how to get into  
21 the program. And he was absolutely humiliated  
22 from it. And now he's doing the program over in  
23 Minnesota.

24 And there's many other things that  
25 that's happened. That's a racial bias. I can

1 see that. I know that. There's been studies of  
2 that. There was no polarization study done to  
3 see if there was truly racial bias on these two  
4 areas that we're subdividing. So I think that's  
5 a big mistake.

6 So with that, I would make a motion to  
7 split that out of the bill. Now, there's a lot  
8 of pages, lines, and numbers of doing that. But  
9 the idea, the concept of the idea that I propose  
10 and make a motion to do is to split that. And I  
11 could by each page and do the line item. It's  
12 four pages. But we have the idea. So that would  
13 be my motion.

14 Maybe we have to be on the 8th Order,  
15 Mr. President.

16 LIEUTENANT GOVERNOR SANFORD: The Senate  
17 will on 8th Order.

18 SENATOR O. LARSEN: And, Mr. President,  
19 if I could just continue a little. You know, I  
20 was going to say the subsection and cut that out  
21 and be all professional about it. But, as I was  
22 looking through here, you know, it's Section 1.  
23 That's where it discusses that.

24 And we know the idea. We know what  
25 we're going to remove from this bill. And that

1 is taking out that subdistrict -- those  
2 subdistricts. And I would also like to have that  
3 question answered if we did have that  
4 polarization study.

5 LIEUTENANT GOVERNOR SANFORD: Senator  
6 Holmberg.

7 SENATOR HOLMBERG: Mr. President, we  
8 don't have to screw ourselves into the ground  
9 over this. The bill is divisible. The bill was  
10 divided in the House. So it is very divisible.  
11 All one had to do is call the legislative counsel  
12 and ask them for the division because it already  
13 -- it has to exist because the House voted on A  
14 and B.

15 So, Mr. President, I guess we can stand  
16 and wait. I did call up there to see if they  
17 could send down the division that was used in the  
18 House to divide this very bill. I don't have it  
19 in front of me.

20 LIEUTENANT GOVERNOR SANFORD: The Senate  
21 will stand at ease.

22 Leaders, please approach the bench.

23 (Pause in hearing)

24 LIEUTENANT GOVERNOR SANFORD: Is there a  
25 second to Senator O. Larsen's motion?

1 SENATOR HEITKAMP: I'll second.

2 LIEUTENANT GOVERNOR SANFORD: Senator  
3 Heitkamp second.

4 Now, we have to decide if there's  
5 division. This is not divisible at this point  
6 because there's nothing clear of what handing  
7 this piece -- this batch of paperwork. Have you  
8 divided it into different sections so that we  
9 could say clearly what Division A and Division B  
10 are, Senator O. Larsen?

11 Senator Holmberg?

12 Okay. It was still on. Sorry.

13 SENATOR O. LARSEN: Mr. President?

14 LIEUTENANT GOVERNOR SANFORD: Senator O.  
15 Larsen.

16 SENATOR O. LARSEN: So, Mr. President,  
17 Division A, this is what is going to be cut out  
18 of the bill. If you go to page 1, section 1,  
19 line 11, where it starts, "District 4 and 9" and  
20 ends at line 14, "chosen."

21 If you go to page 3, line 25, subsection  
22 A, B, down to the next page 4 on line 10.

23 Moving to page 7, again subsection A and  
24 B starting on line 15.

25 Going to page 8, line 7. That would be

1 Section A, division of the bill. That would be  
2 removing the subdistricts of District 9 and  
3 District 4.

4 LIEUTENANT GOVERNOR SANFORD: All right.

5 SENATOR O. LARSEN: And the section B of  
6 the bill would be the remaining part of the bill.

7 LIEUTENANT GOVERNOR SANFORD: Right.

8 SENATOR O. LARSEN: I probably should  
9 have did that instead of saying we love the idea.  
10 We understand the idea. But, you know, that's  
11 the diesel mechanic in me. So there we go.

