

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

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8 TRANSCRIPT OF VIDEO-RECORDED

9 MEETING OF THE

10 REDISTRICTING COMMITTEE

11 STATE OF NORTH DAKOTA

12

13 AUGUST 26, 2021

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EXHIBIT

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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?

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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 29th 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

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

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

8 MALE: [inaudible]

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

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

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

23 Um, a committee member's attendance via Teams,
24 uh, must be approved by the committee chairman. And
25 this should be used sparingly, such as you're sick or

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1 something like that. Uh, members that are attending
2 remotely, uh, are required to keep their video on for
3 the duration of the meeting. So just be aware of that
4 if you are attending remotely.

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

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

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

25 Uh, each committee, as you all know, uh, has to

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1 submit their final report and any recommended
2 legislation to Legislative Management. Um, and then
3 the Legislative Management can accept or reject that
4 committee report.

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

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

17 Um, just a quick note, um, as I mentioned it'll
18 be delivered at a separate meeting. And so if you're
19 kind of wanting a little bit of a reminder of the
20 timelines or, you know, what was done, or our last
21 redistricting cycle, um, during that last
22 redistricting cycle, um, the redistricting committee
23 had, uh, seven meetings. Its first one was on June
24 16th. It got a much earlier start than we did.

25 Uh, and their last meeting was held on October

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1 11th and 12th of 2011. It was a two day meeting. Uh,
2 the Legislative Management approved, um, a portion of
3 the committee's final report relating to the
4 redistricting bill.

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

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

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

23 CHAIRMAN DEVLIN: Senator Holmberg?

24 MR. HOLMBERG: Uh, Emily, you might want to
25 mention that, uh, we don't have anything put down yet.

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

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

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

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

22 CHAIRMAN DEVLIN: Anything else from the
23 committee before we start on the first presentation?
24 Um, today we have Ben Williams from NCSL to speak to
25 us with an overview of redistricting. Uh, obviously

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1 we're the national experts on this subject.

2 And just on a personal item, I just want to --
3 they had a great meeting on this in Salt -- Salt Lake
4 City, I believe it was, that the, uh, several members
5 of this committee got to attend. I couldn't attend for
6 a health reason.

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

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

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

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

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

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

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

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

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1 to North Dakota.

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

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

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

25 Uh, in the 2010s, this was challenged by a group

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1 of plaintiffs in the state of Texas. Texas, like all
2 states, redistricted using total population numbers
3 reported to them by the US Census Bureau. And the
4 plaintiffs in that case argued that there's a
5 difference between equalizing based on persons and
6 equalizing based on voters.

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

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

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

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1 haven't, uh, heard anything about North Dakota's
2 plans.

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

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

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

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

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

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

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

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1 Virginia.

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

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

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

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

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

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

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

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

24 But when, uh, dorms closed down in mid-March
25 2020, and students were sent home, some students were

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

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

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

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

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

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

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

22 Colorado has a commission that has a lot of
23 redistricting deadlines. Some of them go very early
24 into the calendar. And one of the deadlines was called
25 the first draft map. And so the legis- -- uh, the

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1 commission drew the first draft map with the same
2 alternative data that Oklahoma and Illinois did. But
3 for all future maps they will be using 2020 census
4 data.

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

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

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

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

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

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

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

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

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

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

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

21 So the very first method of privacy protection
22 was called data suppression, which meant that the
23 Census Bureau would just take, uh, certain sections of
24 the reports that they would provide and they would
25 suppress them. So you wouldn't get information about

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1 certain census blocks. That information would just be
2 left blank. And that was their suppression
3 methodology.

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

14 What the Census Bureau would do is it would just
15 swap them. So the underlying demographic information,
16 for example their race, their ethnicity, their exact
17 age, if -- if the code were ever broken, you would
18 actually have someone else's record in certain, uh,
19 census blocks. You were swapped with someone else who
20 had identical total information, so it was four people
21 for four people, two adults, two children. But the
22 exact records would have been moved somewhere else
23 within the -- within those census blocks. And that was
24 sufficient to protect privacy in the 1990s through the
25 2010s.

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

9 So as you can see, uh, on the left hand side of
10 this chart we have the actual reported Census Bureau
11 numbers. And on the right side of the chart we have
12 the numbers after differential privacy has been
13 applied. So you see a 14 turns into a 13, 52 turns
14 into a 51, 53 turns into a 54, 47 turns into a 48.

15 And this chart, I think it's important to note
16 this -- this slide by the way comes from the US Census
17 Bureau. I took this straight from one of their slide
18 decks. But what's important to note is that the total
19 population at the state level is correct. You're
20 getting that number reported exactly as it was counted
21 by the Census Bureau.

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

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

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

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

23 But if you change a rural census block that goes
24 from four to five, that is a 25 percent increase in
25 the total population of that block, or from four to

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

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

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

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

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

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

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

25 That's not to say that plans with greater

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

10 CHAIRMAN DEVLIN: [inaudible] Senator Burckhard
11 [sic].

12 MR. SORVAAG: Uh, Mr. Chairman, uh, I -- I just
13 had a question. At 10 percent, I think I'm clear,
14 that's 5 percent, 5 percent, above 5 percent below. It
15 isn't the deviation is -- you can't go 10 percent up;
16 correct?

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

25 And the ideal is just calculated by total

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1 population of the state divided by the number of
2 districts you're drawing.

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

6 MR. WILLIAMS: Okay. So it is Senator Sorvaag.

7 CHAIRMAN DEVLIN: It is.

8 MR. WILLIAMS: I -- I saw that and I was like,
9 oh, they've switched seats on me. Okay. Good. Well
10 thank you, Senator Sorvaag, for the question.

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

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

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

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

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

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

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

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

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

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

25 They didn't say that these cases couldn't be

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

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

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

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

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1 candidate of choice.

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

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

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

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

25 CHAIRMAN DEVLIN: And Representative Nathe.

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

4 MR. WILLIAMS: Wonderful.

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

8 MR. WILLIAMS: Right.

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

14 MR. WILLIAMS: Right.

15 MR. NATHE: -- to grab all the Latinos, or some
16 of them, or --

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

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

25 MR. WILLIAMS: Sure. So I mean it's any minority

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1 group that the test that's on the -- the next slide
2 applies to. And I can get to this in a moment. But,
3 uh, there's no exact threshold requirement. It's -- it
4 requires just some analysis of the political makeup of
5 the -- of the region in particular that that district
6 is going to be in. And whether or not there is what's
7 known as white crossover voting, so are white voters
8 crossing over to vote with the minority candidate.

9 And the exact threshold can vary. And states that
10 have very high racial polarization, where the minority
11 group and the white majority do not vote like each
12 other at all, then you might need a much higher
13 minority threshold than you would in, for example, um,
14 the Atlanta metro area, where evidence has shown that
15 over this past decade, what used to be very richly
16 polarized, now white voters are crossing over and
17 voting for the -- the -- the -- the black candidate of
18 choice in those districts.

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

24 MR. NATHE: Thank you.

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

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

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

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

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

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1 politically cohesive. So just to give you an example,
2 there are -- there's a very diverse Latino community
3 in south Florida. And a lot of the Latino community,
4 they vary in how they vote. And there's a lot of
5 different national identities within what we could
6 call broadly Latino.

7 They don't necessarily vote together as a block
8 in any meaningful way. So they might not qualify for
9 section two protection, uh, because they don't satisfy
10 the second prong of Gingles. But if they did, then the
11 third question becomes, do the white voters that
12 surround them act as a block to thwart their ability
13 to elect their candidate of choice on a regular basis.

14 If a plaintiff can prove all three of those
15 preconditions, then the analysis the courts consider
16 shifts to the senate factors. The senate factors are a
17 totality of the circumstances analysis. This is not
18 like a checklist that plaintiffs have to prove every
19 single one of these elements. Just in general if they
20 can prove some of the senate factors, the courts have
21 found that sufficient.

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

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

3 MR. NATHE: [inaudible] thank you, Mr. Chairman.
4 So Ben, what if the minority doesn't have a candidate
5 or can't find a candidate? So the -- would that make
6 this district invalid then? I mean do we have to draw
7 it to make sure that they do have a candidate or --

8 MR. WILLIAMS: Chairman Devlin, Representative
9 Nathe, so the district does -- the candidate of choice
10 doesn't have to be a member of the minority community.
11 For example there's a Voting Rights Act district in --
12 in Memphis, Tennessee, that is represented by, um, a
13 white man. But he's the minority candidate of choice
14 according to the analyses that have been done.

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

22 So when the state, uh, or whoever is doing this
23 analysis, conducts the analysis, and they -- they run
24 through who it is, it usually comes to some evidence.
25 I've -- I've been told -- I've never conducted one of

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1 these analyses myself -- but I have been told that if
2 the threshold is usually 0.7. So if 70 percent of the
3 minority group is voting a certain way, that's sort of
4 the minimum threshold that courts have found in the
5 past, uh, to be permissible.

6 CHAIRMAN DEVLIN: Um, Representative Schauer.

7 MR. SCHAUER: Thank you, Mr. Chairman, uh, Mr.
8 Williams.

9 MR. WILLIAMS: Mm-hmm.

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

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

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

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

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

9 CHAIRMAN DEVLIN: Senator Holmberg has a
10 question.

11 MR. WILLIAMS: Mm-hmm.

12 MR. HOLMBERG: We of course in North Dakota have,
13 uh, a number of reservations.

14 MR. WILLIAMS: Sure.

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

18 MR. WILLIAMS: Mm-hmm.

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

25 MR. WILLIAMS: Right.

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1 MR. HOLMBERG: Uh, and I would just wonder your
2 observations about if we have districts that have a
3 native population of 8,000 or 6,000, uh, how thin does
4 the ice get if we decide not to do any subdistricting
5 in those areas, as South Dakota has in two
6 reservations. They have subdistricts in two
7 legislative districts.

8 How thin, if you're at 8,000, 9,000 people of a -
9 - of a 16,000 district, is the ice getting pretty
10 thin? And I would suggest maybe the 206 you might
11 agree that, eh, not a big --

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

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

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

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

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

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

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

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1 you're on pretty solid ice, uh, with that decision.
2 But as of this moment, this is -- this is the law as
3 it stands.

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

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

19 CHAIRMAN DEVLIN: Representative Nathe.

20 MR. NATHE: Thank you, Mr. Chairman. Ben, what,
21 uh, what's the definition of politically cohesive? How
22 do they determine that?

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

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

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

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

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

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

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

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

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

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

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1 this at all. Uh, but I just wanted to include it
2 because I was asked to cover the Voting Rights Act in
3 full. And that is that this is a remedy, uh, available
4 by courts who find that a state violated the 14th of
5 15th amendments to the US Constitution.

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

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

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

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1 Clinton was the governor of Arkansas at the time. And,
2 uh, in that case the court found that the state would
3 have to preclear its redistricting plan in 1991 only.
4 And that was the scope of their section three bail in.

5 So after they got their redistricting plan
6 precleared by the Department of Justice in 1991,
7 preclearance went away and they were not a -- in a
8 preclearance state anymore. So it's much more limited
9 in scope. It's very, very rare. But since section five
10 of the Voting Rights Act was struck down in 2013,
11 which is on my next slide, uh, this is becoming a more
12 common remedy that plaintiffs ask for.

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

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

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

4 The Supreme Court clarified later over time that
5 that also includes redistricting plans as well, as a
6 type of election law. The US Supreme Court in 2013
7 struck down the -- that coverage formula for being not
8 tailored to present circumstances. The Supreme Court
9 said that the formula as it existed was drafted in
10 1965. It had not been changed since 1965.

11 And while section four is in theory a
12 permissible, uh, federal exercise of power, uh,
13 congress needs to keep that formula updated for
14 present circumstances on a fairly regular basis
15 because it's a very intrusive invasion of the
16 principles of federalism that are present in the
17 United States Constitution.

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

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1 that includes a reauthorization of section four.

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

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

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

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

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1 County in California, and Orange County.

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

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

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

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

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

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

15 And unlike in federal courts where you have some
16 standardization, in 30 different state constitutions,
17 with 30 different state supreme courts, interpreting
18 30 different state founding documents differently,
19 it's very reasonable to presume that the two states
20 that happened to rule this way, rule -- ruled this way
21 and the others.

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

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

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

15 And it's a common traditional principle. It's in
16 40 of the 50 states. I've given you two of the most
17 common ways to measure it. There are actually over 40
18 peer reviewed different compactness measures that you
19 could in theory use. But that seems like way too many.
20 And most redistricting software, uh, only includes a
21 handful, including these two, Reock and Polsby-Popper.

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

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1 yellow rectangular district. And it has two different
2 scores listed, one under Polsby-Popper and one under
3 Reock.

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

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

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

25 Because you could walk from all parts of the

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

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

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

21 And the Kentucky Supreme Court has said, we'll
22 consider a district to be contiguous if that part of
23 Kentucky is connected to the other part of Kentucky
24 you see on the screen. So you can't attach that random
25 part to Louisville or Lexington, but you can attach it

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1 to the part of Kentucky that is most proximate. And
2 that's in just another scenario where this can become
3 an issue.

4 Another criterion, it's not in the North Dakota
5 constitution, but, uh, Ms. Thompson sent me your
6 guidelines very helpfully, and I saw that it was in
7 2001 and 2011 in your guidelines that the committees
8 adopted then, which is preserving political
9 subdivisions. And so, uh, you have the general
10 application on the left hand side, which is it doesn't
11 specify exactly what political subdivisions have to be
12 kept together.

13 It could be cities, counties, school districts.
14 45 states have this. It's a stand in for communities
15 of interest sometimes. If you think about it, there
16 are parts of the country where county identity is
17 really important. And that's the same thing as a
18 community of interest. Like I'm -- I'm from Jefferson
19 County. I'm from Jackson County. That's my county
20 identity.

21 There are some specific applications, uh, to
22 counties. I've given you two. One of them is from
23 Idaho. The Idaho Supreme Court polices their whole
24 county rule very forcefully. In fact the Idaho Supreme
25 Court has struck down a legislative plan because a

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1 plaintiff was able to prove that you could split one
2 fewer county in redistricting. Uh, and so they -- it's
3 very rigidly policed. So in Idaho they keep as many
4 counties together as possible. And in North Carolina
5 there are sometimes these judicial rules that pop up.

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

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

17 CHAIRMAN DEVLIN: I believe Senator Bekkedahl has
18 a question.

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

25 MR. WILLIAMS: Mm-hmm.

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1 MR. BEKKEDAHL: Uh --

2

3 [202108260956_Redistricting Committee_21573 pt2]

4 MR. BEKKEDAHL: -- your recommendation would be
5 to keep that whole if we can. And secondly, um, if we
6 have a county that could be split into two districts,
7 but stay with -- stay within the county, but some
8 people want to split that up, what would be the case
9 there?

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

17 As you know, when you go through redistricting,
18 there are sometimes cascading effects on what decision
19 you make at one part of the state as you go across.
20 But presuming that that's permissible and that's
21 something that the state wanted to do, uh, and that
22 was a criterion the state was following, then, uh,
23 don't -- I see why it wouldn't make sense to keep it
24 together.

25 And then in terms of two counties, two districts

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

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

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

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

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

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

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

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

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

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

14 Um, and then 17 states have a prohibition on
15 favoring or disfavoring an incumbent party or
16 candidate in redistricting. Um, this is what NCSL
17 calls an emerging criteria. Because it is relatively
18 new. It wasn't something that you saw very often 30 or
19 40 years ago in redistricting. But it is becoming more
20 common.

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

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

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

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

14 So in Ohio you have a state where if you look at
15 the statewide, uh, political, uh, elections from the
16 2020s, it's about 54/46 republican democrat makeup in
17 various statewide elections that you look at, uh, with
18 republicans having a roughly eight point advantage
19 statewide. Under this rule, the state of Ohio would be
20 required to draw in a 100 member chamber, a chamber
21 that elected roughly 54 republicans and 46 democrats.
22 Um, and that's the proportionality provision.

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

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

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

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

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

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1 through the federal courts.

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

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

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

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

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

20 There -- there it is. There's the red book.
21 Emily's got hers. So, um, it's a wonderful resource.
22 And legislators tell us all the time that they find it
23 really helpful in, uh, learning what's changed in
24 redistricting since the last time that they did it.
25 But with that, I'm happy to take any further

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1 questions. And thanks very much for bringing me up
2 here.

3 CHAIRMAN DEVLIN: Questions. Representative
4 Schauer.

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

10 Are those factors, um, met by individuals that
11 want the subdistricts or those who do not want the
12 subdistricts? In other words, if I want the
13 subdistricts, do I have to prove all of these factors
14 that this has happened? And then how do you do that?

15 MR. WILLIAMS: So it's -- it's not -- it's not
16 the -- I don't know if there's a specific application
17 to subdistricting. I will just be forthright with you
18 on there. In general to get a remedy at all, you do
19 not have to prove all of these factors. It's a
20 totality of the circumstances analysis. And it's up to
21 the court to decide how many of the senate factors are
22 sufficient.

