



# Montana Districting and Apportionment Commission

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## MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.  
**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Ninth Public Hearing of Interim  
Strand Union Building, Room 275  
MSU - Bozeman  
May 21, 2002

### COMMITTEE MEMBERS PRESENT

Janine Pease Pretty On Top, Presiding Officer  
Joe Lamson  
Sheila Rice  
Jack D. Rehberg  
Dean Jellison

### STAFF PRESENT

Susan Byorth Fox, Research Analyst  
John MacMaster, Attorney  
Lois O'Connor, Secretary

### VISITORS

Visitors' list (ATTACHMENT #1)

### CALL TO ORDER AND ROLL CALL

The public hearing was called to order by Commissioner Pretty On Top, Presiding Officer, at 1:00 p.m. Attendance was noted; all Commissioners were present. (ATTACHMENT #2)

**Commissioner Pretty On Top:** The Commission was appointed in 1999 and will serve until 2003. By law, we are required to have one hearing but, through the generosity of the Legislature, we are able to carry out a series of hearings that takes us around the state. One of the most important characteristics of the last 10 years has been the increase of population in some areas, which has been dramatic, and the decrease in population in some other areas.

**Susan Fox, Research Analyst, Legislative Services Division**, provided a general overview of the legislative redistricting process and the population criteria. (EXHIBITS #1 and #2 respectively)

**Ken Nordtvedt, Former Legislator, Bozeman:** Is it the U.S. Supreme Court or the Montana State Supreme Court that set up the plus or minus 5% population deviation?

**Ms. Fox:** It was the U.S. Supreme Court through case law, and Montana has a constitutional provision for population also.

**John MacMaster, Staff Attorney, Legislative Services Division**, provided an overview of the mandatory and discretionary criteria for legislative redistricting adopted by the Commission. (EXHIBIT #3)

### **OVERVIEW OF SOUTHWEST REGION PLANS**

Ms. Fox provided an overview of the Bozeman and surrounding area of the Southwest Region Plans. (EXHIBITS #4 and #5 respectively)

**Ms. Fox:** The Southwest region plans completes proposed district 4 from the Northcentral Region and proposed districts 45 through 72. All three plans include an area from Carbon County (Roscoe Precinct #13). Carbon County was too big so it needed some population carved out. A portion of Carbon County and all of Stillwater County are included in proposed district 46 in all three plans. The variation is which parts of Sweet Grass County is shared. Plan 300 is closest to the existing district but adds different areas between the Yellowstone River and I-90 and an area east of Big Timber. Plans 100 and 200 brings more of southwest Sweet Grass County into the district with Big Timber. Proposed district 46 has Columbus as the biggest town in the area. Proposed district 47 includes Big Timber and proposed district 48 is the Livingston district. Proposed district 48 in Plan 300 is closest to the existing district, and it adds an area between the Yellowstone River and the city limits on the eastern edge of town. Plan 200 goes north of Livingston and adds the most population. Plan 100 adds some of that area but not quite as big. Proposed district 47 stops at the county line in all three plans.

Gallatin County gained the highest number of persons between 1990 and 2000 (17,368 people), and it had the second highest percentage gain in the state (34.42%)--Ravalli County had the higher percentage gain and Broadwater County had the third highest gain. Even though Gallatin County gained 17,368 people, you have to look at it in the context of all of the districts. If you look at the existing districts, they range from a negative 13% from the ideal population to 60% over the ideal which explains the variations in the three plans.

Bozeman has 4 house districts, and the city limits are included in those districts. Belgrade is in its own district in each of the plans. In Plan 100, proposed districts 54 and 56 are the new house districts. The northern district includes all of Manhattan and the area outside of Bozeman and Belgrade north of I-90. Three Forks and Willow Creek remain with Madison County. The southern portion of Gallatin County remains the same, pulling south out of the Bozeman area.

In Plan 200, Three Forks is brought back into a Gallatin County district while Amsterdam-Churchill and Willow Creek remain with the Madison County district. The Three Forks district includes Manhattan and the northern part of the district. The district that used to be shared with

Madison County comes completely within Gallatin County and brings Three Forks and Willow Creek in with the Gallatin County district. It is also shared with the Amsterdam-Churchill and the Four Corners area. Proposed district 50 in Plan 100 is all within Gallatin County. Plan 200 includes the shared Three Forks school district out of Broadwater County. Plan 300 shares the district with areas in Toston, Radersburg, and Townsend in Broadwater County and northern Gallatin County, but takes no population from the Belgrade area.

In all three plans proposed district 49 completes the district from the Southcentral Region-- Golden Valley, Wheatland, and Meagher Counties. All three plans have portions of Broadwater County, and Plan 300 includes portions of Lewis and Clark County. In plan 200, proposed districts 54 and 56 are new configurations. In Plan 200, the Madison County district includes the area of Cardwell in Jefferson County. It does not include Whitehall but it does include Cardwell with the Willow Creek and Amersterdam-Churchill areas. In Plan 300, the Madison County district is shared with all of the area that is south of I-90. It includes both Whitehall and Cardwell. Proposed district 55 in Plan 300 is similar to the other plans with the exception that it includes the Big Sky area of Madison County.

Jefferson County is too large for a single district and it is shared in different portions with Madison or Lewis and Clark Counties. In Plan 100, the Montana City portion will go north with the Lewis and Clark County district. Plan 200 goes south into the Cardwell and the Three Forks school district and is kept with Madison County. Plan 300 includes Whitehall, Cardwell and the south of I-90 in the Madison County district. The Madison County district is no longer shared with Butte-Silver Bow County. Beaverhead County becomes a single house district in all three plans and brings back the Apex area that was carved out in the last round.