12 LIEUTENANT GOVERNOR SANFORD: We'll hand  
13 over a copy to all senators.

14 This is much better, Senator O. Larsen.  
15 Thank you.

16 Division A is being circulated. I have  
17 pretty good notes, but I don't know if I was that  
18 detailed. It'll be the sections of Section 1  
19 listed below on the handout.

20 So it is divisible.

21 After going through Division A and B,  
22 we'll have recorded roll call votes on each  
23 division separately.

24 So, for the first order of business  
25 here, the Senate will consider Division A.



1 Senator O. Larsen.

2 SENATOR O. LARSEN: Well, if nothing  
3 else, Mr. President, I do a really pretty good  
4 job at confusing people. But, at the end of the  
5 day, you know, it makes for good conversation.

6 Like I said, and I don't want to be  
7 repetitive, we are missing a huge spot in just  
8 saying that because you're a brown-skinned  
9 person, Indian, a gay person, somebody, a Black  
10 person, it doesn't matter. When we're saying  
11 that, that you are going to have representation  
12 based on your race, based on your sexual  
13 orientation, it doesn't matter. You have to have  
14 a study saying, you know what? That's right.  
15 That is a racial bias. That is a -- it isn't  
16 correct.

17 We have to follow our constitution in  
18 the way that we represent people, human beings.  
19 Not Americans. Not anything else.

20 It's disturbing as well that we can come  
21 off the reservation, and we can support and fight  
22 our Constitution of the United States of America  
23 and the state of North Dakota. But as soon as  
24 I'm done with my service, I go back to my  
25 reservation. And even though I have the U.S.

1 Constitution on the wall, I also have the Nation  
2 of my sovereign nation constitution that I fight  
3 and die for. Does it supersede? Does it match?  
4 That really doesn't matter. That's my sovereign  
5 nation's constitution that I support and I  
6 defend.

7           You cannot come to another nation's  
8 country and say, okay, I want representation even  
9 though I have my own constitution on my own  
10 sovereign nation. And I have no idea if I'm  
11 being racially biased against or not. I do have  
12 the numbers.

13           I think we need to defeat it. And I  
14 think it has merit to support and represent every  
15 human being in our district. That's what we're  
16 supposed to do.

17           LIEUTENANT GOVERNOR SANFORD: So to  
18 clarify, this Division A is to remove the  
19 subdistricts.

20           Any further -- Senator Holmberg.

21           SENATOR HOLMBERG: Mr. President, and  
22 just like earlier, if you want this to remain in,  
23 you would vote green. If you wish to support the  
24 motion made by the senator from Minot, you would  
25 vote red.

1                   LIEUTENANT GOVERNOR SANFORD:   Senator  
2   Kannianen.

3                   SENATOR KANNIANEN:   Well, Mr. President,  
4   the redistricting committee heard about the  
5   Thornburg v. Gingles Supreme Court case from 1986  
6   when it comes to determining what preconditions  
7   need to be met, what factors needs to be  
8   considered in establishing these types of  
9   subdistricts.

10                  Now, the preconditions -- first, there  
11   are three preconditions. And, if all three of  
12   those are met, then there are other factors to  
13   also consider.

14                  So the first precondition is that the  
15   racial or language minority group is sufficiently  
16   numerous and compact to form a majority in a  
17   single member district. So in one of the  
18   subdistricts, are they large enough to form a  
19   majority in one of those subdistricts?

20                  The second one is that the minority  
21   group is politically cohesive such that its  
22   members tend to vote together in a block.

23                  And the third one is that the majority  
24   group votes sufficient as a block. So, in other  
25   words, the non-Natives in the district vote

1 sufficient as a block themselves to still -- as  
2 it says, "usually" to defeat the minority's  
3 preferred candidate despite their block voting.