23 Congress provided no guidance on exactly how
24 many. It has provided a list that courts could look
25 at. So this is the list from the senate report, and

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1 when the Voting Rights Act was reauthorized in 1982.
2 And in general, um, you know, it's not like a majority
3 are required. It's not like, you know, any particular
4 one is more important than another. It's just a
5 holistic answer.

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

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

17 CHAIRMAN DEVLIN: Representative Schauer.

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

23 What is your analysis on this? And I know it
24 really comes down to the accuracy of the census. And I
25 guess it is what it is. But can you explain a little

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1 bit how they came up with this whole idea?

2 MR. WILLIAMS: Sure. Mr. Chairman, Representative
3 Schauer, so the -- the -- the, um, methodology --
4 differential privacy is not a methodology that was
5 created by the Census Bureau for this purpose. It's a
6 method of statistical, uh, that's used in statistics
7 in other circumstances.

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

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

20 They would say that this is necessary because if
21 you compared the data that we release with the
22 swapping to the L2 data, that's so sophisticated that
23 you could crack the code and figure out what every
24 person in the United States responded. And because
25 they say of their dual mandates, they adopted this

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1 differential privacy method.

2 I would not be surprised if there's litigation,
3 uh, around the inaccuracies and the noise. I mean the
4 Census Bureau announced itself on its own webinar
5 introducing the data that states should it use the
6 block data for redistricting, they should go up to the
7 block group because there's more accuracy there than
8 at the individual block level.

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

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

22 But it is a big headache. And, um, the states
23 that are -- you're the ones who have to deal with
24 this. And, um, I wish I had a better answer for you on
25 what can be done. This is actually something my boss

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1 and I were talking about. We're like, should we even
2 talk about differential privacy if our answer is -- if
3 there's not much that we can help with.

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

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

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

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

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1 date, you could know whatever the Census Bureau
2 reported against whatever the number your department
3 of corrections reported. And you could have some
4 comparison with discrete examples.

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

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

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

19 MR. NATHE: Yeah. Thank you, Mr. Chairman. Ben,
20 you alluded earlier to the Ohio lawsuit --

21 MR. WILLIAMS: Mm-hmm.

22 MR. NATHE: -- uh, moving the release up to, uh,
23 August 16th.

24 MR. WILLIAMS: Correct.

25 MR. NATHE: In Salt Lake they were talking about

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1 originally September 30, as you said.

2 MR. WILLIAMS: Yes.

3 MR. NATHE: They're still going to release or
4 have their formal rollout on September 30? Now are
5 those numbers going to be different than what we just
6 received? Or will they be updated come September 30?

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

14 And the best that we can figure out is if the
15 state supreme court hasn't said anything, it's really
16 up to the legislation to decide what the trigger date
17 is. So that -- that's up to you. But the -- the August
18 16th data that came out, um, and that actually came
19 out on August 12th, that will be identical to the
20 September 30th data.

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

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1 and 2001, and 1991, and so on.

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

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

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

14 MR. WILLIAMS: Sure.

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

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

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

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

6 CHAIRMAN DEVLIN: Senator Bekkedahl.

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

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

13 MR. BEKKEDAHL: Okay.

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

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

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1 MR. BEKKEDAH: So we have in our map to program
2 we have, we have a county layer, we have a voting
3 district layer, and then we have a census block layer.

4 MR. WILLIAMS: Right.

5 MR. BEKKEDAH: So the census block layer is the
6 most detailed. We'll -- we'll -- we'll be able to have
7 to use that. Is that correct?

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

12 MR. BEKKEDAH: Has the most noise in it? Okay.

13 MR. WILLIAMS: Correct.

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

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

22 MR. BEKKEDAH: It's complicated enough. Thank
23 you.

24 MR. WILLIAMS: Yeah.

25 CHAIRMAN DEVLIN: Emily?

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

6 MR. WILLIAMS: Sure.

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

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

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

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

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

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

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

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

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

8 CHAIRMAN DEVLIN: Representative Headland.

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

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

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

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1 CHAIRMAN DEVLIN: Representative Lefor.

2 MR. LEFOR: Thank you, Mr. Chairman. So if I
3 understand you correctly that, uh, we're using census
4 block right now.

5 MR. WILLIAMS: Correct.

6 MR. LEFOR: And we don't have census block group.

7 MR. WILLIAMS: Correct.

8 MR. LEFOR: Is -- am I understanding correctly
9 that census block group would be more accurate? And
10 that's the first part of my question. The second part
11 is, do you expect this information to be more accurate
12 September 30th as far as those different levels,
13 county census block, and so forth? What should we be
14 using?

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

23 There are block groups that is another level of
24 geography that the Census Bureau, uh, can report out.
25 I don't have any knowledge about whether or not that's

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1 available to be put into Maptitude. Uh, that's
2 something you'd have to ask your data person or your
3 software vendor, uh, to get an answer on.

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

10 CHAIRMAN DEVLIN: Further questions [inaudible]
11 Representative Holmberg.

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

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

17 MR. WILLIAMS: Sure.

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

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

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

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

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

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

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

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1 that would be so.

2 MR. HOLMBERG: And I mean we can talk about the -
3 - the noise, etc. But aren't we just kind of looking
4 at how many angels can fit on the head of a pin,
5 because it's not going to make any difference at the
6 end of the day.

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

9 CHAIRMAN DEVLIN: Emily, you have some insight.

10 MS. THOMPSON: Uh, thank you, uh, Mr. Chairman.
11 Just to mention, the, uh, templates that we pushed out
12 are currently the census block. But we can, um, add
13 that additional layer of the census block group to
14 your maps. So we can add that into your maps should we
15 want to see those larger, uh, combination of census
16 blocks.

17 CHAIRMAN DEVLIN: Senator Bekkedahl.

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

24 So maybe the census block group would help us in
25 that way. We're dealing about going from maybe one in

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1 that census block group to maybe 10. So, but in terms
2 of drawing up the maps, it might be a time saver.

3 MS. THOMPSON: I would be happy to, you know,
4 work with those legislators with the computers to make
5 sure they're set up to see those, uh, block groups.

6 CHAIRMAN DEVLIN: Other questions for Mr.
7 Williams? I see none. Thank you. Are you going to be
8 around long? Or when is your plane?

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

16 CHAIRMAN DEVLIN: Well I'm sure, Ben, that there
17 will be some questions for NCSL. Because you've been
18 so great to work with in the years I've been involved
19 with this. And the only thing I would tell the
20 committee, if you -- if you got some specific
21 questions, you might want to funnel them through
22 legislative council. Because other people might have
23 the same one. And then we can all get the question and
24 the answer. And I know that the council staff would be
25 more than willing to do that. So.

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1 MR. WILLIAMS: Absolutely. That would work, Mr.
2 Chairman. My contact information is on this slide. I'd
3 be happy to answer any of your questions at any time.
4 Research requests is our bread and butter. So happy to
5 help however I can over the coming weeks and months.
6 Thank you for having me.

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

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

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

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

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

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

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

23 This date was simply selected because back when
24 the bill was being drafted, we were still a little
25 uncertain of when we would be getting the census

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1 information. So we wanted to ensure that if it was
2 really, really late, we still had a little extra time
3 to, uh, get that plan out.

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

9 And specific to North Dakota, I'm going to go
10 through the, uh, requirements of the constitution in
11 the next couple slides here. Um, and our constitution
12 requires that membership of the senate has to range
13 anywhere between 40 and 54 members. Uh, members of the
14 house, that total must range anywhere between 80 and
15 108 members.

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

24 Uh, next, uh, districts ascertained after the
25 1990 federal census, um, are required to continue

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1 until the adjournment of the first regular session
2 after each federal, uh, census, or until changed by
3 law. Uh, the legislative assembly is required to
4 establish by law a procedure whereby half of the
5 members of the senate and half of the members of the
6 house, as nearly as practicable, are elected
7 biannually.

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

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

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

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

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

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

24 MR. SORVAAG: Yeah, Mr. Chairman, Emily, just to
25 expand on that, so everything with -- all the

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1 districts would have to stay in that [inaudible] 8.3
2 [inaudible]. So if that bottom one was 4.1, top 4.2,
3 all the others would be in the middle of that -- I
4 just want to make sure I'm correct in there. So the
5 next got to be 4 -- less than 4.1 [inaudible]

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

13 So any deviation in any district between the
14 highest and lowest populations would fall between that
15 4.2 and 4.1.

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

18 MS. THOMPSON: Correct. Absolutely.

19 MR. SORVAAG: It would be no limitation that --

20 MS. THOMPSON: The only thing --

21 MR. SORVAAG: That's just the ceiling and the
22 floor.

23 MS. THOMPSON: Yep. You're just taking the
24 highest population district and the lowest population
25 district. Those are the only two numbers you're adding

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1 together. Yes.

2 MR. HOLMBERG: Mr. Chairman?

3 CHAIRMAN DEVLIN: Senator Holmberg.

4 MR. HOLMBERG: At the end of the day, they could
5 be up to 10 because that number can go up like this or
6 down like this, as long as the distance between the
7 top and the bottom falls within that 10 percent. So
8 you could have your biggest district could be 5.2
9 over, and you could have a -- a lower district that's
10 4.28. Yeah.

11 MS. THOMPSON: Correct. So you could have, you
12 know, 10 districts that are all 5.2. And then maybe
13 your bottom five districts are all, you know, 1.1, or
14 something along those lines. Um, also in, uh, the
15 North Dakota century code and statute, uh, we have
16 section 540301.13, which provides for the staggering
17 of terms. Um, that's outlined in more detail in your
18 memo.

19 This would be something we'd, uh, likely want to
20 include in our bill. Because you'll notice the dates
21 in there are back in 2012, 2014, and four year terms
22 from those dates. So that we would also want to, um,
23 likely address in our redistricting bill.

24 Uh, section 16.10102.2, this outlines procedures
25 for special elections and allows the governor to call

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1 a special election to be held 90 days after the call
2 if a referendum petition has been submitted to refer a
3 measure or part of a measure that establishes, um, a
4 legislative redistricting plan.

5 Uh, redistricting if it becomes effective after
6 the organization of political parties, and before the
7 primary or a general election, uh, section 16.10317
8 requires political parties in those newly established
9 precincts and districts to reorganize as closely as
10 possible in conformance with that, um, election
11 chapter 16.103, and as an order to comply with those
12 primary election filing deadlines.

13 CHAIRMAN DEVLIN: Emily, if I may interrupt --

14 MS. THOMPSON: Yes.

15 CHAIRMAN DEVLIN: Representative Nathe.

16 MR. NATHE: Thank you, Mr. Chairman. Emily, so
17 say, uh, we get the final plan on the floor in
18 November and we pass it, is that effective
19 immediately? Or is there a certain date? Or when --
20 when does the plan take effect once we've approved it?

21 MS. THOMPSON: Yes. Uh, Mr. Chairman, uh,
22 Representative Nathe, it depends, um, in part on how
23 we are reconvened. So if the governor calls a special
24 session, then if you pass a bill during a special
25 session, the, uh, basic rule for that is every bill

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1 passed during a special session has to have an
2 effective date. And then the bill will just take
3 effect on the date specified in the bill.

4 If instead of using a special session, uh, let's
5 say the legislative assembly decided to reconvene and
6 use those four days we have left, so we wouldn't be
7 called back for special session, we would just simply
8 reconvene to use your days. Well then there's
9 different effective date rules for that. I believe
10 it's 90 days after the passage of the bill it will go
11 into effect.

12 If you wanted it to go into effect say in a week
13 after you passed it, then it would just be like any
14 other, um, session for the emergency clause rules.
15 You'd have to put, um, an emergency clause. And it
16 would have to get that required vote total.

17 Uh, next part of this presentation simply covers
18 the redistricting history specific to North Dakota.
19 Uh, 1931 through '62, the legislative assembly did not
20 redistricting itself, uh, despite the requirement in
21 the constitution of the state for the assembly to
22 apportion itself after each federal decennial census.

23 Uh, 1963 through '75, I just put nearly constant
24 state of litigation. If you want more information on
25 that, I suggest go through your background memo. It

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1 kind of details all the litigation that was involved
2 during that period.

3 Uh, 1981, uh, the state got a little more back on
4 track with redistricting. And the state, uh, did have
5 a 12 member, uh, interim committee. They used a
6 consultant to assist in developing a 53 district plan.
7 Again remember, the constitution has 40 through 54
8 districts as the allowable range.

9 So at that time we used a 53 district plan. Um,
10 that was adopted during a reconvened session of the
11 legislative assembly in November 1981. You'll notice
12 it does say a reconvened session. This was not a
13 special session. This was actually the first time, um,
14 the state did use a reconvened session. And that was
15 for this purpose.

16 Uh, 1991, a decade later, um, a 16 member
17 committee, uh, also contracted with a consultant for
18 different computer related services. And in that, uh,
19 decade, they developed a 49 district plan. And that
20 plan was adopted during a special session. And that
21 was in November 1991. You'll see all of the
22 redistricting plans were adopted during special
23 sessions after 1981.

24 In 2001, uh, it was -- redistricting was
25 completed by a 15 member interim committee. And at

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1 this time we switched from using consultants to more
2 of what we do now. We, uh, used laptops with
3 redistricting software. And at that time, uh, it was a
4 47 district plan that was developed. That plan was
5 adopted during special session again in November of
6 2001.

7 Uh, the last cycle in, uh, 2011, was done by a 16
8 member interim committee who used again those laptops
9 with the redistricting software, similar to what you
10 have now. We used Maptitude at that time as well. And
11 that was a 47 district plan again. That plan was
12 adopted during a special session in November of 2011.

13 Uh, next we're going to cover a little bit --

14 MALE: Mr. Chairman?

15 CHAIRMAN DEVLIN: Senator?

16 MALE: Uh, it's -- it's digging too deep, but you
17 might, you know, question the fact that the North
18 Dakota didn't do anything from '31 until, uh, the
19 '70s. But we had to do some research on this. And we
20 made up for it in the teens because the legislature
21 redistricted in 1911, 1913, 1915, 1917, 1919. They had
22 a lot of fun. That was also during the NPL, uh, season
23 that they -- they caught up. So they built up a
24 cushion that they could use during the '40s and '50s
25 and '60s, I guess.

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1 [talking over each other]

2 MALE: I wasn't on the committee. Martinson [ph]
3 was.

4 CHAIRMAN DEVLIN: Go ahead, Emily.
5 [talking over each other]

6 MS. THOMPSON: So next up again we have, uh, uh,
7 United States constitutional and federal law. And
8 again this was covered, um, in, uh, quite a few of Mr.
9 Williams' slides. He touched on this as well. So I'll
10 just quickly review here.

11 Uh, 14th amendment of the United States
12 Constitution passed back in 1868. Uh, this, uh, state
13 said individuals are guaranteed equal protections
14 under the law. The 15th amendment to the United States
15 Constitution, again following in 1870, uh, provides
16 the right of citizens of the United States to vote,
17 shall not be denied or abridged by the United States
18 or by any state on account of race, color, or previous
19 condition of servitude.

20 Uh, the Supreme Court in, uh, 1962 in Baker v.
21 Carr, determined that the courts would provide relief
22 in state legislative redistricting cases when there
23 are those constitutional violations either of the 14th
24 or 15th amendment. Uh, following 1962, the Voting
25 Rights Act was enacted in 1965. This was enacted as a

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1 tool to essentially aid in the enforcement of the 14th
2 and 15th amendments.

3 Those amendments were in place prohibiting those
4 discriminatory practices, but there wasn't really any
5 teeth to enforce it. So that was more or less the
6 purpose of the Voting Rights Act. This act banned the
7 use of literacy tests in voting. And also provided
8 federal oversight of voter registration in areas where
9 less than 50 percent of the minority population have
10 registered to vote.

11 Next we're going to look at some case law talking
12 about population equality. Um, Reynolds v. Sims, 1964,
13 uh, the main case here. Uh, the equal protection
14 clause of the 14th amendment requires states to
15 establish legislative districts that are substantially
16 equal in population. And that is one of our
17 requirements as well.

18 Uh, both houses of a bicameral legislature must
19 be apportioned on a population basis. And again
20 overall range is that most commonly used measure of
21 population equality. And that we covered before in our
22 example.

23 Uh, 10 percent was mentioned as kind of that, uh,
24 benchmark range that we're looking at with overall
25 range. So just to summarize, if a legislative

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1 redistricting plan with an overall range of more than
2 10 percent is challenged, uh, the state has a burden
3 to demonstrate the plan is necessary to implement a
4 rational state policy, and that the plan doesn't
5 dilute or eliminate the voting strength of any
6 particular group of citizens.

7 And as again Mr. Williams mentioned, the only
8 real rational state policy that has succeeded in
9 justifying a deviation of more than 10 percent has
10 been preserving the boundaries of political
11 subdivisions.