Plans 100 and 200 keep Anaconda-Deer Lodge County a single district. Plan 300 is closer to the existing district splitting the population of Anaconda between two districts. One is shared with Powell County and the town of Deer Lodge.

### **PUBLIC TESTIMONY**

**Senator Don Hargrove, Senate District 16:** I suggest that Plan 100 makes the most sense for a variety of reasons, all of which are listed in the criteria. The most important being the compact and contiguous districts. People identify with their counties, their political areas, and the political guidelines. Another one of your criteria is following the lines of political units. I think that Plan 100 does that and follows communities of interest. In Plan 200, it is nice to have Three Forks and Willow Creek come back home to Gallatin County even though they have been with Madison County for a period of time. In Plan 300, it makes sense to bring Big Sky into the county. However, there are some things that seem to bear no resemblance to the guidelines--compact and contiguous districts, political units, and communities of interest. In Bozeman, it takes a lot of analysis to look at those, but there is no reason for a couple of streets being separated by one street and so on. That doesn't make any sense to me why that would ever have to be done. The best illustration of lack of compliance with the guidelines is proposed district 50 which brings in two counties, its divided by the Missouri River, and there is no bridge between them. Geographically it makes no sense. The communities of interest, the political units all of those things make no sense at all. I assume there is a reason, and I'm not sure if I really heard it. I would suggest that one in itself, based on the guidelines that you have, disqualifies Plan 300 completely. Plan 100 is undoubtedly the best one, and I hope that is the one that comes out of it.

**Commissioner Lamson:** According to the census information, Gallatin County received about 17,000 more people than any other place which puts it just under the threshold to get not only one additional district but close to two. Plans 100 and 200 give the county basically seven more districts up from 6 while Plan 300 gives the County 8 more districts up from 6. You get an additional representative for Gallatin County which mirrors close to the 17,000. Knowing that, do you still support fewer representatives for Gallatin County?

**Sen. Hargrove:** I do just for the reasons that I stated. I am not sure that there is that much advantage (to having more representatives) whether they are Gallatin County or not. Plan 300 has new districts outside of Gallatin County. We will have one senate district that will be almost all outside of Gallatin County and one house district that a great deal of it is outside of Gallatin County. To me it is a disregard of the counties. The benefit I think is political. It is the issues and candidates, and to the folks that I represent, I don't think it will make any difference. In fact, I think it might change things a little bit more to the majority. For the participation of the populous and the attention to the political lines and traditional lines is more important than what we might do by scattering around and taking in some other counties.

**Senator Lorents Grosfield, Senate District 13:** I will restrict my comments to the Park and Sweet Grass County areas. I have been to several of your meetings including your (the Commissions) executive action sessions, and it is very obvious to me and to others that Plan 300 is the plan. All votes for Plan 300 have been 3 to 2. All the votes for amendments offered by the majority for Plan 300 have been 3 to 2. All of the votes and amendments by the minority have been 2 to 3. I am not complaining, I am recognizing reality. When I was first elected to the Senate, the Democrats controlled the Senate for my first two sessions. What I learned in the process, and I learned it early on, is that if you are in the minority and you want to get something done, you must work with the majority. There is just no other way. Because of that, I have not spent much time on Plans 100 or 200, even though I know that they were developed by staff (Susan Fox). I know also that she is a nationally recognized expert in the redistricting arena. In fact, I visited with her boss and found that she has presented in national forums and has actually been a chairman of some national committees in this area.

At the Billings hearing, you had Plan 300 that touched on Sweet Grass County. It did not include Park County. At that time, Sweet Grass County went to the north with Meagher or Wheatland Counties. Since then that has changed, and I appreciate that. A number of people in Park and Sweet Grass Counties were upset with, on one hand, Sweet Grass County moving north, and on the other hand, Park County being combined with Gallatin County. In the spirit of working with the majority, Representative John Esp and I approached Commissioner Lamson and Adam Quinn to work on getting Park and Sweet Grass Counties back together again. We worked together with Mr. Quinn and the Montana Democratic Party who is working on Plan 300 for the Party and for the majority of the Commission. I have to say that I am really pleased with both Commissioner Lamson and Mr. Quinn in helping us work through the changes to Plan 300. As Susan (Fox) mentioned, Plan 300 now for Park and Sweet Grass Counties is very close to the status quo of where we are at now, with some slight changes. I urge anyone seeking input to start with Plan 300, and you might get some ideas from Plans 100 and 200; but Plan 300, at least for our area looks good.

Some specific comments regarding Plan 300. The Livingston district adds a couple of areas between the town of Livingston and the river which makes a lot sense. The area is part of Livingston. It's the same community of interest, the same school, the same trade area, the

same events, and so on. It only makes sense to include that area with Livingston like you have done in Plan 300. However, as I indicated to Commissioner Lamson, I am working on some amendments for Plan 300, but I don't have them ready yet because I understand this is a numbers game and the numbers have to work within the plus or minus 5% or else you are wasting your time. I haven't tracked down all of the numbers. I really feel that while the area between Livingston and the River fits very well within Livingston, I also think the same thing can be said for the area north and east of Livingston. This is the area that I will be looking at to try and talk the Commission into adding a little more. I think that it can be done in a way that it will not adversely affect the Commission's goals for the Livingston district. This would also enable us to add some more to Sweet Grass County. Sweet Grass County is very close to the 5% number. A good example, if you think of I-90 between Livingston and Big Timber, as you are approaching Big Timber from Livingston off to the right as soon as you cross the Park County line, that area goes to Park County. If you think about those people, especially those close to the Park County line, they do as much business in Livingston as they do in Big Timber, and they certainly never go to Columbus for business. So we are trying to figure out a way to add some of those people into Sweet Grass and Park County district. I think we have a way figured out that even Commissioner Lamson will like.