4 Now, this third precondition, the big  
5 concern I have is that the committee -- I didn't  
6 see, as the senator from District 3 mentioned,  
7 the polarization studies. This third  
8 precondition is not met.

9 Now, for example, the reason why I would  
10 assume that the senator from District 9 brought  
11 forth his amendment, they're not -- District 9  
12 isn't too excited about the idea of subdistricts  
13 because, as it is now, they form a strong  
14 majority, the Native population does in District  
15 9, about a two-thirds majority. Subdistricting  
16 them would mean that, as the paperwork shows that  
17 we have from his amendment, as the maps show, one  
18 subdistrict would have 81 percent Native. All  
19 the other subdistrict would have just under a 35  
20 percent Native.

21 So again, this third precondition has to  
22 show that the voting history is such that they  
23 have not been able to elect their preferred  
24 candidates. But, of course, we all know the  
25 election history in District 9. Now, some might

1     argue that we shouldn't make this out to be a  
2     partisan thing. But it obviously is.

3             I mean, to say the preferred candidate  
4     of those in District 9 have certainly been from a  
5     certain party, there's never been a Republican --  
6     you have to -- I've gone back decades. I've gone  
7     back as far as I could search, and there's never  
8     been a Republican elected in District 9. They  
9     have had their candidates elected that they  
10    preferred.

11            And the ironic thing is that by putting  
12    this subdistricting in for District 9, the  
13    subdistrict B that would have just under 35  
14    percent Native population would actually be at a  
15    high risk of having it go the other way on them  
16    where they have the reverse effect, right, of  
17    having benefiting the non-Native minority to the  
18    detriment of the Native majority.

19            Is that what we want? So it's clearcut  
20    in District 9 that the third precondition in the  
21    Gingles case is not met. And it's pretty clear  
22    that the subdistricting would have an adverse  
23    effect on the ability of all of the Natives in  
24    district to elect the candidate of their choice.

25            Now, District 4, that's more

1     questionable, right, that third precondition? It  
2     depends on -- we can't guess how far back a judge  
3     is going to look at determining the election  
4     results.

5             Before 2016, there's only -- you have to  
6     go back decades. There's only one Republican  
7     elected in decades in District 4. And so then  
8     you look at what candidates -- the precincts on  
9     the reservation voted for and then which  
10    candidates won, right, so you know which was the  
11    candidate of their choice.

12            2016 and 2020, of course, were different  
13    stories. So, if a judge just looked at the last  
14    couple of elections, of course, they'd say that  
15    that third precondition is met in District 4.  
16    But typically, you'd probably have to go back  
17    realistically several elections. And then they  
18    would say it's not met. So it is more  
19    questionable in District 4. So how far back do  
20    you go?

21            But so then the other consideration that  
22    one might say is that while we can just -- we  
23    should just do this anyway, I mean, regardless of  
24    whether or not that third precondition is met, we  
25    should just -- we could just do this anyway.

1           Now, that was the case that was  
2   referenced also by the senator from District 3  
3   that showed that in Virginia there was a  
4   subdistrict situation that was thrown out because  
5   it had gone the other way -- could have the  
6   adverse effect of maybe what will happen in  
7   District 9. Or it will have the effect of trying  
8   to apply something this -- a racial subdistrict  
9   without preconditions being met. So there's a  
10   needle that has to be threaded here to satisfy  
11   existing court cases that has not been threaded.

12           And so I, you know, I certainly have all  
13   my constituents on the reservation in District 4  
14   asking for the subdistrict to be established.  
15   And I also have constituents on the reservation,  
16   non-Natives asking for this to be defeated.

17           And my contention simply is that all  
18   three preconditions in the Gingles case have not  
19   been met for either District 4 nor District 9.  
20   And it seems pretty clear that applying  
21   subdistricts to District 9 will have actually an  
22   adverse effect to the Native majority to the  
23   benefit of the non-Native minority. I don't  
24   think that's what we really want or the route we  
25   should be going either.