12 Um, if a plan with an overall range of, uh, less
13 than 10 percent is presented, this may be subject to
14 challenge if the justifications for that deviation is
15 not deemed legitimate, and the plans, um, with lower
16 deviations had been considered. So it's not a -- a
17 total safety net if it's less than 10 percent. You can
18 still be subject to challenge.

19 Rucho v. Common Cause, again this was, uh,
20 touched on by Mr. Williams, a 2019 case. Uh, in this
21 case the question of whether partisan gerrymandering
22 is justiciable by the Supreme Court, uh, was settled.
23 In this case they stated, uh, partisan gerrymandering
24 claims present political questions that are beyond the
25 reach of the federal courts. So that kind of closed

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1 the door here.

2 Uh, the court further stated the, uh, US
3 Constitution supplies no objective measure for
4 assessing whether a districting map treats a political
5 party fairly. However, a little caveat here, the court
6 did note that states may look to their own state
7 statutes and their constitutions for guidance and
8 standards to apply in those partisan gerrymandering
9 cases. So while you might not be subject to that at a
10 federal court level, if you're going down to state
11 court, you have to be mindful of it.

12 Uh, also under our federal law section, we're
13 looking at multimember districts and racial or
14 language minorities. Uh, in regard to multimember
15 districts, North Dakota is one of 10 states that have
16 multimember districts. We have currently one senator
17 and two representatives in each of our 47 districts.

18 Uh, also in this area we're looking at section
19 two of the federal Voting Rights Act, which Mr.
20 Williams also, uh, touched on. And this prohibits a
21 state or political subdivision from imposing voter
22 qualifications, standards, practices, or procedures,
23 that result in the denial or abridgement of a
24 citizen's right to vote on account of race, color, or
25 status as a member of a language minority group.

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1 And I went ahead and just provided the definition
2 in case you're wondering what a language minority
3 group is defined as. Uh, this is defined as persons
4 who are American Indian, uh, Asian American, Alaska
5 native, or of Spanish heritage.

6 Uh, continuing with multimember districts and,
7 uh, racial or language minorities, we have Thornburg
8 v. Gingles again, we touched on in the last
9 presentation. That was in 1986. And this case
10 established that a minority group that's challenging a
11 redistricting plan, uh, initially what they must prove
12 is that the minority is sufficiently large and
13 geographically compact to constitute a minority in a
14 single member district, the minority is politically
15 cohesive, and in the absence of special circumstances,
16 uh, block voting by the majority usually defeats the
17 minority's preferred candidate.

18 Uh, to prove block voting by the majority usually
19 defeats that minority group, uh, the use of
20 statistical evidence is necessary. And that was
21 touched on a little bit in our last presentation as
22 well.

23 And, uh, Shaw v. Reno in 1993, uh, this
24 determined that if race was not the predominant factor
25 in creating the district, uh, a racial gerrymander

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1 challenge is not likely to be successful. If race was
2 the predominant factor in creating a district, the
3 district will be evaluated under a test of strict
4 scrutiny, where it must be shown that the district was
5 narrowly tailored to serve a compelling, uh, state
6 interest.

7 Uh -- excuse me, uh, common types of
8 gerrymandering, we have, uh, listed below, are packing
9 and cracking. You may have, uh, heard this reference
10 before. Uh, packing essentially refers to
11 overconcentrating a minority group into one or only a
12 few districts. Uh, so for instance, um, drawing lines
13 in possibly odd shapes in order to pack a minority
14 group into a single district of say, you know, 90
15 percent of that minority group, and thereby
16 essentially wasting any votes over a simple majority
17 in order to dilute the minority votes in those
18 neighboring districts. They're all packed into one
19 district.

20 Um, cracking, again this is splitting a
21 geographically compact minority group into multiple
22 districts, in order to dilute the voting power of that
23 mi- -- mor- -- minority groups, kind of the opposite.
24 So for instance here, you might take, um, an area that
25 could have compactly been drawn to consist of say 60

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1 percent of a minority group. And that would be
2 possibly split into say three separate districts. So
3 then you'd only have 20 percent minority in three
4 separate districts. That would be cracking to the
5 vote, uh, dilute that voting power.

6 CHAIRMAN DEVLIN: Excuse me, Emily.
7 Representative Monson.

8 MR. MONSON: Thank you, Mr. Chairman. So Emily,
9 looking at those two definitions, how can we win? No
10 matter what we pick, I mean somebody could take
11 offense. They could say, whoa, you're packing it
12 because you're keeping the reservation pretty much
13 whole. So now we're packing it. And they might -- and
14 somebody else might say, oh no, you're cracking it.

15 So how -- how do you -- how do you balance this,
16 packing and cracking?

17 MS. THOMPSON: Uh, Mr. Chairman, uh,
18 Representative Monson, yes, it -- there are, uh,
19 several layers of analysis. This is very high level.
20 But if you're looking at, uh, kind of that test there,
21 was race a predominant factor. So for instance in
22 your example if you were looking at say the
23 reservation, well you're also in that case having an
24 area that's more of a political subdivision boundary.
25 You have reservation boundaries.

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1 And so if one of the factors that you're
2 prioritizing compact, uh, contiguous, preservation of
3 boundaries, if you're drawing that district primarily
4 to preserve the boundaries of a reservation by not
5 splitting that reservation, well that's legitimate.
6 You could argue that your predominant reason isn't,
7 you know, a race or language minority based. You're
8 preserving those district boundaries.

9 So there's kind of a balancing test you have to
10 look at those circumstances. If it was only because of
11 race, no other factors, compact, contiguous, you know,
12 uh, preserving district boundaries, then you're going
13 to have a -- a harder time there.

14 CHAIRMAN DEVLIN: Senator Holmberg.

15 MR. HOLMBERG: Um, and -- one of the slides that
16 we had earlier about, uh, talked about racially
17 polarized voting in the state. And if you
18 theoretically had an area that was, uh, a native
19 reservation, and because of its loss of population,
20 you all of a sudden have to add -- and that particular
21 county votes predominantly, overwhelmingly
22 predominantly one way, and the counties all around it,
23 uh, vote a different way, uh, partisan-wise.

24 Uh, if you add a large -- a number of those
25 people from outside what was the original county, uh,

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1 does that -- does that not lead us to have to discuss
2 whether or not we should be doing a division of, um,
3 house districts for example, because, uh, of that
4 factor regarding polarized.

5 Well you can show that there was polarized
6 [inaudible] and you can show they voted this way,
7 these people voted that way. And are we doing
8 something that dilutes the native population vote, uh,
9 which would I think be very thin ice. And, uh, yeah,
10 so you can say, oh, and that's it, but.

11 MALE: [inaudible]

12 MR. HOLMBERG: A couple instances of the state
13 where that might be an issue.

14 MS. THOMPSON: And also if you think as well, if
15 you had a reservation in the state that say you had a
16 population of 30,000, you would have to split that as
17 well. Because it would be over the ideal district
18 size, which is one of those predominant balancing
19 factors, so.

20 Sorry? Regard to federal law, continuing on here,
21 uh, there have been these traditional districting
22 principles defined. Uh, these are included. The -- the
23 six that are included here are compactness,
24 contiguity, preservation of political subdivision
25 boundaries, preservation of communities of interest,

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1 uh, preservation of cores of prior districts, and
2 protection of incumbents.

3 And so the next slides I'm just going to walk
4 through each of these six items to give you kind of
5 some visual examples of what this looks like and some
6 further description. So in this slide here we're
7 looking at compactness. Districts must be
8 geographically compact. And here we have an example
9 of, uh, Rolette County, which is the current District
10 9. This is a picture of our current district map.

11 And you can see, uh, District 9 is kind of our --
12 our star county right now as far as these
13 constitutional tests. It's very, very compact. It's a
14 nice square shape. So I have a little green checkmark.
15 This is a -- a gold star district in terms of
16 compactness.

17 Uh, if you look at the second picture, which kind
18 of resembles a lake or a river, um, this is actually
19 the third congressional district of Florida drawn back
20 in 1992. Uh, of course this was later struck down
21 because as you can see this is nowhere near compact
22 with this snaking blue, uh, picture they have up here.

23 Uh, next factor, contiguity. Uh, districts must
24 be consist -- must consist of a single shape with a
25 connected boundary. Again looking at District 9,

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1 Rolette County, it's one single boundary. It consists
2 of just one county. If you were to, uh, redistrict,
3 because as you can see in your slide here, the
4 population of Rolette County after the 2020 census is
5 now 12,187. So that would not meet our ideal district
6 size of about 16.5 thousand.

7 So if you wanted to remedy that to get that up to
8 the correct population size, you would not want to do
9 it in the manner you see in the -- the second picture
10 here with that red X. Adding just to kind of a chunk
11 of area to get your population up to ideal district
12 size off to the side there, that's not contiguous. It
13 doesn't touch. You can't travel from one area to the
14 next. So that's what you would want to avoid. That's
15 what you're looking at when you're looking at
16 contiguity.

17 Uh, the third item here, preservation of
18 political subdivision boundaries, uh, this is, uh,
19 essentially avoiding excessively splitting political
20 subdivision boundaries. So again, our -- our nice
21 example of District 9, Rolette County, you're not
22 splitting any political subdivision boundaries, it's
23 right on the -- the county line, so it's all intact.

24 Uh, the second picture though you see on the
25 right, um, this is of the 7th congressional district

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1 of Pennsylvania from the state's, uh, 2011
2 congressional plan. That plan again, that blue area
3 you see there has those odd and winding boundaries,
4 and actually consists of portions of five different
5 counties.

6 So as you can guess from that little exhibit
7 sticker you see down on the -- the right hand corner
8 of that picture, the plan was challenged in court. Uh,
9 the Pennsylvania Supreme Court held that the map, uh,
10 was unconstitutional in part due to that excessive
11 splitting of local jurisdiction boundaries. Uh, the
12 court also did replace that map with a plan drawn by a
13 special master. So that one did not hold up.

14 Uh, the fourth item, preservation of communities
15 of interest, uh, 26 states take this, uh, factor into
16 account. Um, communities of interest, as Mr. Williams
17 mentioned, is kind of defined in a lot of different
18 ways, sometimes state to state, but a general broad
19 definition you can see here is defined as
20 neighborhoods, communities, groups of individuals, who
21 would more or less benefit from being retained in a
22 single district due to either, you know, shared
23 interests, policy concerns, or characteristics. I know
24 socioeconomic was mentioned in the last presentation.

25 Uh, these are often self-defined by the members

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1 of the community such as the Alaskan fishers he
2 mentioned. Uh, race and ethnicity can play a role in
3 defining a community of interest. But it can't be the
4 sole defining characteristic. There has to be
5 something more.

6 Uh, preservation of core or prior districts, 11
7 states require, uh, prior districts to be maintained
8 to the extent possible of course after adjusting for
9 those population deviations. And that is in order to
10 maintain a continuity of representation. One approach
11 to preserving cores of prior districts is starting
12 with the existing boundary line, so to be starting
13 with the 2011 map, rather than just a blank map of the
14 state. And then proceeding to just adjust those
15 boundaries to meet those population, uh, quality
16 requirements.

17 Uh, lastly protection of incumbents. Uh, this is
18 less commonly used. 12 states, uh, require drafters to
19 avoid pairing incumbents. Um, this is essentially
20 placing two or more incumbents in a single district,
21 which leads to one incumbent either having to move, or
22 retired, or be defeated. Uh, and the policy against,
23 uh, this here of pairing incumbents, it aims to
24 promote, uh, again continuity of representation.

25 And that leads us to our final slide which is

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1 your background memo as well. And this is something
2 that we look at in all of our background memos. You
3 know, what should the committee possibly address, how
4 would you like to proceed. So these are items that the
5 committee might want to con- -- um, consider.

6 Uh, first, what parameters should be used, um,
7 should be followed in preparing plans. Again when you
8 go back to the main list here, compact, contiguous,
9 those are in the constitution. We have to follow
10 those. Also, um, equal population, that's something
11 statutory. And the Supreme Court, uh, constitutional
12 as well. So we have to follow that.

13 But three, four, five, and six, those are kind of
14 optional in North Dakota. That's something that
15 generally the redistricting committee will consider
16 whether or not they want to apply any of these, uh,
17 policies or principles when drawing their maps. Oops.
18 So that's, uh, that first bullet here.

19 Uh, also the committee might want to consider,
20 uh, if it should limit considerations to plans that
21 establish a certain number of districts, whether you
22 want to stick with that 47 districts or if you want to
23 deviate somewhere in the range between the -- the 40
24 and the 54 allowable districts.

25 Also, um, how should the plan effectuate --

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1 effectuate the staggering of terms of members of the
2 legislative assembly, which I touched on earlier. Uh,
3 what is the proper procedure for submitting proposed
4 plans for consideration by the committee, how does the
5 committee want to receive plans. Um, also how often
6 should the committee meet. And should the committee
7 meet in locations other than Bismarck.

8 So that's something the committee can consider. I
9 know there's kind of a committee discussion, uh, time
10 block at the end of the meeting today, if that's
11 something you'd like to address then. Uh, and I'd be
12 happy to answer any questions.

13 CHAIRMAN DEVLIN: Are there any questions?
14 Obviously staff is going to be here throughout this
15 process. Are there any questions that need to be asked
16 now? Representative Schauer.

17 MR. SCHAUER: Thank you, Mr. Chairman. I just
18 wanted to get this on the record. Um, because this
19 committee has already been criticized prior to us
20 meeting. And it bothers me. So Emily, my question for
21 you, are you comfortable with the guardrails that we
22 have legally, that we will stay within a process that
23 will bring this group's decision, um, that will be
24 based on integrity, fairness, and transparency.

25 Are you comfortable with the legal guardrails

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1 that we have to make these decisions?

2 MS. THOMPSON: Uh, Mr. Chairman and
3 Representative Schauer, uh, I guess as far as my, you
4 know, personal comfort level, it's more of, um,
5 compliance with our constitution and our statute. I'm
6 not the individual that determines what, you know, our
7 plan should look like. We have these overriding, you
8 know, boundaries or guardrails that we have to comply
9 by.

10 Our constitution says the plans have to be
11 compact, they have to be contiguous, they have to be
12 as nearly, you know, equal in population as
13 practicable. Um, the committees in past, um,
14 redistricting cycles have adopted other criteria.

15 Um, for instance, some have set a specific
16 population variance. Some have set it at 10 percent
17 like the -- the federal case law has established.
18 Other committees have said, you know, we don't want to
19 go above 9 percent, we want to stay even safer than
20 what we might get challenged on in court if we go over
21 10 percent. We're not -- we're going to cap it at 9.

22 And that was the case in your last cycle in, um,
23 2011. The committee decided we're not going to exceed
24 a variance of 9 percent. Um, also the last cycle the
25 committee said, you know, we really want to preserve

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1 existing district boundaries, even though that's not
2 in the constitution of North Dakota or the statutes
3 currently. The committee decided, you know, we want to
4 really play it straight, play it safe. We want to
5 preserve those boundaries.

6 Um, so that's something that -- it shows in I
7 guess the history of North Dakota's redistricting
8 process. Not only have they complied with those
9 constitutional and statutory requirements, they've
10 also, you know, voluntarily elected these additional
11 principles.

12 Uh, almost every time it was, you know, retain,
13 uh -- excuse me, the -- the variance not over 10
14 percent. Um, they've looked at, you know, retaining as
15 many districts in their present form as possible, not
16 splitting those subdivisions.

17 So I think the state has the constitutional and
18 statutory guidelines to provide for those legitimate
19 plans and also has shown in its action over the -- the
20 decades that it institutes those extra voluntary
21 protections. That answers your question.

22 CHAIRMAN DEVLIN: Representative Bellew. And this
23 will be the final question, so.

24 MR. BELLEW: This is not a question, Mr.
25 Chairman. It's a request. Uh, we've been talking about

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1 the reservations. And I noticed, uh, one of my
2 [inaudible] and Rolette County with two reservations.
3 I guess I would personally like to have a list of all
4 the reser- -- reservations and populations. Because I
5 think Senator Holmberg said that one had 300 and some
6 in it and --

7 MALE: [inaudible]

8 MR. BELLEW: Okay. I -- I -- just -- just the
9 parts that are in North Dakota, I guess. If -- if
10 that's possible.

11 CHAIRMAN DEVLIN: Yeah. It is possible. And we
12 will be looking at that as -- as we have dialogue with
13 tribal governments.

14 Uh, Randy, I know Representative Holmberg
15 [inaudible] you have another meeting at 12:00 that
16 won't take long. So I'm going to break till 1:00. And,
17 uh, we will see you then.

18 [recess]

19 CHAIRMAN DEVLIN: Committee, we will come back to
20 order and start with the 1:00 presentation by
21 legislative council.

22 MS. KRAMER: Good afternoon, Chairman and members
23 of the committee. I'm going to briefly go over a memo
24 that should be in your packets. It's the LC number
25 9119.01 and it's the information you've all been

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1 waiting for. It's the actual data. So as Mr. Williams
2 announced earlier that the census data indicated that
3 North Dakota experienced the fourth largest percentage
4 increase in population with a population increase of
5 15.9 or 15.8, excuse me, over the state's 2010
6 population. It's also home to the county with the
7 largest population increase with McKenzie County
8 increasing by 131 percent over their 2010 population.