**Ed Carrel, Park County Commissioner**, provided written comments in support of Plans 100, 200, or 300 for Park County but was in favor of Plan 100 and opposed any consideration of being included in a Gallatin County Plan. (EXHIBIT #6)

**Representative Joe Balyeat, House District 32, Bozeman:** The following is an excerpt from written comments provided by Rep. Balyeat. (EXHIBIT #7)

"I will be addressing Plan 300, which is the Democrat plan, because I believe that the Democrat majority on this Commission has been adopting that plan throughout the entire state. The Montana and U.S. Constitutions are quite clear that one-person one-vote is the essential ingredient to ensuring the integrity of the electoral process. Yet, the Democrat majority which controls this Commission has so consistently gerrymandered house district lines throughout Montana that it is quite obvious that one-person one-vote is no longer valid.

I hold in my hand population statistics for each of the presently established house districts around the state. The pattern is obvious. Probable Democrat districts are consistently under-populated by almost 5%. Probable Republican house districts are consistently over-populated by almost 5%. Current rules only permit at most a 5% deviation from the average. So it is quite obvious that the Democrat majority on this Commission is manipulating the system to the max. They are spreading out the Democrat minority in this state to control the maximum number of house districts possible while cramming as many Republican voters into as few house districts as the law will allow. So people in Democrat districts get roughly 10% more voting power than their Republican-district counterparts, and we no longer have one-person one-vote. For Republican districts, it is one-person-nine-tenths of a vote. Over the entire 100 house district, the end result will be to grant Democrats as many as 4 or 5 more Democrat house districts than they would have otherwise given an evenhanded reapportionment. I contend that this blatant abuse is borderline voter fraud. I further contend that the Legislature, under Article IV, section 3, has a constitutional mandate to guard against this abuse and ensure the purity of the electoral process. I will urge legislative action and court action, if need be, to resist this blatant abuse.

The facts are pretty simple. If this process that you are engaging in were guided by logic rather than blatant partisanship, big city, urban districts would be weighted approximately 5% above average, and the surrounding donut area of rural districts would be weighted 5% below average. Why?, because over the next 10 years the donut-area districts will continue to grow exponentially while the inter-city districts have no room to grow, and thus, they will steadily shrink relative to the average house district size. But rather than follow logic, the Democrat majority on this Commission is following their Democrat-party multi-thousand dollar computer program and doing the exact opposite of what logic and evenhanded governance would dictate. So, 10 years down the road, the discrepancy in voting power could average as much as 20% or more.

Here are the stats for our region. Republican, Stillwater +4.92% above the average; Republican, Sweet Grass +4.51%. Democrat, Livingston -3.25%; Democrat, inner Bozeman -4.64%, -4.60%, and -4.49% respectively. Republican, Gallatin County west +4.88%; Republican, Belgrade/Manhattan +4.73%; Republican, Madison County +3.30%. Democrat, Butte districts -3.34%, -3.92%, and -4.26% respectively. Democrat dominated Anaconda -4.91%. Probable Democrat Helena districts: negative 4.85%, 4.84%, 4.27%, 4.74% 4.79% 4.84%, and 4.44% all negatives from the average. The same blatant abusive pattern goes on throughout the entire state of Montana.

Meanwhile, this Commission is also apparently determined to make life as tough as possible for Republican representatives. In order to properly gerrymander house districts to meet their partisan goal, this Commission is proposing that one representative cover the entire area from Riverside Country Club to Winston, Montana, near Helena, in direct violation of your own redistricting guidelines to the contrary. This requires roughly a 5-hour, round trip drive from Reese Creek to Winston. They (the Commission) has likewise sliced my Belgrade/Manhattan house district into 4 or 5 different pieces. They have, in effect, sentenced House District 32 to capital punishment at the hands of an unjust executioner.

The bottom line is this: (1) the Democrat-controlled Commission is disenfranchising 10% of voters in Republican districts; (2) they are cramming as many Republican voters as they can into rural Republican ghettos; (3) they are systematically diminishing their citizen's rights to something less than full citizenship; and (4) they are making life as tough as possible for the elected legislators and leaders of these Republican districts. I, for one, am not willing to accept this, what I would call, borderline, voter fraud without a fight; and I urge this Commission to reconsider its current course of action."

**Commissioner Lamson:** Are you aware--I am sure you have looked at some of the other Plans besides Plan 300. Do you recall what the variation on the other districts in Plans 100 and 200 for Gallatin County in terms of the size of districts? Were they overall larger than---

**Rep. Balyeat:** Obviously, the variations vary from near minus 5% to plus 5%. But, statistically, the averages should work out to something around the same amount of average of house sizes for Democrat districts and Republican districts; and it isn't even close. You are well aware of that Commissioner Lamson. This is a consistent pattern. I just went through our region, but I can take you through the whole state if you would like. The Democrat districts are almost always nearly minus 5% under while Republican house districts are almost always 5% over, which is exactly what you would expect from a Democrat computer-software program that is generated to generate as many Democrat house districts as possible.

**Commissioner Lamson:** When we shaped the districts in Gallatin County, Gallatin County is nearly entitled to two additional representatives. Doesn't Plan 300 achieve that more closely than the other two plans?

**Rep. Balyeat:** No, what Plan 300 does is gerrymander the districts to try to create a third Democrat house district, even though it is quite obvious to any of us who live here that the growth has been in Republican areas. My house districts is the third largest population district in the state. The house district next to mine (HD 27) is the first largest. The two House Districts combined are 27,000 voters. You could have very easily and simply taken part of my House District (32) and part of HD 27 to create a third house district. But, instead, you gerrymandered to try to create a third Democrat house district.