1           So I think it should either be all or  
2 nothing. If we defeat Division A to take out the  
3 subdistricts, that's certainly an option. Or,  
4 if Division A passes, then we should have an  
5 amendment to subdivide all 47 districts. It  
6 should be all or nothing. It shouldn't be 2 in  
7 45 to have the representation cut in half for  
8 those districts, you know, those Native American  
9 districts really.

10           Now, it has been said that certainly  
11 there are cases where multi member and single  
12 member districts have coexisted in the same  
13 state. But it doesn't mean we should do it. I  
14 don't believe we should go down that road. It  
15 should be all or nothing.

16           I mean, imagine a city counselor, a  
17 county commission where some got to vote for one,  
18 some got to vote for two.

19           So I would ask for Division A to be  
20 defeated.

21           LIEUTENANT GOVERNOR SANFORD: Senator  
22 Doug Larsen.

23           SENATOR D. LARSEN: Mr. President, I'm  
24 not sure if you know this about me or not, but  
25 I'm a football fan. I like the competition of



1 it. Full disclosure, I'm a Viking fan. That  
2 generally means I enjoy most of the game, but I  
3 don't enjoy the outcome. If you were to ever  
4 come to my house and watch a game with me, you  
5 might find me breaking the rules of decorum in my  
6 living room by yelling at the referees, blaming  
7 them for my woes, maybe yelling at the coach.  
8 Why did they come up with a strategy that they  
9 did? Maybe if only we had a better player to a  
10 particular position, we'd be better.

11 At the end of every year, the NFL gets  
12 together and they look at the rules. And  
13 sometimes they change some rules. Sometimes they  
14 see a rule and say, we should make a change here.  
15 It would make for a more fair game or a better  
16 game.

17 I think there's a lot of parallels  
18 between an election and a football game. They  
19 both have strategy. They both have players or  
20 candidates. They both depend on the fans, voter  
21 turnout. And sometimes rules can affect the way  
22 a game will end.

23 I think this division is just about  
24 that. It's about a rule. Some in this chamber  
25 probably believe that that rule should be

1 changed. And those folks should vote green.

2 Others of us may not feel that that rule  
3 is the best change, and it might create division.  
4 And it might give those that might be asking for  
5 less representation than what they're asking for.  
6 But I don't really plan to talk too much more  
7 about the rule and whether or not it's good or  
8 bad.

9 Again, if you are good with subdividing  
10 vote green. If you're not, vote red. But what  
11 concerns me are those who will vote green not  
12 because they like the subdivision, but because  
13 they're afraid.

14 In 1787, with an imperfect, not perfect  
15 document, enough states agreed to form the  
16 federal government, making what the government  
17 said on Monday an absolute historical fact. I'll  
18 quote or paraphrase him by saying, we need to  
19 remind the federal government from time to time  
20 that the states created the federal government  
21 and not the other way around.

22 When we watched that speech in here,  
23 some might notice I very seldom clap for a  
24 television. That got me. I got excited. The  
25 states created the federal government.

1 I don't particularly plan to vote one  
2 way or another for fear of that federal  
3 government. Elections are a state function.

4 At some point, I think a lot of say  
5 enough is enough when we watch federal overreach  
6 after federal overreach. I don't know if you've  
7 hit your enough is enough yet.

8 When I sat in on the transportation  
9 committee this last session, and I was told why  
10 we couldn't do it this particular way or had to  
11 do that a different way because of fear that the  
12 federal government would keep funding from us.

13 Health care is being forced to make  
14 decisions for fear that money will be kept from  
15 them. Businesses are having to make decisions  
16 now for fear that OSHA is going to fine them.  
17 This isn't the first administration to put out  
18 executive orders. Sometime ago, no matter  
19 whether it was a Republican or a Democrat, we  
20 should have said executive orders aren't the way  
21 to legislate.

