

APPENDIX C

# Redistricting Overview

Redistricting Committee  
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## Exhibit 8

# Redistricting Plan Directive

## House Bill No. 1397 (2021)

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

## Requirements of the Constitution of North Dakota

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

## Requirements of the Constitution of North Dakota

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

## Requirements of the Constitution of North Dakota

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

## Requirements of the North Dakota Century Code

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

## Requirements of the North Dakota Century Code

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

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

## Requirements of the North Dakota Century Code

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

# Redistricting History in North Dakota

## 1931-62

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

## 1963-75

- Nearly constant state of litigation.

## 1981

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

## Redistricting History in North Dakota

### 1991

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

### 2001

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

### 2011

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

## Federal Law

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

## Federal Law – Population Equality

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

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

## Federal Law – Population Equality

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

## Federal Law – Partisan Gerrymandering

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

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

## **Federal Law – Multimember Districts and Racial or Language Minorities**

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

## Federal Law – Multimember Districts and Racial or Language Minorities

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

A minority group challenging a redistricting plan must prove:

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

## Federal Law – Multimember Districts and Racial or Language Minorities

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

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

Common types of gerrymandering include:

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

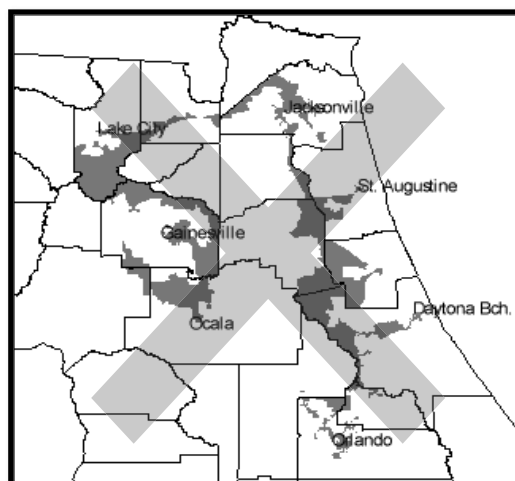
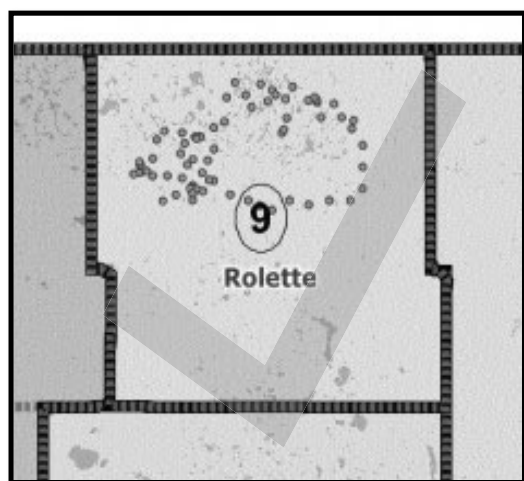
## Federal Law – Traditional Districting Principles

Items identified as traditional districting principles include:

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

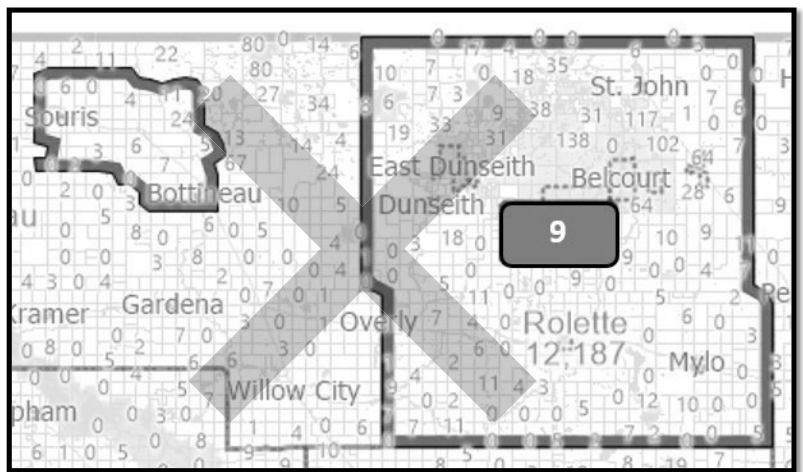
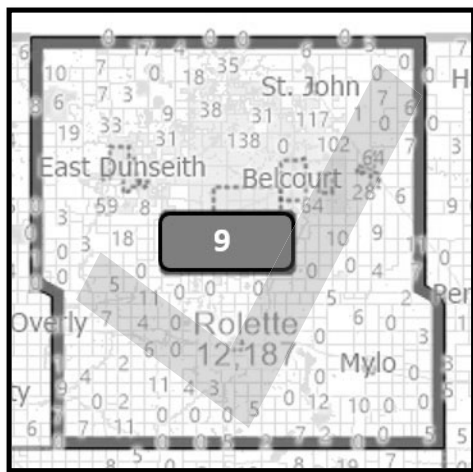
# 1. Compactness

Districts must be geographically compact.



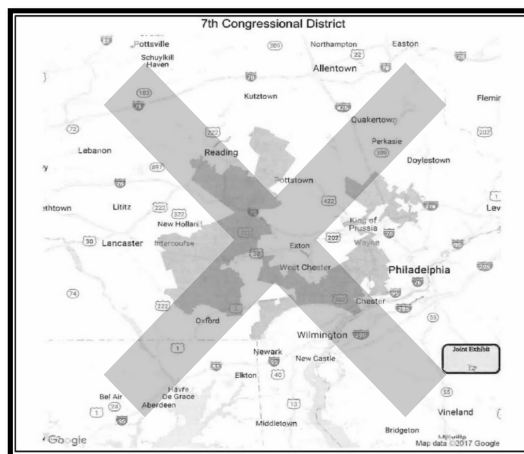
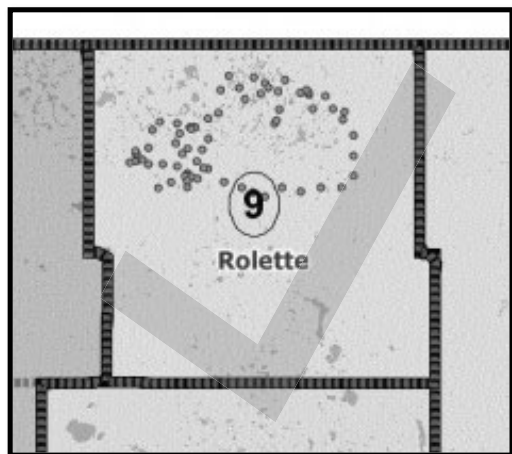
## 2. Contiguity

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



### 3. Preservation of Political Subdivision Boundaries

Avoid excessively splitting political subdivision boundaries.



## 4. Preservation of Communities of Interest

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

## 5. Preservation of Cores of Prior Districts

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

## 6. Protection of Incumbents

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

## Issues to Address

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