**Commissioner Lamson:** But in your previous testimony, didn't you state that because of the tremendous growth in Gallatin County that it necessitated that we cut those areas up around the Belgrade/Manhattan area?

**Rep. Balyeat:** Logically, you would make both areas smaller than the average because they are the areas that are going to be growing, so 10 years from now, as they are today, are districts are huge compared to the relative population. Instead, you've over-populated our districts; and I believe it is quite clear that you have done so deliberately.

**Commissioner Lamson:** You are a statistician and you were pointing out that your voters were allegedly going to get nine-tenths of a vote. With the plus or minus 5%, isn't it really a 9.5% variance?

**Rep. Balyeat:** The way you calculate the differences--Republican districts are 105% of the average population and Democrat districts are 95% of the average population. You would take the 105% divided by the 95% to come up with a little more than the 10% deviation.

**Commissioner Rice:** You are aware through your study that the U.S. Supreme Court is the origin of 5% deviation guideline. Would you say that the Supreme Court has committed voter fraud?

**Rep. Balyeat:** No, but the 5% deviation is meant to deal with difficult areas and try to keep communities of common interest. Statistically, over the course of an entire state, Republican districts may have some that are plus or minus 5%, Democrat districts may have some that are plus or minus 5%. The statistical odds of coming up with this plan (Plan 300) where virtually every probable Democrat district is minus 5% and every probable Republican district is plus 5%, the statistical odds are impossible. I would like to refer you to Ken Nordtvedt, who is a mathematician, to give you the odds of that happening.

**Commissioner Rice:** Have you studied any other states for the validity of that assumption?

**Rep. Balyeat:** No

**Ken Nordtvedt, Former Representative, Present Candidate for Senate District 16:** My profession is mathematical physics. I have a fairly good international reputation in my work so I would not say anything publically that would tarnish that reputation for scientific accuracy. Rep. Balyeat has presented you the list of numbers, the deviations of Plan 300's districts, and their present populations. The plus or minus 5% was the Court's leniency to give people like you (the Commission) to deal with the various criteria about people's lives and geography to make the districts reasonable. If you had plus or minus 2%, 3%, or 4% deviations around the state that randomly correlated with all of these factors, that would be understandable. But I am here to tell you, that the almost perfect correlation between oversized districts of Republicans and undersized districts of Democrat-leaning voters has a probability to happen by accident, if you were using the other criteria. They are astronomically low. As a scientist, I would be willing to

testify to that, under oath, in Court. Therefore, I suspect there is another motive for having districts come out this way, and it is the obvious one--that is to give additional strength to the Democratic voters of the state and to weaken the strength of the Republican voters of the state. The bigger the region in the state that you take, the probability gets smaller and smaller for this happening for any reason other than partisan politics.

**Commissioner Lamson:** This is a process that never seems to please everybody completely. As a former legislator, the day comes when you have put it into a bill or it is just rhetoric. We are dealing with redistricting laws and numbers. Do you have a preference for any of the plans?

**Mr. Nordtvedt:** No, but I will say one positive note about your Plan 300, just one. I think that taking the Madison County part of Big Sky and putting it in with the Gallatin County part of Big Sky does serve a useful purpose in bringing two communities of common interest together. Plans 100 and 200 come from a more nonpartisan process and they have pluses and minuses. But your plan (Plan 300) is a very deliberate plan to weaken the Republican vote in the state and strengthen the Democrat vote in the state. That is my interpretation of the outcome of the districts.

**Commissioner Lamson:** You are aware that statewide, there is no Republican or Democratic majority on a given office on the statewide offices. There are both Republicans and Democrats elected on a statewide basis. In giving a voice to all people in Montana, we are going to have to change things around in terms of where the population has moved.

**Mr. Nordtvedt:** That is why when I use the words Republican and Democrat voters, there is the implicit meaning that there are many voters who change from election to election. You know and I know that there are regions in the state where one can identify that the voters lean one way or the other typically, unless there is an unusual election.

**Gene Townsend, Mayor, Three Forks:** I would like to speak in favor of Plan 300. Prior to the 1990 changes, Three Forks and Willow Creek were almost always in the Gallatin County area as far as our legislative districts. Sometimes we did share some of Broadwater County area up around Townsend and also part of Jefferson County. Speaking of the towns of Willow Creek and Three Forks, we certainly have more in common with the other communities in Gallatin County. Most of the people in Three Forks who travel to work, travel to the Bozeman/Belgrade area. The schools work well with the Churchill/Amsterdam areas. I encourage the Commission to adopt Plan 300 for the Southwest Region. I am speaking on the part of the Three Forks and Willow Creek communities.

**Shiell Anderson, Former Representative, Livingston:** I won't go into the political realities being what they are, but I would like to advocate what I think Sen. Grosfield said. That is, if you are able to use Plan 100 for Park and Sweet Grass Counties as opposed to Plan 300, it would serve the people in lower Sweet Grass County well. I remember when that was split up in 1990, the lower Sweet Grass people felt like they were disenfranchised, in part, because to get from lower Sweet Grass County to Stillwater County, you have to go up through Big Timber or else take a wagon or a horse across the mountains. It just works better for them to be included in the rural district as it is laid out in Plans 100 and 200. I think you could do that without affecting what you are trying to do aside from those two counties because of you expand the Livingston district, by taking that district north and east up toward Highway 89, then you are able to absorb more people in the rural district in the southern part of Sweet Grass County. If that is a possibility, I think that you would geographically and politically serve the people in that area. Politically, I mean, the local people actually voting for their representative more easily because most



business conducted in southern Sweet Grass County is conducted in Big Timber and Livingston.