22 I shouldn't have to sit on an airplane  
23 and be told that it is a law for me to wear a  
24 mask now. The Senate didn't approve that law.  
25 The House didn't approve that law. One person

1 made that law.

2 At some point, I think enough is enough.

3 I can't change yesterday, and I don't want to

4 wait until tomorrow.

5 LIEUTENANT GOVERNOR SANFORD: Senator

6 Holmberg.

7 SENATOR HOLMBERG: Mr. President,

8 members of the Senate, I just want to remind you,

9 and that was a very good presentation by the

10 senator from Mandan, but I want to remind you

11 that your committee, when it worked, was not

12 working based upon a fear or a disagreement with

13 an executive order like we have seen lots of

14 lately. This is the law of the land. And that's

15 why your committee said and would urge you --

16 majority of the committee to vote green on

17 Section A.

18 LIEUTENANT GOVERNOR SANFORD: Senator

19 Hogue.

20 SENATOR HOGUE: Well, Mr. President, I

21 certainly want to start off by thanking the

22 redistricting committee for all their hard work.

23 I know all of them volunteered for this position.

24 All of them went into it knowing that they were

25 going to disappoint some of their colleagues.

1 And they took on the task. And perhaps many of  
2 them knew that going into it, they would have to  
3 give pink slips to some of their colleagues. And  
4 that's a hard thing to do.

5 And when I looked through the membership  
6 of the committee, I came to the realization that  
7 the carrier of the bill is absolutely right.  
8 This is the interim that never was for those  
9 folks.

10 There are five members of the  
11 redistricting committee that also serve on the  
12 appropriations committee. The redistricting  
13 committee met seven times in September. The  
14 appropriations has met I think at least five  
15 times in October. So they've been putting in a  
16 lot of overtime. And I certainly want to thank  
17 them for that.

18 And listen, this idea of creating  
19 subdistricts. I mean, that is the redistricting  
20 committee recommending that we give power away.  
21 And that's not a normal thing for human beings to  
22 do, to give away power. And so I appreciate that  
23 gesture. I think that's a noble gesture.

24 But I share the concerns of the senator  
25 from District 4 and the senator from Mandan. I

1 don't think the Gingles criteria have been met.

2 And the senator from District 4 is flat out right  
3 that it hasn't been met in District 9 at all.

4 The history of the minority's ability to  
5 elect candidates of their choice is a relevant  
6 consideration. And the Gingles is a U.S.  
7 Constitution case that was decided in 1986. And  
8 the Voting Rights Act gives permissive  
9 authorization.

10 You may create a racial district.  
11 You're not compelled to create a racial district.  
12 You may create a racially divided district if all  
13 three of these elements are met. And I'm sorry,  
14 in District 9, they're just not met. And we all  
15 know that. I mean, if you think back in your own  
16 history, you know that it's not met.

17 But my biggest disagreement with this  
18 subdistricting is it's just bad policy. It's  
19 flat out bad policy. We have an outstanding  
20 relationship with the Mandan, Hidatsa, Arikara  
21 Nation. I think it's outstanding.

22 When we have juveniles that have a  
23 scrape with the law, that's an integrated process  
24 for helping juveniles. We have compacts that we  
25 tax tobacco and oil and gas revenue on a

1 cooperative basis with that nation. Just last  
2 month, Mr. President, the governor signed an  
3 agreement so it doesn't make any difference where  
4 the law violation is happening to. The state  
5 highway patrol can respond to it or a law  
6 enforcement officer from the MHA nation.

7 We have these continuing types of  
8 cooperative arrangements. And they've been going  
9 on since I've been in the Senate. And I hope  
10 they continue.

11 My problem with this particular  
12 subdistrict is it just -- it goes right back to  
13 identity politics. We're going to raise up our  
14 differences again. And it makes no sense to me.