9 Uh, in regard to rural counties, the population
10 trends tracked with the nationwide trend of less
11 populous counties losing additional population.

12 Uh, this memo provides a summary of the change in
13 population of legislative districts, counties and
14 cities and then, uh, compares the results of the 2010
15 census to those of the 2020 census.

16 So when we compare the 2010 census results to the
17 2020, uh, in regard to legislative districts, the five
18 legislative districts with the largest percentage
19 increase in population were districts 2, 27, 16, 7 and
20 39 with the five legislative districts with the
21 largest percentage decrease in population being
22 districts 9, 42, 23, 10 and 14.

23 And as you can see in the table right underneath
24 on the first page there that summarizes the population
25 change in districts comparing, uh, the last census and

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1 the current census results, including the deviation
2 from the newly calculated ideal district size if we're
3 looking, again, at keeping the 47 districts.

4 The second table on the next page provides a
5 visual of what the ideal district size would be for
6 various numbers of districts, if that's something that
7 the committee would like to consider.

8 And then the top of the third table on the second
9 page provides similar data relating to counties.

10 So when we compare the 2010 census results to the
11 2020 census results, the five counties with the
12 largest percentage increase in population are
13 McKenzie, Williams, Stark, Mountrail and Cass.

14 And the five counties with the largest percentage
15 decrease are Rolette, Benson, McIntosh, Steele and
16 Pierce. So the table on page two and then carrying
17 over to page three shows you the population
18 information for each county in the state along with
19 that deviation. Starting at the bottom of page three,
20 we have a similar table that, uh, lists all of the
21 city data. So when we compare the 2010 census to the
22 2020 census, the five cities with the largest
23 percentage increase in population are Watford City,
24 Arnegard, Venturia, Williston and Tioga.

25 And those with the largest percentage decrease

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1 are Ruso, Wales, Calio, Bantry and Ardoch. And then
2 the table, uh, on page three and then for the
3 remainder of the memo, actually, lists all of the
4 cities in the state and their corresponding
5 populations and, uh, deviations. We'd be happy to
6 answer any questions. I imagine it'll take you a few
7 minutes to digest that, but we are here as always.

8 CHAIRMAN DEVLIN: Questions from the committee? I
9 don't see any. So are we already down to the 1:30
10 presentation?

11 MS. KRAMER: Yes.

12 CHAIRMAN DEVLIN: You are so efficient. Okay.
13 We'll move on to the 1:30 presentation on -- who's --
14 who's doing this one? Claire? Okay, Claire Ness will
15 do this one.

16 MS. NESS: Okay, Mr. Chairman and members of the
17 committee, we're going to talk a little bit about
18 recordkeeping today.

19 So developing and maintaining redistricting
20 records and the possibility of having records used in
21 court if the legislative assembly might be sued over
22 redistricting issues.

23 And this is an area that is litigated a lot, so
24 this presentation is just going to be a very high
25 level summary and overview of some of the key issues.

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1 If you ever have questions about details, please let
2 me know.

3 Any of us at the table here can address any
4 specific questions you might have.

5 So as you create and maintain your documents
6 throughout the redistricting process, you're going to
7 need to balance two different interests.

8 And the first interest is going to be making sure
9 that you maintain a clear record of your decision-
10 making process for how you draw your map.

11 So this will help not only to keep your decision-
12 making organized and consistent regardless of whether
13 you're sued, it also would be invaluable if you are
14 sued as a legislative assembly, because what it'll do
15 is use the -- excuse me, the record could be used to
16 show a court how and why you made your decisions about
17 district borders.

18 If you don't have a record showing how and why
19 you made certain district choices, then the holes in
20 your record could be filled in by somebody else who
21 might be misinterpreting or misunderstanding what the
22 documents you do have, show.

23 So you don't want to leave those holes open to
24 some sort of a subjective interpretation that may not
25 have been what you were intending to do.

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1 Second, you're going to have an interest in
2 protecting the deliberative process.

3 So courts all over the country, including the
4 United States Supreme Court, have said that individual
5 legislators have to have breathing room to make
6 decisions without fear of litigation because
7 legislators bear significant responsibility for many
8 of our toughest decisions in society.

9 So court sometimes will not require legislators
10 to produce some materials related to their decision-
11 making. We're going to talk about this in more detail,
12 but you have these two competing interests you're
13 going to have to keep in mind and -- and balance as
14 you go through this process.

15 Please keep in mind, however, that even though
16 you're going to be protecting the deliberative
17 process, that does not mean that you can have a quorum
18 of the committee meet secretly or share a document
19 secretly amongst a quorum of the committee members.

20 Anything that you do in a quorum has to be in a
21 public meeting and any documents you share in a public
22 meeting are going to be open records.

23 There are two primary scenarios in which somebody
24 might have a record become public, even if the
25 committee has not chosen to make it public. The first

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1 would be an open records request, and I think
2 everybody is probably familiar with those.

3 And the second scenario would be in litigation.
4 And those two things are different, so we're going to
5 talk about them differently.

6 If somebody makes a request for a redistricting
7 record under the open records laws, the record may be
8 protected from disclosure, either under laws that are
9 specific to redistricting or under our general open
10 records laws.

11 And you can see the bullets on this slide provide
12 some examples of protections for records that you're
13 going to be working with.

14 So under House Bill number 1397, which is our
15 redistricting bill that was passed this past
16 legislative session, draft plans that are created
17 either by a legislator or by the legislative council
18 are exempt unless they're presented to a committee or
19 the full legislative assembly.

20 And once you present a draft, it becomes open,
21 but previous versions of that draft still remain
22 exempt from open record. So they do not have to be
23 provided upon request.

24 That is something that has been the case, um, for
25 several district -- redistricting committees going --

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1 going back in time. Um, and again, that's intended to
2 help protect the deliberative process.

3 You can also see that we have our standard open
4 records statute that protects your communications with
5 other individuals, our work product and our
6 communications with you from disclosure under the open
7 records laws, and then there are also other statutes
8 that might -- might protect requested records from
9 disclosure.

10 CHAIRMAN DEVLIN: Claire, we have a question, if
11 you don't mind. Representative -- or Senator
12 Bekkedahl.

13 MR. BEKKEDAHL: Thank you, Mr. Chairman.

14 Claire, the, um, question I have is if -- if I,
15 as a legislator, had assistance or had something
16 presented by legislative council relative to a map and
17 was -- and had sent to me, that's still protected as
18 long as it's not give to the whole committee in a
19 quorum environment?

20 Is that correct? So a legislative council can
21 still help me with a map and we can correspond between
22 us and have that protected then?

23 MS. NESS: Uh, yes. Mr. Chairman and Senator
24 Bekkedahl, that is correct. Those drafts would be
25 protected, even if we are helping you work on them

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1 from an open records request.

2 However, if we get to litigation -- so if there's
3 a lawsuit, the -- the rules change. And litigation,
4 like I said, is different from open records request.

5 And just because a record is exempt from open
6 records laws doesn't mean that an opposing party, who
7 is suing you, you can't get access to that record.

8 Because what you have in litigation is discovery
9 and for those of you who haven't been, you know,
10 personally involved in litigation, um, a lot of things
11 become available to the other party upon their
12 request.

13 So during redistricting litigation, there can be
14 extensive discovery and that means that legislators,
15 consultants, staff and others may be required to do
16 things like appear for a deposition.

17 And the reason I put this picture on the slide is
18 this is kind of what it looks like during a
19 deposition. You sit at the other end of the table.
20 You're under oath.

21 There's usually a video camera and a bunch of
22 lawyers looking at you and you answer questions that
23 they provide to you that you don't know in advance,
24 and you're doing that under oath and it can be a
25 fairly stressful situation.

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1 You might also have to answer questions in
2 writing under oath. Those are called interrogatories.
3 And again, you might have to provide records to the
4 other party. You typically do that before a deposition
5 so they can ask you questions about the records.

6 And discovery can cost a lot of time and a lot of
7 money and so that's a completely different scenario
8 from an open records request.

9 If you have to provide records in a lawsuit, you
10 may have to provide any records related to
11 redistricting, regardless of where or how those
12 records are stored.

13 Putting a record on your personal computer or
14 texting a message about redistricting on your personal
15 phone will not protect the record from disclosure, so
16 keep that in mind.

17 And when you do provide records, you're generally
18 going to be asked under oath if you have provided all
19 of the responsive records and that would include
20 things on your personal electronic devices.

21 So if we end up in litigation and there is a
22 discovery request for redistricting records, there are
23 some protections that we can claim to try to limit the
24 amount of materials we have to provide to the other
25 party and that's -- that's common procedure so that

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1 you don't end up just providing mountains and
2 mountains of information that may not be relevant to
3 the issue at hand.

4 The North Dakota constitution says that members
5 of the legislative assembly may not be questioned in
6 any other place for any words that are used in any
7 speech or debate in legislative proceedings and this
8 kind of relates back to what we talked about earlier,
9 where you have this legislative privilege that applies
10 to your deliberations and has been extended by courts
11 to include the records that are used in your decision-
12 making process.

13 And so we would often be able to assert
14 legislative privilege if there were a request for
15 documents in a lawsuit.

16 There's an attorney client privilege that may be
17 applicable if you are working with one of the
18 attorneys on staff, however, for government attorneys,
19 that privilege can be really weak.

20 We could claim that the documents are work
21 product, protected as legislative council or attorney
22 work product and there may be a confidentiality
23 statute somewhere that would apply.

24 However, you have to keep in mind that the judge
25 is going to be the one who's going to decide whether

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1 or not those privileges or protections actually apply
2 to the records at hand and a judge could certainly say
3 that those protections are inapplicable.

4 So these privileges have limits. When a court is
5 trying to determine whether one of those privileges or
6 protections applies, they'll look to the words of the
7 relevant statute or [inaudible] or definitions that
8 other courts have provided for those privileges in the
9 past.

10 And I provided one example up here that's been
11 used in redistricting cases. So this test is to
12 determine whether a record is protected by legislative
13 privilege. And it consists of those five bullet
14 points.

15 And a court would look at those five bullet
16 points and say, okay, is this particular record going
17 to be -- um, are these five bullet points going to
18 weigh more in favor of producing the record to the
19 other party or keeping it protected?

20 And as you can see, the first four bullet points
21 out of those five, generally are going to favor
22 producing that record. Um, and so a lot of times these
23 tests that the courts use are going to result in one
24 of your records being provided to the opposing party.

25 I wanted to give you some examples of past cases

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1 too, to see what courts have said about some of these,
2 um, discovery disputes.

3 And again, these are just a couple of examples
4 that I'm going to go through. This is something that
5 has been litigated a lot.

6 Um, but in this particular case, this is from the
7 Supreme Court of Florida and the court basically said
8 that yes, there is a legislative privilege and that is
9 great, but making sure that redistricting complies
10 with the constitution is more important than that
11 legislative privilege.

12 So even though you have that privilege, it's been
13 outweighed by the interest of, uh, voters and
14 residents and having a constitutionally compliant
15 redistricting map.

16 So in this particular case, the legislators had
17 to provide their draft plans and supporting documents
18 to the other party.

19 So even though under open records laws those
20 documents would be considered exempt and you would not
21 have to provide them to somebody who's asking for them
22 under the open record statutes, it can very well turn
23 out that a court would say in that litigation context
24 those documents have to be provided to the plaintiffs
25 who are challenging your map.

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1 Here's a -- another case. This is out of the
2 Rocket Docket, which is the eastern district of
3 Virginia. It's a federal court. Um, the federal court
4 here required a consultant to provide evidence in a
5 redistricting case.

6 Uh, the consultant was an independent contractor.
7 He was paid by a political party. He was not somebody
8 who was, um, you know, a legislative staff member,
9 wasn't in a legislative, um, you know, uh, their
10 version of the legislative council. It was a private
11 consultant.

12 And even though those legislators had had
13 conversations with that consultant outside of an open
14 meeting and they had worked together on a map, the
15 court said that the consultant was so involved that
16 the consultant's documentation, um, that he had worked
17 on with the legislators and his communications with
18 the legislators were fair game and had to be provided
19 to the opposing party.

20 And as you can imagine, that resulted in a lot of
21 interesting headlines and, um, and reports that were
22 being made to the public.

23 So one of the things that, when I was in private
24 practice, I used to always counsel my clients was
25 don't put something in email unless you want to put it

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1 in the Washington Post. And I think that's still
2 applicable.

3 Um, you can see these emails were all made public
4 in redistricting cases. So sometimes you can say,
5 don't put things in emails, because they can be
6 misconstrued and oftentimes emails can be
7 misconstrued, because you take one snippet of a
8 conversation and put it in a document.

9 The same is obviously true for text messages.
10 However, sometimes you just maybe would say prudence
11 is the better part of valor and maybe just not put
12 some of these things in writing, because they just
13 don't sound very good.

14 These are some headlines that have resulted in
15 some of these cases where people have litigated
16 whether or not certain documents should be made public
17 or provided to the opposing party in litigation.

18 Um, again, you can come up with these in a few
19 minutes of searching Google.

20 These are all over the place and when this is
21 coming out in the papers on a daily basis during a
22 redistricting committee's work, it's distracting, um,
23 and it's obviously not something that is very pleasant
24 for legislators and staff and the public to go
25 through.

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1 It can undermine the confidence in the
2 redistricting process. And as everybody knows, this
3 has become a much more public, uh, much more of a
4 public interest issue in the past decade, so there's
5 obviously a lot of scrutiny on what this committee is
6 going to be doing.

7 So I wanted to put together a few best practices
8 and on the left-hand side, you should see the word do.
9 So at a recent conference, on speaker said the easiest
10 way to stay out of legal trouble is to do the right
11 thing.

12 And there's sometimes a question about what --
13 what is that in this context? You want to comply with
14 the law, but the law is complicated. Um, and the best
15 thing to do is to identify what the lawful reasons for
16 creating districts are and create districts for those
17 reasons.

18 You want to document those reasons and the
19 criteria that you use and the process you went through
20 carefully so that you do have that record to support
21 what you've done in case you are end up -- in case you
22 do end up in litigation.

23 And try to have your conversations in person or
24 on the phone, if possible, and that's to avoid
25 misunderstandings or misinterpretations of snippets of

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1 conversations that might end up in emails or text
2 messages.

3 What you don't want to do is you don't want to
4 create districts for unlawful reasons. You don't want
5 to create a false record and because you're creating a
6 document for an unlawful reason.

7 Um, you don't want to create -- you don't want to
8 discuss creating districts for unlawful reasons, even
9 if you don't plan on doing it or you don't end up
10 doing it, don't discuss it.

11 Um, you don't want to create confusion or send
12 messages that are subject to misinterpretation,
13 because certainly that would end up as, you know,
14 potentially an exhibit in litigation.

15 Similarly with jokes, those are often
16 misunderstood. They're not -- you know, they may be
17 improper. They may be okay, but just taken out of
18 context. So really be careful about joking about
19 improper or unlawful redistricting.

20 So with that, I'll be happy to take any
21 questions. Again, that's just a very high-level
22 overview of recordkeeping, but something to keep in
23 mind as you go throughout this entire process.

24 CHAIRMAN DEVLIN: Questions for Claire? Senator
25 Burckhard?

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1 MR. BURCKHARD: Mr. Chairman, uh, Claire. So if
2 we have questions, we can call your office, right? And
3 you can guide us?

4 MS. NESS: Yes. Mr. Chairman and Senator
5 Burckhard, yes, of course.

6 MR. BURCKHARD: Thank you.

7 CHAIRMAN DEVLIN: Representative Schauer.

8 MR. SCHAUER: Thank you, Mr. Chairman. The
9 question I have is how does the process work? Because
10 right now, we're already being threatened to be sued.
11 How does the lawsuit work?

12 Where does it? What -- what level of court? How
13 is it handled and who ultimately makes the decision?

14 MS. NESS: Mr. Chairman and Representative
15 Schauer, that depends on what the plaintiff -- where
16 they file the suit.

17 So they could choose to go to a state court or a
18 federal court and it would depend on who the
19 plaintiffs are and what the issues are to decide --
20 excuse me, to help the court determine whether or not
21 they have jurisdiction.

22 So the answer to that question is it really
23 depends on who is it, what are the issues they're
24 claiming, and then the court will decide if they have
25 jurisdiction. If that's something that we would

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1 challenge.

2 The process would, presumably, if we are sued, go
3 into, um, litigation mode where you would have
4 attorneys filing motions on different issues back and
5 forth. And those really can be any number of things.

6 There are, you know, dozens and dozens and dozens
7 of types of motions that can be filed. So I hate to
8 say the answer to your question is it really depends,
9 but it -- it does. It can go any number of ways.