**Representative Christopher Harris, House District #30:** I am in favor of Plan 300 for some of the reasons already articulated--(1) it combines the communities of Big Sky, being the Madison and Gallatin County communities. If you are a resident of Big Sky in Madison County, the trek to the voting places is around 65 miles. It is almost easier to make it by helicopter to Ennis than it is to drive. As Mayor Townsend has said, it also combines Three Forks and Willow Creek into a Gallatin County district. That is certainly more valid. In addition, Gallatin County gains one additional representative which I think ought not to be underestimated. As far as the Bozeman districts, I think what happens there is that they become more competitive between Democrats and Republicans. I think you are doing a favor to the political process by having competitive races. In my own district, I would be safer to have either Plan 200 or Plan 100. This (Plan 300) dilutes the Democratic strength in former House District #30, but it means that I will probably have a tough opponent and I will have to run pretty hard. I think that is good for the electorate to have competitive races. I urge you to resist any plan that would create Democratic urban ghettos. That would be a travesty. I urge you to adopt Plan 300.

**Jerry Calvert, Professor of Political Science, MSU:** I have a Ph.D. in political science and I have taught courses on campaigns, elections, and constitutional law for 30 years. The 500-pound gorilla in this room is the infamous words "partisan gerrymandering", which was rightly brought up. Let's not dance around it. Let's talk about that, and let's also talk about quality of voting rights. First, the U.S. Supreme Court, for reasons that are not really clear to me, has allowed no slack whatsoever in terms of congressional redistricting. In fact, it turned down a New Jersey congressional redistricting plan that had a variation of less than plus or minus 1%. However, in several other cases involving redistricting for state legislatures, the U.S. Supreme Court has many variances greater than the plus or minus 5%. Do I think that is bad law? I do personally, but that is set on case law. From a strictly cost benefit analysis in terms of resources and time, no matter what plan you are looking at here, I would suggest that is a very long bet to challenge whatever plan you agree on that has a population variance of plus or minus 5%. I think that is a dead horse if you are going to go into federal or state courts on the issue. So let's cut to the chase and talk about "partisan gerrymandering".

The U.S. Supreme Court addressed that issue in 1986 in Davis v. Bandemer (478 U.S. 109 (1986)), involving Republican-dominated legislative reapportionment in the state of Indiana in which they did a pretty good job of screwing the Democrats in the wake of the census. They ruled against the plaintiffs, and in so doing, they gave a rationale that I would like to quote, which addresses specifically some of the issues raised here today. In ruling that the obviously partisan gerrymandered congressional districts in Indiana did not violate the equal protection clause of the Fourteenth Amendment, the U.S. Supreme Court, by a 6 to 3 vote, said "Relying on a single election to prove unconstitutional discrimination was unsatisfactory. Unconstitutional discrimination occurs, Justice White wrote, only when the electoral system is arranged in a manner that will consistently degrade a voters or a group of voters influence on the political process as a whole." I fail to see in any of the plans, including Plan 300 based upon what I have heard so far, that Plan 300, if adopted, would lead to a consistent degradation of Republican votes in the state of Montana. In fact, the last time the Democrats controlled both Houses of the state legislature and the governorship was 1986. The Republican Party is the majority party in the state Legislature and will likely remain so no matter how you jigger the districts in the short

term because politics is not just about finagling district lines, it is also about having good and well-funded candidates who speak to the issues. You can't get there from here just by district line drawing.

Finally, I want to go back to the Court's decision. "Whether a particular group has been unconstitutionally denied its chance to effectively influence the political process, such a finding of unconstitutionality must be supported by evidence in the continued frustration of the will of the majority of the voters or the effective denial to the minority of voters of the fair chance to influence the political process". I fail to see any of those things happening in any of these plans.

As a followup point, I do not like partisan gerrymandering. I was disappointed the day of this decision. I was disappointed in the U.S. Supreme Court decision in the last term in the minority involved in the continued litigation over North Carolina's Twelfth Congressional District, the so called majority-minority district in which the majority voters had been conscientiously districted to be minority voters. Unfortunately from my perspective, the majority of the Court ran with Davis and said "Gee Whiz! Yes, it is true that the majority of voter in the Twelfth Congressional District are Native American, but they are Democrats, so that's okay." I don't like it but that is the law. You can go to court, but some lawyer is going to make a lot of money and you are going to lose.

**Commissioner Rehberg:** If you were sitting on this Commission in the minority position, how would you vote? I have been opposed to everything they have done because I think they are totally wrong. Would you continue to vote no against all of their proposals?

**Professor Calvert:** I would take the advise of some of the people in this room. I would try to work very hard to represent my point of view and try to find common ground with the majority as best I could. I think from a moral standpoint, I would remind the Commission that a plus or minus 5% is simply an arbitrary number, and there is no logical reason why the standard that the Supreme Court set for Congress--when it wouldn't even tolerate a plus or minus 1%--that you should be arguing for that every point along the way. We should be arguing for neutral redistricting principles.

Here is my problem. Is there any way to get politics out of reapportionment? No, there isn't. Consider the alternatives. No one is going to want the state Legislature to do it. Okay, so let's just sue and have a special, 3-judge Federal District Court panel do it. Good luck! You can study the history of what those guys have done. They don't give a rip about incumbents or anything else. Often, they put incumbents in the same districts. From my perspective there is no way to get around it. All you have is the criteria. Given the criteria and the fact that the state Legislature can't modify whatever plan that is adopted, the only place you can go is to court. I am simply advising that given the fact that the complaining parties are clearly in the majority, and in light of the standards set in Davis, it's really a waste of everyone's time.