15 I do practice law, Mr. President. So I  
16 am aware of the risks of litigation. It's  
17 something I deal with all the time. I'm also  
18 aware of the various not-for-profit organizations  
19 in the state of North Dakota and throughout the  
20 country. Your local church is a not for profit.  
21 You have not for profits that want to foster the  
22 arts or the symphony.

23 We also have, Mr. President, a lot of  
24 national not for profits. And they're interested  
25 in implementing their policy through litigation.

1 And they do that by doing what happened here.  
2 They come to local legislators knowing that  
3 probably not going to adopt their policy, but  
4 they are going to let them know what the law is  
5 and that they're well-healed enough to pursue  
6 their litigation.

7 And to me, Mr. President, we're the  
8 policymaking branch of government. We cannot be  
9 looking over our shoulders all the time worrying  
10 about what a court may or may not do because they  
11 have the right to do what they're going to do.  
12 We have to focus on what is good policy.

13 And I think what's good policy is to  
14 break down identity politics whenever and  
15 wherever we can and to foster good relations with  
16 our partner tribal nations. And this  
17 subdistricting, to me, that doesn't do that.

18 So I would join, Mr. President, I would  
19 join the senators who ask that Division A be  
20 defeated.

21 LIEUTENANT GOVERNOR SANFORD: Senator O.  
22 Larsen.

23 SENATOR O. LARSEN: Mr. President, I had  
24 heard discussion of, you know, this is the law of  
25 the land. This is the way it's going to go.



1 We're going to redistrict this way and then  
2 something about following, that we have rules to  
3 go by. But we have to follow the rules. So we  
4 did not do that study that was key. But here's  
5 the bigger issue that just keeps rolling around  
6 in my head. We're going to give representation  
7 to an individual to represent individuals that do  
8 not follow the Constitution of the United States.

9 They have their own tribal sovereignty  
10 constitution that they follow first. That's what  
11 they follow first, and then the U.S.  
12 Constitution, and the state constitution comes  
13 secondary.

14 If we do this, there are other  
15 nationalities of people that have their  
16 constitution that can live in our state and have  
17 the numbers and then secondarily follow our  
18 constitution. This is a big picture of what  
19 could come. If it's this group of people first,  
20 and then the next -- we have to represent  
21 individuals, human beings, not these classes of  
22 people.

23 LIEUTENANT GOVERNOR SANFORD: Senator  
24 Mathern.

25 SENATOR MATHERN: Thank you,

1 Mr. President. I heard the word "fear." And I  
2 thought, really, the redistricting committee  
3 moved out of fear. I don't think they acted in  
4 fear. It seems to me they acted in calmness.  
5 They acted in reason. And so I support their  
6 work.

7           There is considerable disagreement. I'm  
8 just so impressed that they moved beyond that.

9           And I've also heard the comments about  
10 our relationships with the MHA Nation and the  
11 tribes that have become more positive. And I  
12 believe, in my years in the Senate, that has, in  
13 fact, been the case. But I believe the reason  
14 for that is we have increased our respect for  
15 tribes.

16           It's almost ironic to think that we're  
17 talking about this when all of this land of  
18 Dakota was land, or is land, of indigenous  
19 people. And it seems like we are moving towards  
20 more respect, and that respect has brought us to  
21 this point.

22           And it seems to me the redistricting  
23 committee is giving respect to the tribal leaders  
24 of our state. And I wasn't there, but I  
25 understand that this is the preference of our

1 tribal leaders.

2 So I think our movement is really  
3 towards calm. It's towards reason. It's towards  
4 respect. And I think that calls for a yes vote  
5 for the redistricting committee recommendation.

6 LIEUTENANT GOVERNOR SANFORD: Senator  
7 Clemens.

8 SENATOR CLEMENS: Mr. President, the  
9 word "fear" that's been used in this conversation  
10 is a legitimate word to be used in this  
11 discussion. I have visited with more than a few  
12 members of the redistricting committee that have  
13 told me, we don't like this idea of subdistricts,  
14 but we have to do it. And I say, well, why do we  
15 have to do it?