10 And that -- and at this point, there has not been
11 any lawsuits filed.

12 CHAIRMAN DEVLIN: Representative Nathe.

13 MR. NATHE: Thank you, Mr. Chairman. Claire, when
14 was the last time the state was sued?

15 MS. NESS: I think I'll defer to Emily. Emily, do
16 you have that in your memo? I know we discuss it in
17 the memo. I don't remember off the top of my head.

18 MS. THOMPSON: Uh, Mr. Chairman, Representative
19 Nathe, I do believe we've touched on that in the memo.
20 One moment. Let me refresh my memory.

21 [inaudible]

22 MS. THOMPSON: Well, we have someone that recalls
23 that directly [inaudible] our director, 1991. Yeah.

24 MR. BJORNSON: Nineteen. Mr. Chairman, uh,
25 members of the committee, John Bjornson, legislative

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1 council. Um, we were briefly engaged in a -- a
2 litigation in 1991, uh, that, uh, was dismissed almost
3 immediately by the federal district court.

4 But, uh, the, uh, the claim was -- or the wish
5 was, of the plaintiffs, to connect the Standing Rock
6 and the three affiliated tribes into one district by
7 using the river as a, uh, uh, a line to connect the
8 two -- two tribal entities. And the -- the, it, uh,
9 did not make it very far.

10 CHAIRMAN DEVLIN: Senator Klein.

11 MR. KLEIN: So, Mr. Chairman, um, and Claire, do
12 we -- is -- is litigation begin at any point or is it
13 after the legislature has finally condoned and voted
14 and passed the bill?

15 Because, um, certainly a work in progress, uh, as
16 some of us who have just looked at a couple of
17 districts and it's just pushing all over, but
18 eventually we've got to get it down to where the
19 entire body is going to give us a thumbs up or a
20 thumbs down.

21 When -- when -- can this process start at any
22 point where somebody may feel that they haven't been
23 in -- I suppose involved in the process properly? Or
24 can you shed some light on that?

25 MS. NESS: Sure, Mr. Chairman and Senator Klein.

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1 Um, I think Mr. Williams pointed out that the -- there
2 have been a couple of lawsuits already. A plaintiff
3 can file a lawsuit at any time.

4 Um, but you can also -- a court will decide
5 whether it's right. Um, you can file motions, you
6 know, about that issue too and rightness will depend
7 on several factors. But, um, I would imagine that the
8 -- the vast majority of the cases are filed once a
9 plan has been adopted.

10 But that doesn't mean that a plaintiff can't file
11 a lawsuit at another point in this process.

12 CHAIRMAN DEVLIN: Further questions? Thank you,
13 Claire. Who gets to do the Maptitude demonstration?
14 Emily?

15 MS. THOMPSON: Thank you, Mr. Chairman. Um, up
16 now on our agenda, what we're going to do for you is
17 just give you kind of a high-level overview of the
18 Maptitude for Redistricting software that, um,
19 legislative council has purchased.

20 Uh, I mentioned briefly in our -- uh, my last
21 presentation that, um, in the last redistricting cycle
22 the, uh, staff and committee members also use this
23 same Maptitude software, so some of you might be
24 familiar with this.

25 But for those of you that are not and for just

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1 members of the public in general to get an idea of
2 what this software looks like and some of its
3 functions, I'm just going to briefly go over and show
4 you some, um, highlights of the software.

5 So again, this is Maptitude for Redistricting,
6 and what it allows you to do is draw plans or draw new
7 legislative district maps.

8 And as I mentioned before, um, sometimes states
9 will use, um, as part of their consideration,
10 preserving those core district boundaries, uh,
11 Representative -- or excuse me, Mr. Williams touched
12 on that, um, as well.

13 So that's one thing that legislators can keep in
14 mind when they're drawing maps is whether you want to
15 start from a blank map and just a clean slate, draw
16 all new boundaries, or do you want to look at all at
17 preserving those, uh, core districts and start with
18 possibly the current boundaries and then just modify
19 that by population.

20 So here you can see we have, um, two items listed
21 here. We have a blank map, or a template.

22 Um, just for demonstration purposes, I'm going to
23 start with a blank map just to show you some features
24 and then we can look at what a template of the current
25 legislative line map looks like.

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1 I'll just open that here. Yes.

2 MALE 1: Sorry, Mr. Chairman. I'm -- Senator
3 Burckhard, missed the last meeting, so I'm giving the
4 computer to do this, but when I bring up the plan
5 manager, I have Brad Plan 1 and Brad Plan 2 in there.
6 I don't see a new category.

7 How do we get to a new so he can start over?

8 MS. THOMPSON: Uh, yes. Um, we can do new maps
9 from templates. Um, and I can, uh, come through and
10 help you generate new maps.

11 Um, right now I just had -- I just went ahead and
12 preloaded, um, just a blank map and a 2010 map just so
13 -- a kind of walkthrough of the demonstration. But
14 yeah, I can stop over, um, and do the new map
15 templates.

16 MALE 1: Sorry, are you under the plans manager
17 under plans or libraries? Which [inaudible]?

18 MS. THOMPSON: Um, it's plan manager, plans.

19 MALE 1: Okay.

20 MS. THOMPSON: And then you'd want to make sure
21 you've selected the right library from the drop down
22 under plan manager.

23 MALE 1: Okay, thank you.

24 MS. THOMPSON: Mm-hmm. So when we pull up, um, a
25 blank map, this is kind of the view that you'll be

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1 looking at and you'll have certain kind of popup
2 features that allow you to draw your map, uh, here.

3 Go ahead and drag -- zoom in a little bit. So in
4 this map, you can tell it looks kind of busy. There's
5 a lot of different features on here. You can see all
6 of these, um, blue lines. Those are the county
7 boundaries.

8 So you can get a sense of where all your county
9 lines are. Also, you'll see a lot of kind of little
10 purple dots here and if I zoom in on that, you can see
11 that this is showing you where all your city
12 boundaries are.

13 So here you can see the outline of, in this case,
14 Minot. I zoom in a little more.

15 MALE 2: Woohoo. Oh, excuse me.

16 MS. THOMPSON: Oh, shout out to Minot. So this is
17 a way for the map to kind of help you if you're
18 saying, you know, I want to keep these political
19 subdivision boundaries together. I want to try to keep
20 these counties whole or I want to try not to split up
21 these cities.

22 Or maybe I want to look at, you know, townships.
23 You can see Burt, North Dakota right here is, um, a
24 township and then you can see that light gray boundary
25 if I -- I zoom in there.

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1 And so this is just, um, they're called kind of
2 layers that you add to your map and you can see over
3 here you have a list on the far-left hand side of all
4 these different options. So you can make your map more
5 or less busy depending on your preferences.

6 So, in this case, let's say I would uncheck the
7 city town feature. You can see I lose that purple
8 outline of Minot. You can't see it anymore. It doesn't
9 look as, um, busy. But if you want to use it, you can
10 turn that back on.

11 So that's a little bit of the functionality of
12 the software.

13 MR. BELLEW: Mr. Chairman, can I ask Emily a
14 question? It's --

15 MS. THOMPSON: Yes.

16 CHAIRMAN DEVLIN: [Inaudible] Bellew, I'm sorry.

17 MR. BELLEW: Thank you, Mr. Chairman, and Emily,
18 uh, you have the townships there and you have the
19 population of the townships. Uh, are the cities
20 populations separate in that township?

21 Like Burlington is Burlington Township and
22 Burlington town? Or do you have two separate
23 populations there?

24 MS. THOMPSON: Uh, yes, Mr. Chairman and
25 Representative Bellew.

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1 MR. BELLEW: Because I -- I don't see it, so.

2 MS. THOMPSON: Yeah. If I zoom in a little more,
3 you can see, uh, Minot here. The new population for
4 2020 is 48,377 people there. But if you're looking at
5 this, um, Nedrose Township, this 2334 people.

6 The township would be classified as any area
7 that's outside the city limits. So they wouldn't be
8 layered or combined. That's a distinct separate
9 population.

10 And the reason it's nice to kind of have these
11 little population summaries is that when you're going
12 through and you're adding areas, you can kind of get
13 an idea of if you click on a county or if you click on
14 a city, how much is that going to add to your total?

15 And the way you kind of track your total, they
16 also have this handy pending changes view here. So
17 what I'm going to do to demonstrate this feature is
18 I'm just going to go ahead and just mock draw a county
19 so you can see what that looks like.

20 So I'm going to zoom back out. Drag this. Takes a
21 minute to load, so you'll have to bear with me. So
22 here we have Richland County and I mentioned earlier
23 that our ideal district population is 16,576 people
24 now that we're taking into account those new 2020
25 figures.

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1 So in this case, I can see, you know, hey,
2 Richland County, 16,529. That's almost spot on with
3 what our ideal district size is now. So if I wanted to
4 just say, okay, we're just going to start and say
5 Richland's the first district that we're drawing if
6 we're using those 47.

7 So I'd want to make sure this said new district
8 and I want to select by county. You can select by big
9 chunks at a time or little chunks at a time, like such
10 as a city or a -- a census block. I know I want this
11 whole county, so to save myself some time, I'm just
12 going to select by county.

13 Use my little pointer tool. And then when I click
14 on Richland County, you can see it turns this whole
15 county red and it's also going to add up how many
16 people I have in the county.

17 Uh, and this pending changes, I know it's a
18 little small on your screen there. I wish I could blow
19 it up, but I don't think I can. Um, it has kind of a -
20 - a rolling tally of this new district that I'm
21 creating.

22 So right now, in my new district, the population
23 is 16,529.

24 MR. BELLEW: I have a -- I have another question,
25 Mr. Chairman.

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1 MS. THOMPSON: Yes.

2 CHAIRMAN DEVLIN: Representative Bellew.

3 MR. BELLEW: Thank you, Emily. Okay, Richland
4 County is one of those counties where an Indian
5 reservation is in two different counties and if we
6 wanted to try to keep the Indian reservation whole,
7 um, either we'd have to stick it in to Richland County
8 or to the county over.

9 Um, I guess that's one of the reason why I was
10 asking for the population of the Indian reservations
11 and how to do that, so -- are you understanding what
12 I'm trying to -- thank you. You're so good.

13 MS. THOMPSON: I do. Uh, Mr. Chairman and
14 Representative Bellew, and that's something the
15 committee will have to kind of work through as part of
16 its policy decision, if it wants to split the county.

17 If it's looking more to retain, um, the
18 reservation area on the north side of, you know, the
19 South Dakota, North Dakota border, and, you know,
20 that, again, as Mr. Williams mentioned, it's -- it's
21 kind of like a domino effect once you start drawing
22 maps.

23 So, you know, what he said, I think, one state
24 starts from one side of -- or yeah, one side of the
25 state and then just kind of draws out. It's going to

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1 really depend on what are your neighboring districts
2 look like?

3 If you're going to have to split a county, you
4 know, are you going to have to creep into another
5 county and split another county? It's that domino
6 effect.

7 So as you start developing maps, you'll have
8 these little tabulations that are also, um, that's a -
9 - that's a good point to kind of mention right here.
10 You'll have, uh, factors that you can track while
11 you're making these districts, in addition to just the
12 population.

13 So, for instance, here you can see, you know,
14 what percentage of this area is, um, Native American,
15 if you want to kind of look at those population
16 totals. And we built that in as a factor so you can
17 see, when you're making these districts.

18 So in this case, you can see in, um, Richland
19 County, the, uh, portion of that 16,529 people who are
20 classified as American Indian in the census is 467,
21 and you can see what percent of that district is made
22 up of that population.

23 So that's, again, all just this great information
24 this tool provides you, so you can take all these
25 factors into consideration when you're drawing based

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1 on how you --

2 MR. BELLEW: Uh, Mr. Chairman, if I might. Uh,
3 that just tells you the amount of -- of American
4 Indians in that county. That doesn't tell you the
5 amount that's on the reservation. Is that not correct?

6 MS. THOMPSON: That is correct, uh, Mr. Chairman
7 and Representative Bellew. That is measuring -- right
8 now, it's measuring the number of, um, American
9 Indians in that area that you've selected. In that red
10 area that you've selected.

11 If I went in and selected a little chunk of
12 Sargent County to the neighboring side and turn that
13 red, this population tally would change. The number of
14 American Indians in the red area would be tracked.

15 So that's kind of what it's showing you there.

16 MALE 3: Emily, isn't it also true though that
17 you can -- if he wants to find out about the American
18 Indian, you have that on there and all you have to do
19 is push that, take off the red, push that and it'll
20 tell you there's 205 people that are in that
21 reservation? Yeah.

22 MALE 4: Mr. Chairman, I was going to say the
23 same thing. So if you just go in and click on the
24 layer, which is, um, right now on new districts on
25 this one, but if I just click on, um, or not -- no,

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1 I'm sorry, the county.

2 If I click on the county layer and bring up
3 Indian reservation and then if I bring my pointer down
4 to Fort Berthold, it'll populate the population of
5 Fort Berthold or the -- the reservation population
6 into that little box on the side, won't it?

7 MS. THOMPSON: And that's correct.

8 MALE 4: Because that's what he's trying to get
9 to?

10 MS. THOMPSON: Yeah, and I can show you that
11 quickly. If, let's say I don't want to select by
12 county, so I want to select by, um, we have an option
13 that dropped down that says Indian reservation.

14 So then if I use my pointer tool, and you see --
15 you can kind of see here this light beige area. Those
16 on the maps, on that beige area you can see in your
17 little, uh, list over here, Indian reservation.

18 It's kind of a tan color. Anywhere you see kind
19 of a tan area on the map indicates that there's an
20 Indian reservation in that area. So then if you used
21 your pointer tool and you clicked on that, you can see
22 it only highlights the portion of the reservation
23 that's actually in North Dakota.

24 So we're not looking at the total population. And
25 so in this case, you can see the population of the

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1 Indian reservation that we've just clicked on is 206
2 people. And so that will kind of help you track that
3 way too. That --

4 And as you're clicking through, if you decide,
5 well, I don't want to do based on reservation, I just
6 want to do on county, you kind of just click red,
7 click white, turn them on and off.

8 So for just demonstration purposes, I'll go back
9 to, um, a county level, just because the population is
10 so nice and tidy in Richland County, and show you what
11 it looks like when you, um, actually decide you want
12 to kind of finalize that as a district.

13 So I just click this little green checkmark and
14 then it's going to want me to number the district.
15 I'll just put one for demonstration purposes. That'll
16 be our first of 47 districts.

17 And you can see this turns green and then it adds
18 a district one information bar at the top of your
19 screen there. And so then you can see the total
20 population of that district, um, the deviation from
21 your ideal population.

22 Uh, you can see here, um, we're only 47 people
23 short from ideal in Richland County, that's how close
24 it is.

25 I also mentioned earlier, um, in my presentation

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1 the overall range where you take the most populous
2 county and then the least populous county and you take
3 that deviation percentage and you add them together,
4 disregarding the plus and minus signs.

5 So here, in the percent deviation, which is very
6 hard for you to see, it says negative 0.28 percent.
7 And so it -- let's assume that, uh, this is the
8 closest you're going to get.

9 Um, if you had another county that was maybe a
10 one percent deviation and those were your highest and
11 lowest population counties, your total deviation would
12 be 1.28 percent.

13 You would add the biggest population county, the
14 littlest population county, add those two deviation
15 numbers together and that's how you know you are kind
16 of within a, you know, a more acceptable range. You're
17 hitting that benchmark of 10 percent or less.

18 So next, just to kind of, again, demonstrate some
19 of these features, we'll go ahead and add another
20 district. And again, for demonstration purposes, I'm
21 just picking kind of the -- the easy math population
22 counties that would add up to the number we're
23 shooting for here.

24 The ideal district size. So in this case, if I
25 clicked on Barnes, Griggs and Foster, you can see in

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1 my little pending changes box, my red area pending
2 changes box, that, um, we're very close to the ideal
3 district size.

4 Or excuse me, clicked on the wrong one here.
5 [inaudible] over the ideal district size. Um. There we
6 go. [inaudible] quite high. Oh, let's see. Actually,
7 I'll probably use a different example.

8 Actually, I think I'll -- in this one, I'll show
9 how to split a county, just so you get an idea for the
10 tools of how to select by a smaller layer.

11 So in this case, let's use Stutzman County. The
12 new population is 21,000 people, so that's way over
13 your ideal district size of 16,000. So in this case,
14 you would essentially, more or less, have to split a
15 district -- or excuse me, a county to get to the ideal
16 district size.

17 So if you wanted to, for instance, um, make --
18 let me zoom in here. Jamestown, if you wanted to
19 preserve the boundaries of Jamestown, you could take
20 that out of the area you're looking at and possibly
21 make that its own district.

22 Now you see if I change this selection layer to
23 city town, you can select the entirety of Jamestown at
24 one time and then you can see on your pending changes,
25 you know, what that -- that gets you up to.

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1 When you're all done and you've decided you --
2 you like your second district, it's within the
3 population range, again, you would just -- this little
4 green checkmark and then you could see, uh, what your
5 district looks like.