**Commissioner Rehberg:** I would like to respond to something you said. You can take partisan politics out of it. I was on the Commission 10 years ago. If you would go back and research the minutes, I'll bet that there were less than six votes that the two parties did not agree on. Only six votes in the whole session did we vote against each other. It was almost a unanimous decision on everything we did because we could sit down and reasonably discuss it and work it out. There were no 3 to 2 votes.

**Professor Calvert:** Didn't the Supreme Court also pick the Chair that time?

**Commissioner Rehberg:** No, they did not. Our first choice was Chief Justice Haswell who died. Our second choice was Les Gulbrandson who was a retired Supreme Court Judge, and

our third choice, after those two were elected and resigned, was Jean Fallon Barrett a former Secretary of the Senate.

**Professor Calvert:** The Constitutional Convention set the standards for a nonpartisan Commission like yourselves. I clearly hope that is what would have happened every time--that the two Democrat and two Republican appointees would agree on a fifth neutral party. Unfortunately, that has not always been the case. Among all of the possible evils, there are different ways of doing this, and the setup that we have in Montana is the best in terms of reapportionment.

**Commissioner Pretty On Top:** It is true that in this particular case, one of the unknowns, for all members of the this Commission, is who is the Presiding Officer. There are a number of factors that come to that. I have a very interesting process of looking at what is proposed from both partisan interests. In this case, the Supreme Court decided, for whatever reason, that I am the Presiding Officer. We have plans from a number of obvious perspectives. I think that the Montana process does, in fact, provide some interesting balance in that regard.

I think it is interesting to know who I am. The whole Native American issue in Montana is a very big issue. It is reflective of what happened in 1980 and 1990. I just hope that those of you who statistically analyze what is going on in Montana would also analyze how disenfranchised our Native American voters are. I wonder if you would enter the discussion on their behalf if you are so excited about the (population) deviations and bring up the rights of all Montanans to be represented in this whole process. I am particularly interested in that, of course, as you might assume.

In 1980, I appeared before the Commission. In 1990, Native American voters in this state lost out big time. We have very few representing Native Americans in our Legislature. Since we are on the topic of who is Presiding Officer, and I am that, I thought that I would share with you some of my perspectives on what is going on. I am a Democrat. I applied to be one of these two people (Commissioners Lamson or Rice). That group of applicants went to the Supreme Court, and they decided to appoint me Presiding Officer. I do think that there is an abundant possibility that if the Republicans have an excellent plan or discussion, I could be a swing vote; and I will say that to my fellow Commissioners.

**Commissioner Rehberg:** No way.

**Commissioner Pretty On Top:** Jack (Commissioner Rehberg) also knows that I was campaigning for Democratic candidates when I was 12, but I do think that it is incumbent on both parties to participate in the process. Whether or not they do is another question. Coming to the table and talking about the interests of people and 70 statements at one hearing and 50 statements at another, we read them. I would like to challenge all of you to think that each and every Commissioner is following through with this responsibility in a serious manner. We are looking at that correspondence. There have been people offering testimony from whatever partisan position whose significant statements do make a difference. Communities of interest, neighborhoods, income levels, school districts, they have made a difference in the amendments that have come before this Commission. I hope that when you check the record that you also check the transcripts and our discussions and the decisions that have been made.

**Representative John Sinrud, House District #31:** I live on the northern border of proposed house district 55 which will probably soon be. Looking at that district, it splits the community I live

in. It's a rural subdivision that has Wylie Creek on the southside, Valley Grove on the north side, and a couple of other older subdivisions. If you look at Plan 300, it splits those communities in half. It takes that community at the very northern part of proposed district 55 and puts it in with West Yellowstone. It basically maintains the same district that I am currently in, but I don't necessarily think that the values are represented well from West Yellowstone up rural areas or subdivision-urban areas of Bozeman.

Professor Calvert has a great understanding of constitutional values and issues, and it is not based upon politics even though this is a political forum. This is where the true political animal resides, on this Commission, because what you are determining are the lives and the votes of each individual person who resides in Montana. I believe in one-person one-vote. The sad thing is that most Montanans don't get out and vote. We need to have our votes counted, and we need to have people's input into running our system even though it is a representative form of government, not a democracy. I believe that you three, Commissioners Pretty On Top, Lamson, and Rice, do have the vote. It is up to you to look at the value of the people of Montana and where your concerns lie. Commissioners Rehberg and Jellison are really nonissues at this point, and it comes down to you three. That is a large responsibility, and I believe that we can come together, putting politics aside, but look at the value of each Montanan and how would that influence their vote and representation at the state level.

Proposed district 55 in Plan 300 cuts out just north of Bozeman, goes west, and subdivides my area up. So I will have a neighbor on one side who deals with West Yellowstone, and I will deal with the other. That is not where the fire and school districts are at, and I think that 911 and the GIS in Gallatin County is having a problem right now on who lives in Belgrade and who doesn't, who lives in Bozeman. It is just a big mess. You need to really take a poll of the community to find out what communities are contiguous and what communities have the same values together. We do have some sporadic farming in the area that I live, but it is not massive. As Belgrade moves west, there are subdivisions being created that are coming into the city limits with no houses. You have continuous development west. You can't go east, but we can go south and go west. We also have subdivisions going up in the northern part across from the freeway, but they are not going into the city limits. It is important to understand the makeup of the Valley and where growth is going before the plan is submitted.