16 Well, if we don't do it, we're going to  
17 run into litigation with the federal government.  
18 Now, if that's not fear, I don't know what fear  
19 is. Our federal government has been overreaching  
20 for decades into every state in the union.

21 And until we start standing up on issues  
22 like this, they will continue until we will not  
23 have another option. We have to be willing to  
24 sacrifice on some other issues, maybe some  
25 physical balance sheets for our state in order to

1 fight our federal government. We have to start  
2 taking a stand and saying we're going to do  
3 what's right, which has been mentioned earlier  
4 here today. Forget about what the consequences  
5 may be. Let's do what's right.

6 I'm a member of District 16 in West  
7 Fargo. West Fargo, Fargo, especially Fargo, is  
8 becoming -- and I welcome it -- a very diverse  
9 community. But, if we allow these subdistricts  
10 in 9 and 4, as was mentioned earlier also, this  
11 will become a trend within our state. And I  
12 could see where Fargo or I should say districts,  
13 I guess, in Cass County will become many  
14 subdistricts, maybe entire districts that are  
15 going to be racially motivated.

16 That is not what we want for our state.  
17 We are trying to build in every legislative  
18 session, and when we're back in our communities,  
19 racial, social unity. As members of North Dakota  
20 and members of the United States, we want to  
21 build that unity, not divide.

22 LIEUTENANT GOVERNOR SANFORD: Is there  
23 any further discussion? Any further discussion  
24 on Division A? A green vote keeps the language  
25 for the subdistricts. A red vote removes it.

1           Hearing none, the vote is on Division A.

2       Secretary will open the key.

3           Have all senators voted?

4           Any senator wish to change their vote?

5           Secretary will close the key, take the  
6       tally.

7           Tally reveals 26 ayes, 21 nays, 0  
8       absent, not voting. Division A passes.

9           Continuing on to Division B, the  
10       remainder of the bill, House Bill 1504. Any  
11       discussion?

12          Any discussion on Division B?

13          Hearing none, votes on Division B.

14       Secretary will open the key.

15          All senators will cast their vote.

16          Any senator wish to change their vote?

17          Secretary will close the key and take  
18       the tally.

19          Final tally on House Bill 1504, Division  
20       B is 43 ayes, 4 nays, 0 absent, not voting.

21          Returning to the 14th Order, House Bill  
22       1504. Any discussion on the remaining bill?

23          Senator Kannianen.

24          SENATOR KANNIANEN: Well, Mr. President,  
25       may we be on the 8th Order for purposes of a

1 floor amendment.

2 LIEUTENANT GOVERNOR SANFORD: Senate  
3 will be on the 8th Order.

4 SENATOR KANNIANEN: Mr. President, I  
5 move 21.1113.03001.

6 SENATOR VEDAA: Second.

7 LIEUTENANT GOVERNOR SANFORD: Is there a  
8 second over there? Second Vedaa.

9 Senator Kannianen.

10 SENATOR KANNIANEN: Mr. President, here  
11 it is. This amendment would task the  
12 redistricting committee throughout the rest of  
13 this interim to create subdistricts for all 47  
14 districts in the state and then report its  
15 recommendations to the 2023, the 68th Legislative  
16 Assembly in 2023.

17 Mr. President, I believe that again,  
18 subdistricting should be an all or nothing issue.  
19 It should be either all districts or no  
20 districts. And this body -- majority of this  
21 body has chosen to do it for two districts. So I  
22 believe that this same concept should be good  
23 enough for their district so that there isn't an  
24 unequal, as I see it, unequal representation to  
25 have some citizens represented by one of the 94

1 while other citizens are represented by two of  
2 the 94. A representation issue, a voting rights  
3 issue, that's the way I see it.