6 I think it might have added it to -- oh, one
7 moment. We added it. Forgot to select a new target.
8 Select a new target there. Um, when you're drawing a
9 second district, you have to select that you're doing
10 a new district.

11 Forgot to click that button. But now we have
12 Jamestown and now when I click that checkmark, I'll
13 label it as district two. Apologies there. So now you
14 have district two and you can see that loaded on your
15 little taskbar kind of summary sheet up here.

16 You have district one and you have district two.
17 You can see the percent deviation, um, if just using
18 Jamestown as a district is -4.39 or 727 people short.
19 So that's within that, you know, acceptable deviation
20 range of -- about 5 percent is kind of what you're
21 shooting for.

22 So that's a -- I guess just a high-level summary
23 of what this looks like. I'm going to go ahead and
24 close this and just quickly open, um, a map that
25 already has all of the existing districts on it.

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1 So if the committee decided, you know, one of the
2 factors we want to look at is preserving core
3 districts to the extent possible. If you wanted, you
4 could start with the, uh, existing map.

5 You can see that here. So this map has an
6 additional layer, in addition to all those county
7 boundaries and those purple city boundaries. It has
8 all these yellow lines right here, which are your
9 existing legislative districts.

10 But it also factors in, well, what's the new 2020
11 population in those existing districts? And it gives
12 you these little markers here so you can see, you
13 know, district two grew substantially. It's 78.7
14 percent over the ideal district size now with the
15 population change.

16 Um, you can also see this same -- essentially
17 this same picture in your, uh, census population memo
18 that Sam presented. The very last page has the same
19 kind of picture of all the districts with that current
20 deviation based on the new population.

21 And so, in this case, instead of, you know,
22 creating a new district, you would select this
23 existing district and then either kind of steal area
24 from the neighboring district or subtract area out.
25 You would just be essentially modifying the

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1 boundaries.

2 So I think that covers the basic features. Um,
3 I'm going to turn it over to Claire now and she's
4 going to touch on, um, the reports that you can
5 generate using this software. And I'll [inaudible].

6 MS. NESS: Thanks, Emily. So Maptitude actually
7 has dozens of types of reports that you can generate.
8 Um, you probably will not use most of them, but I'll
9 show you an example of, um, what these reports look
10 like.

11 So here, I know some of the writing is really
12 tiny when you blow it up on the screen, but what it
13 basically does, is it says this is a population
14 summary report. So the type of the report is at the
15 top and then you can see that I selected three
16 different districts.

17 And these were based on 2020 -- or excuse me,
18 2010 data. So these would not necessarily reflect
19 what's going on today. And then I identified, um, not
20 only the population of those different districts, but
21 also different characteristics of those districts.

22 So in this case, I looked at different races and
23 the population of individuals over 18. Again, I wish
24 you could see it better on the slide, but basically
25 those -- yeah. There we go. If you can see that a

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1 little bit better.

2 Um, and so you can see that for each district, it
3 shows you those numbers. And then at the bottom, it
4 has a bunch of other statistics that it just runs
5 automatically. So I'll -- this is what a summary
6 report -- a population summary report will look like.

7 I'll go back to the redistricting software here
8 and show you how we get there. So you just go up to
9 your redistricting window and then you would go down
10 to reports. And then all of these, in this window
11 here, are all of the different types of reports you
12 can run.

13 Now, I didn't select any areas in the map, so if
14 I select one of these types of reports, um, so we
15 could do a population summary report. I can do all the
16 districts or all except for the unassigned, which is,
17 in this case, the same thing.

18 So it would be all the districts and then I would
19 hit the run tab. When I hit the run tab, then you
20 would get a report generated that looks like the one I
21 just showed you and it would include all of the 47
22 districts, because that's what I've reported on.

23 Now, for the really tricky part, I'm going to see
24 if I can get it to do a report on a selection. So this
25 is, um, you won't be able to see it well, but we can

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1 always do this for you or we can walk you through it.

2 You have a little icon up here that looks like a
3 funnel, essentially, and it takes you to this box that
4 says district selection and you click one of these
5 icons. And then you want to go ahead and -- I'll just
6 click a county to make it easy.

7 And then that is now going to be -- oops. Oh,
8 okay, it wants to give me this county instead. So that
9 is my selection. And so then, just for example
10 purposes, you still go back to redistricting at the
11 top menu.

12 You run down to reports and then you choose the
13 type of report you want to run and then here, in the
14 report on button, there will be an option for
15 selection. And again, I know that's a few different
16 steps.

17 We can create a document that kind of shows you
18 how to do it. We're happy to answer questions, walk
19 you through it, do it for you. I just want to show you
20 that it is possible, then, to choose a selection on
21 your map.

22 And instead of running the report for all 47
23 districts, you can do it for one or two districts or
24 counties or whatever the layer is that you have
25 selected. And then you just hit run and that report

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1 will come up for that selected part of the state.

2 Are there any questions?

3 CHAIRMAN DEVLIN: Committee members, I will tell
4 you from personal experience that the three people
5 sitting here from legislative council can provide you
6 all the expertise you want.

7 Just schedule some time with them if you want to
8 come out and discuss a concept for your area or
9 whatever. You know, obviously they can't take all of
10 us in one day, so I would ask that -- well, some of
11 them might take a little longer, Representative
12 Bellew, than you would.

13 So I -- that's why, you know, I want to give them
14 -- I want to give them a little extra time there. But
15 you know, just -- yeah -- yeah.

16 So give them a heads up and ask what will work
17 out and they're very good to work with and I'm
18 convinced the, uh, documentation plans that they've
19 come up with should be used nationwide, because they
20 are really, really good.

21 So anyway, I just wanted -- I mean, it's there
22 for members of this committee. Call them, schedule it
23 and let them work with you.

24 And I know new people have the computers today
25 and I know that these -- these three people and others

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1 of legislative council will be glad to help you with
2 them any way possible. They work very good, but I did
3 have to come out to do it.

4 It was a lot easier for them to have me in front
5 of them than trying to explain it to me over the
6 phone. You can understand that Representative Bellew?
7 Okay. Thank you.

8 Okay, are we -- we're done with that? Okay.

9 MS. NESS: Mr. Chairman, if I might, um, just
10 mention, the committee, uh, does have that select
11 number of actual laptops with this software on it, but
12 that doesn't mean there aren't other tools available
13 for other individuals to be able to kind of see and
14 draw maps.

15 I know it was mentioned in 2011, uh, Dave's
16 Redistricting. If you just Google Dave's
17 Redistricting, you get kind of a similar thing where
18 you can draw maps and kind of see different ideas for
19 districts.

20 And so for those members of the public that might
21 think, well, I don't have access to this software and
22 these fancy computers, there is another tool that's
23 more publicly available, um, online.

24 CHAIRMAN DEVLIN: Thank you. Um, we have -- I
25 think we have time, as we will at every meeting that

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1 we have before we get into some, uh, um, future
2 planning, for comments from the general public.

3 And there is letters here from the, uh, um, two
4 different -- two different groups. Uh, uh, secretary
5 of League of Women Voters of North Dakota and the, uh,
6 North Dakota's Voter's First group and I know that
7 there's several groups working together on this.

8 And that is here in writing in your committee.
9 Please take it and read it and study what they have to
10 say. Is -- is there anyone else here in the public
11 today?

12 I know this is just the initial meeting that has
13 something that they want to say today? Otherwise we'll
14 move on. Let's -- you've got like this too? Yeah.
15 Yeah. Did you get one?

16

17 [202108260956_Redistricting Committee_21573 pt4]

18

19 CHAIRMAN DEVLIN: -- one? [inaudible]

20 MR. PURDUE: Chairman Devlin, members of the
21 committee, thank you for the opportunity to testify
22 today. My name is Matt Purdue. I'm testifying on
23 behalf of North Dakota Farmer's Union.

24 NDFU recognizes the challenging task before the
25 committee and we appreciate this opportunity and

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1 future opportunities to provide input.

2 Uh, NDFU's member-driven policy and action states
3 three basic principles that we feel ought to be
4 followed in the redistricting process.

5 Those principles that districts should cross as
6 few county lines as possible, seek to retain
7 communities of common interest within district
8 boundaries and give geographical balance to our
9 legislature.

10 NDFU is particularly concerned by the loss of
11 rural representation, uh, through the redistricting
12 process. Um, obviously you all have seen the map.
13 We've had pretty significant growth.

14 Uh, the state's population as a whole. But we've
15 had 30 counties who have lost or that have lost
16 population. And so we are concerned that as the, uh,
17 state's population gravitates towards urban areas, um,
18 a couple key dynamics will impact rural voters.

19 First, we will have some areas of the state where
20 districts become much, much larger. Um, our members
21 are concerned that the larger the district gets, the
22 less they have an opportunity to directly interact
23 with their elected officials.

24 The other dynamic is that members or -- or, uh,
25 citizens of North Dakota who currently live in

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1 primarily rural districts will find themselves living
2 in districts that are urban, rural split.

3 And that's a concern for many of our members who
4 feel, especially if the rural population is in a
5 minority there, that their concerns will be, uh,
6 drowned out, uh, really, by the urban constituents.

7 We feel that one of the, uh, ways to address this
8 issue, particularly in those two situations that I
9 highlighted, is to consider or explore possibilities
10 to subdivide districts for purposes of house
11 representation.

12 Uh, North Dakota is one of only 10 states that
13 currently uses multi-member districts, uh, and we feel
14 that single member house districts, um, may provide
15 more geographic bounds to our legislature and better
16 retain communities of common interest within those
17 boundaries.

18 Uh, so with that, uh, again, we would encourage
19 the committee to explore that as a possibility. Uh,
20 appreciate the opportunity to testify today. Uh, and
21 you may see I -- I reference regional meetings.

22 I realize I may have jumped the gun on that, uh,
23 but we do think that -- that regional opportunity to
24 provide input is really important to this process. So
25 thank you and I will stand for any questions.

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1 CHAIRMAN DEVLIN: Any questions? Senator Klein?

2 MR. KLEIN: Mr. Chairman and Matt and I think --
3 am I not clear that today's meeting is everywhere?
4 That anyone can participate today?

5 I guess we haven't talked about that much, but
6 what we've done with all this technology has provided
7 an opportunity for people from every corner of the
8 state not having to drive to any particular community.

9 Uh, your members are aware of that, I hope?

10 MR. PURDUE: Mr. Chairman, Senator Klein, uh,
11 yes, they certainly are aware of that. Um, I think, as
12 you all recognize and as we learned through the
13 pandemic, there are a lot of ways that we can stay
14 connected virtually.

15 I think that there's also a lot of value in being
16 able to have that face-to-face interaction. So yes,
17 our members do appreciate that, uh, the virtual
18 opportunities are available. Uh, we also see, uh,
19 value in, uh, regional opportunities to engage face-
20 to-face. Thank you.

21 CHAIRMAN DEVLIN: Thank you. Representative
22 Boschee.

23 MR. BOSCHEE: Thank you, Mr. Chairman. I think
24 just to point out, though, Senator Klein's comment is
25 that people can observe, but we don't have the

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1 capabilities right now for people to engage or to
2 communicate back with us.

3 Uh, so you know, for instance, the folks -- uh,
4 Mr. Purdue, who is here, had to come here to testify.
5 He wasn't able to testify virtually.

6 MS. NESS: Uh, Mr. Chairman, members of the
7 committee. Today, uh, our meeting was live streamed.
8 Um, we have a Teams option right now for committee
9 members only or the presenters that are actually
10 scheduled.

11 So for instance, if Mr. Williams wouldn't have
12 been able to fly in today, he was one of our scheduled
13 presenters that the committee had specifically
14 requested present in front of it.

15 So he would have, uh, been able to receive a
16 Teams link that we've used in interim committees. I
17 also mentioned at the outset those rules of procedure
18 that the committee follows.

19 Again, in-person, uh, attendance is encouraged by
20 committee members, but if a committee member is ill or
21 has some other reasons, they can receive a Teams link.

22 Um, at this time, uh, the committee, uh, was not
23 set up for -- today for members of the public to
24 interact via Teams, kind of like they did during the
25 legislative session. It's just a live stream only.

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1 Uh, however, you know, individuals that contacted
2 me about participating in the committee, uh, I always
3 let them know that they can provide written testimony
4 if they don't wish to appear in person and, um, that
5 testimony would be distributed by our staff if that
6 was their option.

7 So at this time, we don't have that -- this
8 meeting was not set up for Teams for individuals from
9 the public to participate, but that is something that
10 could be at the discretion of the committee at -- at a
11 later date, they want to allow Teams participation
12 from the public.

13 CHAIRMAN DEVLIN: Okay, committee. Let's -- let's
14 talk a little bit about -- I mean, I, you know, at
15 least the people in the session know that I spent my
16 whole life in the newspaper business, but I thought
17 when we just got done with the legislative session,
18 we'd -- half million people in the state participated
19 in the legislative process from a distance and I
20 suspect that we're going to be able to do that as we
21 go through this as well.

22 Um, you know, the question is whether you need to
23 have meetings all the way across the state and I guess
24 the committee has to decide that. You know.

25 Um, we did, in the past, it wasn't always very

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1 well attended, but we did -- but we didn't have the
2 virtual options that we have today.

3 And, um, you know, if -- if the committee thinks
4 we have to go outside the Bismarck [inaudible] some
5 areas, then we may need to make that decision now,
6 because the legislative council, it takes them two
7 hours to go out -- or two hours to set up all of the
8 electronic equipment when they get to, let's say they
9 have it in Finley, a major hub, Representative Bellew.

10 So two hours when they set it up in Finley and
11 another two hours to take it down, plus the time
12 they're there. So it is -- you know, because we're
13 doing it virtually across the state, it isn't an easy
14 thing to do and we want to make sure anybody in the
15 state can see everything we do.

16 And we'll have to work through the questions as
17 well, but, you know, what is your -- what are your
18 thoughts? I mean, I need to know. What are your
19 thoughts about going out or can we run it the way we
20 did the legislative session or is there one or two
21 places you want to go?

22 Um, Representative Bellew.

23 MR. BELLEW: Thank you, Mr. Chairman. I -- I
24 guess from a personal standpoint I would just as soon
25 that we have them here in Bismarck and somehow allow

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1 the public, if necessary, like we did during the
2 session in our committees.

3 You know, it's, um, beamed out to them or
4 whatever is done, but, uh, the -- the public, if I
5 remember right, could, uh, do -- do testimony, uh,
6 right at the first part of the committee meeting and
7 then -- then we would conduct our meeting or something
8 similar to that. So.

9 CHAIRMAN DEVLIN: Representative Schauer.

10 MR. SCHAUER: Hey, Mr. Chairman. I have no
11 problems with going virtual, although I think we
12 should go to Cass County live at one particular point.
13 At 25 percent of the population, I think it's wise for
14 us to get out in that part of the state.

15 CHAIRMAN DEVLIN: Senator Klein.

16 MR. KLEIN: Uh, Mr. Chairman, any recollection of
17 what happened 10 years ago. I know it was Fargo and
18 Devil's Lake. I think those were the only -- and we
19 had a -- and we had three more months or four more
20 months to -- to work on it.

21 I know we're up against a -- kind of a narrow
22 time window, but, uh, I guess I understand the Fargo
23 thing, um, certainly, but if -- as Representative
24 Bellew said, uh, if -- if you notify staff with
25 testimony and we can set you up just like we did in --

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1 in the committees, that from wherever you are, you can
2 provide your testimony live, we -- we can do that yet,
3 even after a session?

4 Right, Kim?

5 MR. KOPPELMAN: That is correct.

6 MR. KLEIN: I guess we went to two communities
7 last time and I get the Fargo thing, but, uh, I know
8 it does create additional time and expense for the
9 council and -- and their -- their folks, but maybe
10 they want to go to Fargo shopping or something.

11 CHAIRMAN DEVLIN: No. Representative Nathe?

12 MR. NATHE: Thank you, Mr. Chairman. Again, I --
13 I wouldn't have a problem or anything with Fargo, but
14 just a little historical perspective, 10 years ago, as
15 Senator Klein said, we had meetings in Devil's Lake
16 and -- and Fargo and probably the number -- the total
17 number of public that attended both those meetings
18 probably wasn't two dozen.

19 I remember up in Devil's Lake, I think it was
20 three or four. That was it.

21 We all drove from all over the state, took our
22 time off. I mean, again, I think with what we have now
23 with the electronic means and Zoom and everything
24 else, uh, I think we can reach far more people if we
25 do something along these lines.

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1 But again, I have no problem with Fargo. I think,
2 uh, Representative Schauer makes a good case for that.
3 Um, we had it at NDSU at the Alumni Center, and again,
4 maybe a handful of people.

5 I mean, you know, so I'd be interested to see how
6 many people are watching today. It'd be interesting to
7 see that. I bet there's far more people today
8 watching, so -- because it's more accessible than 10
9 years ago we didn't have Zoom. So.