In Plan 200, if you look at the growth in Bozeman, Rep. Harris' seat lost 9.4% and Rep. Jent lost 13.4%. Plan 300 creates one more district into an area that has not grown with the population. Right now, the Valley, itself apart from Bozeman, is frustrated with the politics of Bozeman being pushed out into the rural communities. This is very important to understand as well. The second thing is if you look at Plan 200, it maintains Bozeman as two areas which is pretty good, and then it takes in the more rural communities as they spread west. That is a good plan. I do agree with Plan 300 incorporating Big Sky. That is a long drive from the tip of Belgrade down to West Yellowstone. Again, those communities have different values and political understandings. To be pure in heart and to understand how the criteria is to be maintained, you want to keep the contiguousness of the communities together. Please, very carefully look at that understanding that you three (Commissioners Pretty On Top, Lamson, and Rice) control what Montana is going to look like in the future.

**Commissioner Lamson:** Isn't it true that the current district goes the same distance from Belgrade down to West Yellowstone?

**Rep. Sinrud:** Yes, it does.

**Commissioner Lamson:** So that is not particularly new for Gallatin County?

**Rep. Sinrud:** No, that is not particularly new. What I was looking at in Plan 300 was that you split, at least in looking at the population, we are over by roughly 4% to 4.5% consistently. If we can shift those things around to make it equal but more contiguous right up on to proposed district 55. Can I approach. I live right up in here, this is one subdivision, and Bozeman is growing in this direction. Harper Park is the dividing line.

**Commissioner Lamson:** So, it is growing this way too?

**Rep. Sinrud:** Well, it is but not as rapidly as it is to the west. I live in Valley Grove, this is Wylie Creek, and this is Baxter Creek. They are all separated--three different communities, three different areas, but they are all within one-half mile from each other. It is heavy population in these areas. It is going to continue to grow west, and I just thought that if you could work this area out, for instance, if you look at Plan 200 or 100, the areas a more conducive for growth, but again, you are still in the area and your neighbors are in the same district. That is also the problem with the Belgrade school district as well as the fire district. They split right on those areas, and it is very confusing. If you continue to have different precinct districts to go vote, it is going to be very confusing to people.

**Representative Diane Rice, House District #33:** Next to House District 32, House District 33 is probably being the one that is most pushed, pulled, and stretched into different directions. Right now, my area encompasses four different counties. It looks like potentially now it will lose some of those but gain Jefferson County. My preference for these plans in order are Plan 100, Plan 200, and lastly Plan 300. No one likes change. They want things to stay as close to the same as possible.

No one has mentioned that with and having a large area, this is really discrepancy and a difficulty for people to try to cover such a large area and develop relationships with their constituencies. Right now, I am working with some people in both Willow Creek and Three Forks. Now, they are not even going to be in my district. This is a real hardship on people with a large district. Most importantly as I look at Plan 300, being realistic that this is the plan you will most likely go with, I am most concerned about the fact that the Three Forks and Willow Creek areas remain in a contiguous, natural resource-based income area. It does, but it is picking up some agricultural land, and yet, those folks who work at the mines still will have representation for folks that are sympathetic to resource-based industries.

The one area where I really object to Plan 300 is siphoning off the upper village Big Sky area. The upper mountain is in Madison County, and those folks pay taxes to Madison County. There is a symbiotic relationship between Madison County and the upper village area. Madison County supplies law enforcement and pays tuition for students to go to the Gallatin school districts. People don't realize that there is a great deal of commuter traffic year round up to the Moon Light Basin. It doesn't take a helicopter to get there. All of the construction crews live in Ennis and drive to Big Sky from that side. If anything, I want you to be really cognizant that that area is not so isolated, and I believe that I will probably be introducing an amendment to try to keep that area in Madison County.

**Shelley Vance, Gallatin County Election Administrator:** My discussion with you today is not partisan. It is as an election administrator and the impacts of the plans on how they affect my precinct lines and when I try to conduct elections. To support Rep. Rice, the Big Sky area, you

realize where the county line is. Madison County in the general election, primary elections, and current elections, the Madison County Election Administrator will be supplying the people their ballots regardless of which legislative district boundary it is.

I am requesting that you please focus very strongly on something for me. It is very important to me. In the last two legislative sessions, there have been bills proposed to change election laws to combine elections so that we don't have an election every time you turn around. Philosophically, I absolutely support that. I think that it is good practice for the voters and for us as taxpayers. Let's get elections on just a couple of days instead of every time you turn around. Unfortunately, I had to go before the Legislature and submit testimony. They started to call me the map lady because my districts are in really bad shape right now. My precincts, my school districts, and my fire districts in Gallatin County, nothing matches. When I hear discussions about proposing changes to combine school elections with a presidential primary, I panic because I have 26 school districts and 49 precincts. I know that you are probably thinking "Why is that our problem?" It is my problem and I know it is my problem. But, I am asking for your help. I will not get the school districts to change their boundaries. So, what do I do next? I guess I am going to have to get our Commissioners to change our boundaries in order for us to not split precincts and to not have multiple costs on election ballots. It is very important that I try to match up my precinct boundaries with the legislative boundaries that you set. If we possibly can follow one of your discretionary criteria--to follow political boundaries. I realize that I have a tremendous job in front of me to try and get my school district boundaries to match up or to move my precinct lines so that they match up with school districts a little bit.