4 So again, adopting this amendment  
5 wouldn't delay things for this special session.  
6 It wouldn't create any extra work for the special  
7 session. And it wouldn't affect the 2022  
8 elections. It would be something that would be  
9 worked on in 2023, looking ahead to 2024, to  
10 create that equality across the board for the  
11 House of Representatives.

12 LIEUTENANT GOVERNOR SANFORD: Do all  
13 senators have a copy of the amendment?

14 Senator Holmberg.

15 SENATOR HOLMBERG: Mr. President, the  
16 introduction of this particular amendment is  
17 certainly appropriate. And what would happen is  
18 that we pass this, then the bill goes back to the  
19 interim -- or it goes back to the joint committee  
20 because there is a difference between the House  
21 and the Senate.

22 I would hope that if we were going to do  
23 something like this, we do it during the next  
24 biennium because, as the previous speaker said,  
25 it's not going to have an impact on the election

1 of 2022. I think we can wait and do it another  
2 time, if that's what the interest of the  
3 legislature is. So I would hope we vote not.

4 LIEUTENANT GOVERNOR SANFORD: Senator  
5 K. Roers.

6 SENATOR K. ROERS: Mr. President, will  
7 the carrier at the moment yield to a question?

8 LIEUTENANT GOVERNOR SANFORD: State your  
9 question.

10 SENATOR K. ROERS: I just want some  
11 clarification, just some clarifying questions.  
12 So number one, I'm understanding that it wouldn't  
13 take place until the 2024. Would that imply that  
14 all House members would then be up for election  
15 in 2024 if this was approved? And then probably  
16 before that question, is this just a study, the  
17 feasibility and desirability, or this is create  
18 the plan because it's happening?

19 LIEUTENANT GOVERNOR SANFORD: Senator  
20 Kannianen.

21 SENATOR KANNIANEN: Mr. President, yeah.  
22 It would -- the Senator from District 27 is  
23 correct. It would potentially create a situation  
24 where every member of the House of  
25 Representatives is up for re-election in 2024,



1 now, except, potentially, those in District 9,  
2 being an odd number district.

3 Now, as far as the requirement, you  
4 know, the committee still has the opportunity to  
5 -- being an interim committee, I mean, there  
6 would still be no requirement for the committee  
7 to release a favorable recommendation in the  
8 legislative management meetings. The way that  
9 the wording is that they'd, you know, my  
10 understanding, it sure doesn't require anybody to  
11 do anything, but if someone wants to correct me  
12 on that.

13 But the intent is to at least bring --  
14 keep it going and then develop a potential plan.  
15 It doesn't mean that those -- doing it have to  
16 vote in favor of that plan.

17 LIEUTENANT GOVERNOR SANFORD: Any  
18 further discussion on the amendment?

19 Hearing none, the question will be on  
20 the proposed Amendment 21.1113.03001 to House  
21 Bill 1504. All in favor of the amendment say  
22 aye.

23 (Ayes)

24 LIEUTENANT GOVERNOR SANFORD: Opposed,  
25 nay.

1 (Nays)

2 LIEUTENANT GOVERNOR SANFORD: Amendment  
3 fails.

4 Continuing on 14th Order, House Bill  
5 1504. Any further discussion?

6 Hearing none, questions on final passage  
7 of House Bill 1504. Secretary will open the key.

8 Senators will record their vote.

9 Have all senators voted?

10 Any senator wish to change their vote?

11 Secretary will close the key and take  
12 the tally.

13 Final tally in House Bill 1504 reveals  
14 40 ayes, 7 nays, 0 absent, not voting.

15 Bill is passed.

16 (END OF VIDEO FILE)

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1 CERTIFICATE OF TRANSCRIPTIONIST

2 I certify that the foregoing is a true  
3 and accurate transcript of the digital recording  
4 provided to me in this matter.

5 I do further certify that I am neither a  
6 relative, nor employee, nor attorney of any of  
7 the parties to this action, and that I am not  
8 financially interested in the action.

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Julie Thompson, CET-1036

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