10 CHAIRMAN DEVLIN: Representative Boschee.

11 MR. BOSCHEE: Thank you, Mr. Chairman.

12 Um, well, I can certainly appreciate what's been
13 said about, uh, you know, people have more access in
14 terms of beaming in from wherever they are and if we
15 can set up processes for them to testify from wherever
16 they're at, uh, we have to remember that this is a
17 once in every 10-year process.

18 And so while there may be some inconveniences to
19 us or to our staff and the great work they do, um, I
20 do think we should make an effort to have
21 conversations with communities that are going to be --
22 especially those that are going to be negatively
23 impacted.

24 And we can define that differently. It could be
25 Cass County because they've grown -- we've grown so

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1 much. It could be rural community or communities,
2 because they're going to get, in some cases, twice as
3 big as they currently are.

4 Um, so, um, while I understand that we have the
5 technology and the ability for people to participate,
6 um, I think we should try to make every effort to
7 connect with communities, also recognizing we only
8 have two months to do this work.

9 But it is a once in an every 10-year process that
10 we do this.

11 CHAIRMAN DEVLIN: Representative Boschee, as you
12 well know, it was a lot easier when we started at the
13 end of April and could go well into the fall
14 [inaudible].

15 And the other thing that has come up, it didn't
16 come up in this conversation, but had come up earlier
17 today when somebody asked me a question that was
18 tribal input.

19 And right now what we're doing is the tribal
20 relations committee is meeting with every tribe in the
21 state this month and they are -- redistricting is one
22 of the things they're talking with the tribes about.

23 And then it's my intent, when that is completed
24 here, to allow the tribes to present either virtually
25 or in person so the committee has an opportunity to

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1 hear from each of the tribes as well.

2 So I mean, I think that is being done very well
3 with the tribal relations committee and I praise
4 leadership for making that happen and, uh, we will
5 have full input from every tribe that wishes to
6 participate. So.

7 MS. OBAN: Mr. Chairman?

8 CHAIRMAN DEVLIN: Representative -- Senator Oban.

9 MS. OBAN: Uh, assuming most of our work likely
10 will be done, um, by providing access virtually, no
11 matter where we're meeting, um, has there been
12 thoughts by legislative council on how to make any
13 maps we discuss as a, um, as a committee available to
14 the public while we're -- while we're talking about
15 it?

16 Just as a bill draft would be available, um,
17 online to look at while we were discussing during
18 session?

19 MS. NESS: Um, Chairman Devlin, uh, Senator Oban,
20 uh, yes, the maps, uh, last, uh, go around in 2011
21 were all linked to the minutes.

22 Now we obviously have the technology to broadcast
23 things right on the overhead if we're doing a Teams
24 meeting, livestream, everyone can pretty much be right
25 in the room with you.

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1 And that's something, um, just like, uh, memos or
2 bill drafts, how we link those to the agenda, maps
3 could easily be linked to the agenda beforehand if --
4 if you wanted to use that option.

5 CHAIRMAN DEVLIN: 326 today. So probably ten
6 times what we had, easy. Uh, what -- was there someone
7 else from the general public that meant to talk that I
8 missed? Sorry about that. Okay.

9 MS. BROWN: Is this on? Okay. Uh, good afternoon,
10 Chairman Devlin and members of the redistricting
11 committee. Uh, thank you for having me here or
12 allowing me this time.

13 I am here with Nicole Donaghi of, uh, North
14 Dakota Native Vote and, um, as -- my name is Collette
15 Brown. Um, I'm the gaming commission executive
16 director for the Spirit Lake Casino and Resort and I'm
17 here to speak on behalf of the Spirit Lake Nation and
18 give some testimony.

19 The Spirit Lake Nation is a federally recognized
20 tribe located in the state of North Dakota with
21 enrolled membership of 7559 members as of January
22 2021.

23 According to the American Community survey, there
24 are almost 4000 Native Americans currently living on
25 our reservation in North Dakota. Spirit Lake is a

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1 sovereign governed nation by its tribal council.

2 Tribal operations include schools from elementary
3 through community college, radio stations, a resort
4 and casino, to name a few.

5 The tribe, in its operations, are major economic
6 drivers in the greater Devil's Lake area, providing
7 jobs and opportunities for many North Dakotans and
8 tribal members. I'm here to advocate on behalf of the
9 tribe and it's members for fair and legal voting
10 systems.

11 For the tribe's communities be considered a
12 community of interest that should not be split into
13 multiple legislative districts.

14 For the use of single member districts to elect
15 representatives to the state of house and to demand
16 that the North Dakota redistricting committee listen
17 to tribal input and hold district meetings and tribal
18 consultations on reservations.

19 But as you guy were just discussing, it's
20 probably something maybe we guys could set up with,
21 um, a virtual invite to each tribe? Uh, tribes across
22 the nation have had to fight for their right to vote
23 and the Spirit Lake Nation has been at that forefront
24 of that fight.

25 In 2000, the United States sued Benson County due

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1 to the county's at large electoral system, which
2 diluted the voting power of Spirit Lake's members in
3 violation of their voting rights.

4 To settle the case, the county entered into a
5 consent decree, agreeing to abolish the at large
6 system and adopt five single member districts with at
7 least two Native American minority or majority
8 districts.

9 Despite entering into the consent decree, Benson
10 County has gone back into implementing an at large
11 election system.

12 As the Native American population has increased
13 in Benson County and every census since at least 1990,
14 this election system must be reviewed to ensure that
15 it complies with the Voting Rights Act.

16 In 2016, the tribe, on behalf of its members,
17 sued the North Dakota Secretary of State over the
18 state's illegal voter identification requirements that
19 would make it impossible for many tribal members to
20 vote.

21 In 2020, the parties entered into a mutual agreed
22 upon consent decree that will allow for the
23 recognition of tribal IDs and allow tribal voters to
24 identify their residence on a map due to many tribal
25 members lacking a physical street address.

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1 The right to vote is a fundamental right in our
2 democracy and Spirit Lake will vigorously defend that
3 right of its members. As the state of North Dakota
4 undertakes its redistricting process, the legislature
5 should take several steps first.

6 It is critical that the legislative comply with
7 the Voting Rights Act. This includes moving away from
8 the at-large districts for the state of house
9 representatives, which may have dilutive effect on a
10 minority votes.

11 Where there are tribal communities such as Spirit
12 Lake, the legislators should carefully analyze whether
13 there should be a single member house districts to
14 ensure tribal communities have equitable
15 representation.

16 Failure to draw a single member house district
17 can dilute the need to vote and may violate the Voting
18 Rights Act.

19 Second, a community of interest should --
20 standard -- standards should be utilized in
21 redistricting, which can take into consideration
22 communities that have similar language, culture,
23 economics and identity to keep those communities
24 together with legislative districts.

25 Spirit Lake and its communities are a community

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1 of interest and should remain in a single legislative
2 district. Splitting the reservation and our
3 communities into multiple districts would dilute the
4 ability of tribal members to elect a representative of
5 their choice.

6 Third, even though the redistricting schedule is
7 abbreviated, there is no excuse for failing to consult
8 with tribes and take tribal input into account in
9 redistricting process.

10 Many other states have already begun -- begun
11 holding redistricting hearings to get feedback
12 directly from citizens and tribal governments. This
13 process is far too important to ignore the perspective
14 of tribal communities.

15 I thank the committee's -- the members of the
16 committee for your consideration on these important
17 issues and I'm happy to address any questions with
18 Nicole.

19 CHAIRMAN DEVLIN: Questions from the committee?
20 Oh, Senator Holmberg isn't here and he's obviously
21 been doing this a little longer than -- than some of
22 the rest of us, but it has been one of our standards,
23 ever since I was involved, that we do not split a
24 reservation.

25 MS. BROWN: Thank you.

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1 CHAIRMAN DEVLIN: You know, that just is -- does
2 not happen in North Dakota. Um, I believe that the,
3 uh, that the, uh, legislative meeting with -- that
4 your tribe is scheduled for next week.

5 I'm not on that committee, but I think that it
6 is, but we will still want to have a meeting with
7 Spirit Lake Nation as part of, you know, when we reach
8 out to all the tribes. So we will do everything we can
9 to have input from the tribes so we do not split a
10 reservation in North Dakota.

11 That does not happen.

12 MS. BROWN: Thank you, Chairman. And our meeting
13 is set for September 1.

14 CHAIRMAN DEVLIN: Oh, okay. Thank you.

15 MS. BROWN: Thank you.

16 CHAIRMAN DEVLIN: Thank you. I guess that was it.
17 So is there anyone else today that I missed? I
18 apologize, I didn't see the representatives from
19 Spirit Lake to speak. Me.

20 MR. DAVIS: Hello, uh, Chairman, committee
21 members. I'm Nathan Davis. I'm the new executive
22 director [inaudible] affairs and I just wanted to, uh,
23 go on record to something that you just stated, uh,
24 Chairman.

25 Uh, last week, we were up in the Turtle Mountains

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1 with the tribal state relations committee. Uh, next
2 week we'll be in MHA on the 31st and Spirit Lake on
3 the 1st. So I think maybe these are some topics of
4 discussion we can, uh, engage with tribal nations on.
5 Tribal leaders.

6 Uh, we are still tentatively setting a date for,
7 uh, the Standing Rock Sioux tribe and I think it would
8 be a great first step to kind of begin these
9 discussions with tribal leaders and, um, I can set up
10 any -- any correspondence, any meetings that we may
11 need to follow up on what the committee -- and I just
12 want you to know my office will be -- will be
13 available to assist in those endeavors.

14 So I just wanted to go on the record and let you
15 all know.

16 CHAIRMAN DEVLIN: And we appreciate that. I mean,
17 it was -- that was very important to us, that the
18 tribal relations committee reach out to each tribe in
19 the state and start that process and then we will
20 probably work with your office when we want to have
21 each tribe have an opportunity to -- to testify of
22 this committee.

23 Whatever works best for them, virtually or in
24 person, but we will work through your office to do
25 that.

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1 MR. DAVIS: Okay, thank you, Chairman. Committee
2 members, I just want to, once again, go on the record
3 and say we will be available --

4 CHAIRMAN DEVLIN: Yeah.

5 MR. DAVIS: -- to assist and if there's any, uh,
6 comments or concerns I may be able to answer now, I
7 guess I'll feel free to take any questions that you
8 may have in regards to tribal relations or, uh,
9 setting up future, uh, consultation.

10 If not, I just wanted to pop in real quick. I
11 know I'm on a call with Chairman Yankton as we speak
12 right now, on some other issues. So he apologized for
13 not being able to be here. Um, but if there's anything
14 else, I guess I'll take my leave.

15 CHAIRMAN DEVLIN: Thank you.

16 MR. DAVIS: Yeah. Thank you.

17 CHAIRMAN DEVLIN: Senator Holmberg?

18 MR. HOLMBERG: Mr. Chairman. Uh, one of the
19 things, as you -- as you go forth, which we have done
20 in the past, is to put parameters around what we're
21 doing so that we don't have, uh, Senator Klein over
22 there working on his master plan of 54 districts and
23 someone else doing 42 districts and someone else.

24 So I would like to make a motion and see what the
25 -- the, um, feeling of this committee is like and you

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1 know all the arguments. You can say, you know, growing
2 government, not growing government, increasing, uh,
3 access to legislators.

4 I would make a motion that we, uh, go forward
5 with -- with a plan of 47 districts as we have right
6 now. Remember, South Dakota has 35 districts and they
7 are bigger than us. So I would like to make that
8 motion and see what happens.

9 MS. OBAN: Second.

10 MR. BELLEW: Second.

11 CHAIRMAN DEVLIN: Second by Representative
12 Bellew, I believe. Well, you were a little quicker.
13 Yeah, so. Discussion. Representative Monson?

14 MR. MONSON: Thank you, Mr. Chairman, and I think
15 it's a little premature to be settling on just 47 or
16 49 or whatever the number is until we've all had a
17 chance to maybe get a computer and play with a couple
18 different, uh, versions.

19 I am leaning toward 47 districts, uh, I just
20 don't know that we are quite ready for that. But, um,
21 we have to move quickly, I understand that. We don't
22 have the luxury of taking a long time to look at a
23 bunch of different plans that might have anywhere from
24 54 to 42 districts.

25 So just my thought, it might be a little bit

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1 early, but --

2 CHAIRMAN DEVLIN: Yeah, I certainly understand
3 what you're saying, Representative Monson. Just I
4 think in the abbreviated timeframe, you know, we don't
5 want people coming in with three different size plans
6 and then trying to, you know, sort it out.

7 I mean, uh, you know, when I look at it as a
8 rural legislator, I could understand the argument, but
9 you still get down to there's roughly 600 people
10 between the two. It doesn't do me much good in rural
11 North Dakota.

12 If it was 2000 or 1000 or whatever, it would make
13 a difference, but it doesn't at this point. But
14 whatever the committee wants to do. Do you want to
15 wait on --

16 MR. BELLEW: Mr. Chairman?

17 CHAIRMAN DEVLIN: Yes. Representative Bellew, I'm
18 sorry.

19 MR. BELLEW: If -- if I remember right, now,
20 Representative Nathe or Senator Holmberg can correct
21 me if I'm wrong, but we made the decision in our first
22 meeting 10 years ago to go with the 47 districts.

23 And I think we should make that decision now,
24 today, or decide what we're going to do, anyway.

25 CHAIRMAN DEVLIN: Representative?

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1 MR. HEADLAND: Thank you, Mr. Chairman. Uh, just
2 curious, uh, with that in mind, have you got an idea
3 of how many times you expect this committee will meet?

4 Uh, you know, the more opportunities we have to
5 meet, maybe the more we don't need to rush into the --
6 and settle on the number of districts. I -- I don't
7 have any idea what you've got in mind.

8 CHAIRMAN DEVLIN: Um, I'm trying to find -- here.
9 Representative Headland, you know, I -- we know we had
10 a schedule earlier that we looked at, that just gave
11 us some basic dates, but, um, at a couple of those --
12 I think until this committee starts getting some, not
13 plans, but some concepts from legislators, we can't do
14 much.

15 You know, and it's my thought that if we're going
16 to do Cass County, if that's what the -- the
17 legislature feels or this committee feels, we should
18 do that early on.

19 You know, that first week at September and then
20 after that, start having two day a week meetings and
21 start looking at the concepts and see if we can pull
22 this together.

23 It's pretty easy for me to lay out a play for my
24 district, but it's a little tougher when I start
25 looking at all the other ones. I -- I think we need to

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1 have some concepts, uh, to go on, and I think we need
2 to do that sooner rather than later.

3 Representative Monson?

4 MR. MONSON: Thank you, Mr. Chairman. So this
5 isn't really relevant, I guess, to the motion that we
6 have at hand, but you brought up, um, okay, so if
7 we're going to have two-day meetings and we're going
8 to have four of those, that would be eight. Eight
9 meetings.

10 Are you planning on full two days each time or
11 what do you have in mind there?

12 CHAIRMAN DEVLIN: Personally, Representative
13 Monson, I think it may be more like six meetings. The
14 three weeks after that meeting in Fargo, if that's
15 what we do.

16 Um, I'm -- you know, and I may be very naïve,
17 because I've not been involved in this as many times
18 as Representative Holmberg has, but I believe that we
19 need to have our work done by the end of September,
20 hopefully.

21 So that's going to mean a meeting in -- a meeting
22 in, say, Fargo the -- let's say the 8th of September
23 and then three meetings in a row here to go over the
24 concepts and see if we can bring all these different
25 factors together and -- and do it.

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1 I believe the 47-district question has to be
2 decided today, because I don't know of any way that
3 you could start laying out these concepts without
4 doing that. So Representative Nathe?

5 MR. NATHE: Thank you, Mr. Speaker. Uh,
6 Representative Bellew is absolutely right. Ten years
7 ago, we took this, uh, question up right away. Um, and
8 as you stated, we had a lot longer timeframe.

9 This time we're under a condensed time -- we're
10 under -- we're under the pressure to get this done in
11 a short amount of time. Uh, the other thing that's
12 going to really -- is a challenge for us, is the
13 number of computers.

14 We only have, you know, four computers for 16
15 people and we're from all over the state. So I like
16 your idea also -- I support the 47.

17 I like your idea of meeting a couple times a week
18 so when we're here we can work on the computer with
19 LC, share the computer with somebody else who needs
20 the -- who needs it, because the avail -- the computer
21 availability is a big question.

22 That's a big challenge. So, uh, um, I think we
23 should stick with the 47 and, as you said, Mr.
24 Chairman, uh, start, uh, knocking out these, uh,
25 ideas.

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1 CHAIRMAN DEVLIN: And as I pointed out earlier,
2 Representative Nathe, I mean, the -- the council staff
3 does have the computers here as well.

4 So there's members of this committee that want to
5 come into Bismarck like I did the other day, whether
6 you have the committee or not -- or excuse me, the
7 committee, the computer or not, you will be able to
8 work through [inaudible].

9 They will help you do that. You know, and -- and
10 like I said, only thing I would ask, out of respect of
11 their time, is you try to schedule that and if two or
12 three of you want to come in or something at the same
13 time to discuss the same issues, just schedule that
14 with council staff.