Susan (Fox) came down and visited with us. I have a fantastic GIS technician. We printed out the proposed Plans 100, 200, and 300, we took our school districts and placed them on there, and then we took the precincts maps and placed them on the plans also. None of them matched. Plan 100 matched my school district boundaries closer than anything, and it supports growth areas to spread out more over the next 10 years. Plan 200 is better than Plan 300. Plan 200 does not allow for growth in the Belgrade area on the northwest and southsides. I encourage you to do everything you possibly can to look at the school district boundaries. Let go of my precincts because they are all going to have to change. We have way too much growth in Gallatin County. I was trying to match up, if at all possible, most of the legislative boundaries with the school districts because I think the school district boundaries are the ones that will not change nor will fire districts. I stand in support of Plan 100. But I do have a procedural question. On any of the districts when we get around Bozeman, there was a legislative boundary that was kind of funky with a city limit line, and if it doesn't affect too much population, I would like to propose some changes. We have another boundary that follows roads in a mountainous terrain, and I was thinking "How am I going to write the legal description?" Procedurally, how would I propose some of the possible changes once you have decided which plan you are going to go with?

**Ms. Fox:** I'm a little unclear on it myself, but I would be happy to look at them computer-wise and write a description of them for the Commission.

**Commissioner Lamson:** The configurations usually come off the census blocks and how those were put together. Sometimes, they are peculiar looking.

**Ms. Vance:** If we were could ask permission to move a line on the exterior of our city limit to follow the city limit boundary, how would I convey that to you? Can I call you?

**Commissioner Pretty On Top:** You are encouraged to do that or contact Susan (Fox).

**Ms. Vance:** I will try and communicate some of that and that will answer my second question. Some of this gets a little confusing when you are trying to write out a possible boundary change. I was just wondering if I am allowed to contact Susan (Fox) personally and communicate with her?

**Commissioner Lamson:** Whatever you want to do.

**Commissioner Lamson:** One of our difficulties is that we are based on the 2000 Census in terms of where the population is. I have seen the school district maps of Montana, and they are not based on that at all, as our counties are not based on that. That is where we run into the rub because those districts are not going change a whole lot, but we are not drawing school districts. We are drawing legislative districts. I don't envy you your problem with the combined growth in Gallatin County. You understand that is one of our problems, we cannot school district boundaries because they weren't set up on the 2000 Census data.

**Ms. Vance:** You are absolutely right. I realize that you have tackled, especially now where you have gotten into the areas where the state is growing, you have some tremendous challenges to try to pick and get some lines. That is what I was trying to explain to you that in comparing your population, your Census, your legislative lines in your three proposal, Plan 100 follows my school district lines about 85% as compared to the others which are probably less than 50%.

**Representative Cindy Younkin, House District #28:** I would encourage you as much as possible to do whatever it takes to keep yourselves out of court. I have already heard that this thing is just going to end up in court anyway. As Ms. Fox pointed, the last redistricting is still in court. I am an attorney, and I can say from personal and professional experience that litigation is never the best way to resolve an issue. To the extent that you are able to stay as close to no deviation instead of going plus or minus 5%, how about we shoot for no deviation--a plus or minus 1%. I think that would be an admirable goal. I know the challenges that you are faced with are great in trying to reach that goal when you are trying to work with political and geographic boundaries. I think that the 5% deviation was meant to allow you to take those things into consideration.

My biggest concern as I look at Plan 300 for proposed house district 50, it is amazing. We have the extreme northeastern part of Gallatin, you can't get from there to Winston without going up and around through White Sulphur Springs, into Townsend, and then over or back down to Bozeman and up the Interstate to get to Winston. It is an extremely diverse geographic area. We have the Bridger Mountain Range along one side of it, you got the Madison River and the Horseshoe Hill in the middle of it, and then you've got only one way that you can get there. While it may provide an additional part of a house district to Gallatin County, I think that the people of Sudan and the northern part of Bridger Canyon would be ill-served to be in the same house district as the people in Winston and Townsend, and vice versa. I would encourage you to tweak that some way or another and maybe just put the bottom part Broadwater County, like you have in Plan 200, in the same district because those people come to Bozeman to shop. The people in Winston never come to Bozeman. That proposed district is problematic for me even though I do not represent that district, I am looking at pure logistics. On Plan 200, the same thing happens with the extreme northeastern part of Gallatin County. It appears to me that the small farming community of Sudan is cut out of the remaining district that would be in Bridger Canyon. I don't think that is a good idea because of logistics. You can't get from there to the rest of the district without coming back around and going around the mountain. On Plan 300, proposed district 52,

the little area here, and I will show you on the map, is one little neighborhood and this is the city limit line. My suggestion is to either draw the line along Highland and put the green part in with the orange part or put it in with the green part. In Plans 100 and 200 that little neighborhood is all within one house district.

**Commissioner Jellison:** I would concede that going to court is never the best solution. Would you concede that sometimes it is the only solution?

**Rep. Younkin:** Unfortunately yes, I do concede that sometimes it is the only solution, but I think that if there are ways to avoid that, they should be explored so that we don't spend a lot of time and taxpayers money doing that. Hopefully, that won't happen. I know the litigation on the last redistricting plan has been ongoing, and I certainly take to heart the issues that are at the center of that litigation. However, I think that perhaps some of the concerns of many people, which have been stated here today, could be alleviated far short of having litigation.

**Representative Esp, House District #25,** provided a letter from the Sweet Grass County Commissioners in support of any of the three plans, with some small amendments to Plan 300. (EXHIBIT #8)

**Commissioner Pretty On Top:** If there are other points that you would like to bring before the Commission, you can correspond for the next three weeks.

**Commissioner Rehberg:** Rep. Balyeat took my speech so, Joe, (Commissioner Lamson) I won't have to give it this time.

**Commissioner Lamson:** With the press present, I would like to remind them that the historical perspective on the previous Commission was certainly a very rosy, one-sided position. There is another side to that story if you look at the record.

**Commissioner Rehberg:** Would you criticize you two Democrats?

**Commissioner Lamson:** I would have strong fault with one of my Democrats, so-called Democrats, yes.

There being no further public comment; the public hearing adjourned at 3:30 p.m.

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