15 MR. NATHE: And just so they know, you have to do
16 it with them present, correct?

17 CHAIRMAN DEVLIN: Right, right.

18 MR. NATHE: Yeah, in their office. So that's --

19 CHAIRMAN DEVLIN: Right.

20 MR. NATHE: -- you know, I kind of hate to be in
21 there working on it while Emily is working on her job,
22 so it's, uh, but yeah, you're exactly right.

23 CHAIRMAN DEVLIN: They will -- they will arrange
24 the time for you. Representative Lefor, did you have
25 something?

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1 MR. LEFOR: Yes, uh, thank you, Mr. Chairman. Um,
2 I guess I'd like to know if that software that's
3 available that we're talking about, Dave's or whatever
4 it's called, can that be downloaded into Maptitude?

5 Because if it could, then you can go on to that
6 internet software. I've seen it. And if that could be
7 downloaded, then everybody'd have access to it.

8 MS. THOMPSON: Uh, Mr. Chairman and
9 Representative Lefor, offhand, I haven't played much
10 with the Dave's redistricting, so kind of trying to
11 get up to speed on our software, so I wouldn't off the
12 cuff be able to answer that, but we can look into that
13 and see if they're mergeable.

14 CHAIRMAN DEVLIN: We discussed this 10 years ago,
15 but I forgot about it this time and, uh, Emily has
16 what it costs to add one district. I know that was
17 part of the conversation last session and I think I
18 would ask her to present that now, just so you know
19 before.

20 And then we'll do a rollcall vote on the 47
21 districts.

22 MS. THOMPSON: Just as a refresher, uh, 2011, the
23 last time we had a redistricting cycle, the committee
24 did consider if they wanted to expand it, you know,
25 within that 40 to 54, uh, district range and they

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1 looked at the cost of what it would be to add one more
2 legislative district, which in our state would mean
3 three more legislators, a senator and two
4 representatives in each district.

5 And so the cost for that, and that was looking at
6 a 10-year cost period, because of course until you
7 redistrict again, that's going to be your fixed cost
8 for those three additional individuals.

9 And so they looked at things like the monthly
10 salary, health insurance, pay, mileage, lodging, all
11 those costs, and the figure came out to almost \$1.2,
12 um, million, for those three additional legislators.

13 And again, we're looking at, um, 2011 salaries
14 and costs, so -- you could pretty safely assume that
15 might be higher today.

16 CHAIRMAN DEVLIN: I'm sorry, Senator Klein?

17 MR. KLEIN: Well, Mr. Chairman, um, I sense we
18 are kind of pushing our way into this, but you know,
19 um, and I might support the motion, but if -- if
20 Representative Headland goes home and -- and figures
21 out 49 and he brings it back and shows that it's a --
22 a reasonable, rational, uh, map, uh, would -- are we
23 just saying now that we would never consider that?

24 Because, uh, but -- but he's done that on his own
25 time and his own effort, as some of us tried to last

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1 time, uh, figure out a way to make it, uh, our
2 districts less than five counties.

3 But, uh, I see that being -- 47, 49, you hit on
4 it, 600 people. I still need -- I need 2400, so I need
5 another three times that or so. I get that, but I hope
6 we're not -- by passing this motion, I get it.

7 We're -- we're suggesting 47, but if -- if
8 there's a member and the software will allow that,
9 will that not -- uh, wouldn't we say 49, then we could
10 work from that point. So, um, uh, I hope we're not
11 just slamming the door on some individual who wants to
12 -- to work on that.

13 And I understand, you know, a growing government
14 and those comments, but, uh, um, yeah, the geography
15 is growing. I know South Dakota's got 35. I -- I did
16 have, uh, someone sent me, uh, the picture of South
17 Dakota's map.

18 Um, they -- they've got like some districts have
19 seven counties. I get it, but, um, you know, we are
20 probably the closest -- I think we are very close to
21 our people and, um, you know, I hate to -- to see it,
22 um, diluted any more, but, uh, I just don't want to
23 slam the door on anybody that wants to go through
24 those efforts.

25 CHAIRMAN DEVLIN: And your point is well taken. I

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1 understand that too, I -- but I also really don't want
2 14 members of the committee designing different size
3 districts if we're most likely going to end up with
4 47, but I have absolutely no problem at all if
5 Representative Headland can come up with a really good
6 49, because I would like that a lot.

7 MR. KLEIN: Mr. Chairman, if -- if 14 of them do,
8 that only leaves two that have got 47, so certainly
9 we'd be on track then and we'd be -- we'd be -- we'd
10 be very close.

11 CHAIRMAN DEVLIN: Well, I would hope the
12 committee would always be open to a new idea and
13 that's what it would be at that stage, but I think --
14 I think you need a starting point and if everybody is
15 starting to design a plan, whether it's on the public
16 one or on the one that you've got the computer
17 [inaudible] or working with legislative staff, it'd be
18 kind of nice if we were at the same page, uh, at least
19 to start.

20 And then, like I say, if Representative Headland
21 comes up with that, I am just fine with that. Rural
22 North Dakota, I'd like that. I'd go to 54, but I don't
23 think the rest of you would do that either, so.

24 Uh, Representative Monson.

25 MR. MONSON: So Mr. Chairman, you're saying this

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1 is -- the 47 is pretty much in stone, but it isn't
2 chiseled there for sure?

3 CHAIRMAN DEVLIN: Yeah. I'm saying the 47 is for
4 planning purposes.

5 MR. MONSON: Okay.

6 CHAIRMAN DEVLIN: And that's what, you know,
7 people are working on. But if somebody comes up with a
8 concept that's different than that, they should always
9 be welcome to present it. So.

10 Well, poll the committee.

11 MS. THOMPSON: If I may just, uh, jump in. We've
12 received some input on the previous question for
13 Dave's redistricting. Um, it looks like you can, um,
14 export a shape file from that software, so that is
15 something that we could upload in ours.

16 CHAIRMAN DEVLIN: I think we're ready to vote on
17 Senator Holmberg's motion to start 47 for the planning
18 purposes.

19 MS. THOMPSON: Representative, uh, Devlin?

20 CHAIRMAN DEVLIN: Aye.

21 MS. THOMPSON: Representative Bellew?

22 MR. BELLEW: Yes.

23 MS. THOMPSON: Representative Boschee?

24 MR. BOSCHEE: Yes.

25 MS. THOMPSON: Representative Headland?

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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.

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1 MS. THOMPSON: And the motion passes.

2 CHAIRMAN DEVLIN: Thank you. The, um, if we're
3 going to do Cass County, would -- would the committee
4 be open to doing Cass County on the first Wednesday in
5 September?

6 I hate to meet the day after Labor Day, because
7 some of you might have travel plans, but if we're
8 going to -- I'd like to get that set up, which is the
9 8th. And then after that, we'll do twice a week until
10 the end of September and -- huh?

11 MR. BELLEW: Are there going to be two days in
12 Cass County?

13 CHAIRMAN DEVLIN: No. Just the one day.

14 MR. BELLEW: Just the one day in Cass County?
15 Okay.

16 CHAIRMAN DEVLIN: Yeah.

17 MR. BEKKEDAHL: Mr. Chairman?

18 CHAIRMAN DEVLIN: Um, Senator Bekkedahl.

19 MR. BEKKEDAHL: My -- my only conflict is then if
20 we do the next week in Bismarck, I'll have to leave
21 early on Thursday if that's a meeting day, because I
22 have a dental CE class in Fargo on that evening I have
23 to get to.

24 So, um, I can be at Fargo the first week, it just
25 means if we're in Bismarck the next week I might have

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1 to leave early on a Thursday to get there, so.

2 CHAIRMAN DEVLIN: Or would Tuesday and Wednesday
3 be -- work better for the committee after the initial
4 meeting in Fargo?

5 MR. BEKKEDAHL: That would be fine with me. I'm
6 just -- I just want to make sure I'm here as many
7 times as I can and that's my only conflict and I
8 wanted to make aware of it, so thank you.

9 CHAIRMAN DEVLIN: Yeah. I only -- Senator, I only
10 did Wednesday in Fargo mainly because I know that a
11 lot of people go away for Labor Day or whatever and
12 having a Tuesday just doesn't work, so I thought
13 Wednesday would be better.

14 But I have no problem if the committee, you know,
15 you can let council staff know, but if Tuesday,
16 Wednesday is better for us for those other meetings,
17 then over the last week we have to add a third day, we
18 can do that.

19 MS. OBAN: Mr. Chairman?

20 CHAIRMAN DEVLIN: Yes, I'm sorry.

21 MS. OBAN: Is it possible for us to set these,
22 like the entire month of September as much as we
23 possibly can right now?

24 CHAIRMAN DEVLIN: Yep.

25 MS. OBAN: I mean, I hate to be a pain, but some

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1 of us have to make work arrangements and child
2 arrangements and --

3 MS. POOLMAN: I already called a sub for all the
4 days that you had on the calendar, so yeah, if we
5 could rearrange and -- and definitely define that,
6 that would be awesome.

7 CHAIRMAN DEVLIN: Is Tuesday, Wednesday better
8 for the committee than Wednesday, Thursday? Because
9 it's immaterial to me, but is one better than the
10 other? You think Tuesday, Wednesday is better?

11 [inaudible]

12 CHAIRMAN DEVLIN: Uh, October 15. Tuesday,
13 Wednesday is better? Okay. Then my thought would be
14 that we would meet --

15 MS. OBAN: There's already a government
16 administration meeting on Tuesday the 14th.

17 [inaudible]

18 CHAIRMAN DEVLIN: Oh.

19 MS. OBAN: Admin.

20 [inaudible]

21 CHAIRMAN DEVLIN: Uh, committee, the bad news is
22 there's several other committee meetings on those
23 various Tuesdays, so I mean, I understand your issue,
24 Senator, but --

25 MALE: Mr. -- Mr. Chairman, I think a lot of them

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1 did, because [inaudible].

2 CHAIRMAN DEVLIN: Yeah, [inaudible]. So I will
3 take full blame for that. Um, so let us go for
4 September 8, which is a Wednesday in Fargo so they can
5 set that up.

6 MALE: The 15th and 16th or what?

7 CHAIRMAN DEVLIN: 15th and 16th, 22nd and 23rd
8 and hope -- and hopefully we won't have to be here
9 29th and 30th in Bismarck.

10 MALE: Okay. Okay.

11 MALE: And Mr. Chairman, it's budget section on
12 the 30th.

13 CHAIRMAN DEVLIN: Okay, so then could we do the -
14 - what about the 28th?

15 MALE: Right, the office [inaudible].

16 CHAIRMAN DEVLIN: Oh, higher ed tentative?
17 [inaudible]

18 CHAIRMAN DEVLIN: Well, let -- let us set just
19 the -- anybody on higher ed on this committee? I don't
20 think so. Okay, so then we're [inaudible]. So it's
21 Wednesday, Thursday, Wednesday, Thursday, Tuesday,
22 Wednesday.

23 MALE: Okay. What are the dates?

24 [crosstalk]

25 CHAIRMAN DEVLIN: Well, I'm wondering if we can

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1 do these two then -- okay. Yeah, at the end of the
2 month, it'll probably be the 28th and 29th, which is a
3 Tuesday, Wednesday, just to work around some other
4 things.

5 But we would have a little time to adjust that as
6 we go along here.

7 MR. BELLEW: And Mr. Chairman, one -- one final
8 thing. You said it takes legislative council how long
9 to draft it? Like 20 days or? Or?

10 MS. THOMPSON: Uh, we had tentatively looked at
11 possibly two weeks, and for this, we're talking about
12 the actual final bill draft. Not just making a map.

13 Uh, the final bill draft that, uh, will be
14 submitted to legislative management has to have all of
15 those Metes and Bounds description from here to here
16 in this county all written out.

17 So that, obviously, takes a little bit longer for
18 our staff to make sure. We want to make that accurate.
19 But as far as just drawing a map on your computer,
20 that's not a -- a two-week thing. It's just the legal
21 description. The Metes and Bounds for a statute.

22 CHAIRMAN DEVLIN: And I know, uh, there is some
23 people with conflicts starting like the first of
24 October that are serving on this committee, um, but
25 you know, if we're into the first week in October,

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1 we'll work -- we'll work through that too.

2 But I'm hopeful that we will be able to get done.

3 I'm very optimistic. I've studied the committee
4 makeup, you know, completely. I think we can get this
5 done in time. Uh, Senator Holmberg?

6 MR. HOLMBERG: Um, another issue -- not issue.
7 Another -- I'm done.

8 MS. POOLMAN: I'm sorry, Mr. Chairman, but I was
9 talking out of turn and I wasn't listening. Can we go
10 through the final, final, what you decided for the
11 month of September so I can get the right dates?

12 CHAIRMAN DEVLIN: Yeah.

13 MS. THOMPSON: Uh, Mr. Chairman, uh, Senator
14 Poolman, a quick recap of those dates. We're looking
15 at, uh, September 8 -- or, yeah September 8, which is
16 a Wednesday at Fargo and then Bismarck meetings on
17 September 15 and 16, which is a Wednesday, Thursday.

18 September 22 and 23, a Wednesday, Thursday, and
19 then again, September 28 and 29, which is Tuesday,
20 Wednesday in Bismarck.

21 MALE: What was that last one?

22 MS. THOMPSON: Twenty-eighth and 29th is the last
23 one.

24 CHAIRMAN DEVLIN: Uh, I wanted Senator Holmberg
25 to address something that we want to see in all the

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1 concepts so we make sure we're all on the same page.

2 Um.

3 MR. HOLMBERG: Uh, sorry, there's been a natural
4 disaster that I'm handling. So but here we are.

5 Actually, uh, I'm referring to page 10 of the memo
6 that we had, which lists the various, um, items that
7 we have used in the past as criteria.

8 Uh, for example, such things as compactness, uh,
9 [inaudible] which I believe is constitutional,
10 preservation of political subdivision boundaries, and
11 that is really counties.

12 If you recall, uh, last time we had a -- a lot of
13 discussion about county lines and at the end of the
14 day, we ended up with 33 counties that were not
15 divided and there were some counties that had to be
16 divided because of just their population or their
17 location, which meant that they were kind of on the
18 menu and two other counties grabbed those things.

19 Um, and as we heard earlier today -- as we heard
20 earlier today, um, that those, uh, issues are -- are,
21 um, important and -- and can be used.

22 Uh, preservation of communities of interest,
23 cores of prior districts, uh, protection of incumbents
24 is one of those that has been articulated as
25 traditional practices and obviously compliance with

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1 Section 2 of the Voting Rights Act.

2 Those were the things that were in the memo that
3 you had today and I would hope we would certainly keep
4 those in mind as you put together your ideas.

5 Um, and, uh, so I mean, I would just hope that
6 they could do that, because we've done that in the
7 past and some of it is statutory and some of it is
8 what we have done and some of it is just practical.

9 CHAIRMAN DEVLIN: Representative Monson?

10 MR. MONSON: Thank you, Mr. Chairman. Can we get
11 that list that you just read off?

12 MR. HOLMBERG: It's -- it's in your handout.

13 MR. MONSON: Oh, it's in the packet?

14 CHAIRMAN DEVLIN: Yep, it's on page --

15 MR. HOLMBERG: Yeah, it's -- it's, uh, the last
16 page of the redistricting background memo.

17 MR. MONSON: Okay.

18 MR. HOLMBERG: I knew it was familiar, but I
19 didn't know where it was.

20 CHAIRMAN DEVLIN: Okay.

21 [crosstalk]

22 CHAIRMAN DEVLIN: Yep. Yep.

23 MR. HOLMBERG: Yep, okay, I [inaudible].

24 CHAIRMAN DEVLIN: Representative Headland?

25 MR. HEADLAND: Thank you, Mr. Chairman. Uh, for

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1 the respective dates you've picked out, your Tuesday,
2 Wednesday, every week except for September 22 and 23
3 and I guess I didn't hear why we are going Wednesday,
4 Thursday?

5 CHAIRMAN DEVLIN: We -- we looked at the other
6 legislative hearings that were coming up and we were
7 working around that.

8 MR. HEADLAND: Okay, so it's hearings?

9 CHAIRMAN DEVLIN: Or legislative --

10 MR. HOLMBERG: Budget section.

11 CHAIRMAN DEVLIN: Budget section, other
12 committees are already scheduled, you know, so.

13 MR. THOMPSON: Tax committees.

14 CHAIRMAN DEVLIN: Okay, tax committee, like I
15 said, the tribal relations committee will be meeting
16 with the tribes starting next week. I think they
17 already met with one, I think Mr. Davis said that. So
18 is there anything else for this committee today? Last
19 chance, Representative Bellow.

20 Are we done?

21 MS. THOMPSON: Yes.

22 CHAIRMAN DEVLIN: Thank you very much. I know
23 it's been a long day and there's going to be more long
24 days, but we'll get through this. So thank you. We're
25 adjourned.

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1

2

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