

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIRMAN, on January 28, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chairman (R)
Rep. Wilbur Spring, Vice Chairman (R)
Rep. Ervin Davis, Vice Chairman (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None.
Executive Action: HJR 5

EXECUTIVE ACTION ON HJR 5

Discussion:

REP. SIMPKINS began the discussion with consideration of the
amendment to HJR 5 requested by the Blackfeet and Salish-

Kootenai Tribes to be considered together in forming a district.
EXHIBIT 1

REP. SIMPKINS reviewed a memorandum to John MacMaster from Barbara Lavender, dated September 13, 1982, regarding the constitutionality of the proposed redistricting of Big Horn County, Montana. The legal argument centered on the effect of tribal differences between the Crow and Cheyenne Tribes on creating districts so that a protected minority has a majority. The Crow and Cheyenne argued that their tribal differences were too great for them to be considered a community of common interest and parts of each tribe should not be combined into a single district.

Mr. MacMaster suggests that differences between the Blackfeet and Salish-Kootenai are of the same nature as those between the Crow and Cheyenne. He argues in his memorandum that "you cannot say differences matter for one purpose and should be ignored for the other." **EXHIBIT 2**

REP. STOVALL asked **REP. SIMPKINS** whether Big Horn and Rosebud Counties could be combined. **REP. SIMPKINS** responded the opinion of legal staff is that the redistricting of Eastern Montana is constitutional and consistent with the Voting Rights Act of 1965. **REP. SIMPKINS** said the only question is the redistricting of the Flathead area.

REP. MOLNAR asked about the cost of legal challenge by the ACLU and the Indian Nations. **REP. SIMPKINS** responded that if there is a court challenge, the state will incur legal expenses. He stated, however, the objective is to (1) be fair, and (2) be within the legal jurisdiction. **REP. SIMPKINS** reminded **REP. MOLNAR** the ACLU brief based their legal challenge on Section 5 of the Voting Rights Act; Montana is not affected by Section 5. **REP. MOLNAR** asked whether loss of a legal suit could result in Montana becoming a Section 5 state. **REP. SIMPKINS** agreed that such a result was possible, but pointed out there were differing views of the legal issues.

REP. SPRING asked how many house and senate districts were involved in the Flathead area amendment. **Susan Fox, Staff, Districting and Apportionment Commission**, responded that the tribes are proposing two house districts which would join in one senate district. The amendment would not affect most of the house districts in Flathead County, although it would affect Lake, Glacier, and Pondera Counties, and perhaps Missoula County.

REP. GERVAIS asked **REP. SIMPKINS** his opinion of the state's willingness to go to court. **REP. SIMPKINS** responded that the state is always ready to go to court; the committee is using value judgements and not submitting to threats and intimidations. **REP. SIMPKINS** added that any lawsuit would be handled by the attorney general, not the legislative council legal staff.

REP. DAVIS asked **Ms. Fox** what would happen to the redistricting plan if it were challenged in court. **Ms. Fox** replied that it depended upon the court's decision; the court could issue an injunction or allow the plan to go into effect and change it later or take some other action.

REP. STOVALL asked when the redistricting plan would take effect, assuming no changes were made. **Ms. Fox** answered that the plan would be in effect as of January 1, 1995; thus, the 1994 primaries would be based on the plan's redistricting.

REP. SIMPKINS reminded the committee that the Legislature has no authority to change the redistricting plan. The Legislature only offers advice. The committee could recommend that the Flathead Valley amendment be reviewed to determine whether it meets the requirements of the Voting Rights Act.

Susan Fox reviewed the effect of the Cascade County amendment. Because of the Commission's priority to have districts with equal populations, portions of Cascade County have been included in districts with other counties. **Ms. Fox** reported the Commission also considered the rural versus urban nature of communities in forming districts, as well as geographic proximity. Thus, for example, Vaughn was included in a Great Falls district, even though its urban nature was in question, because of its proximity to Great Falls. On the other hand, Fort Shaw and Sun River were included in Teton County because of their rural nature. **Ms. Fox** reported the ripple effect of the Cascade County amendment would be internal to the county. **EXHIBIT 3**

REP. GALVIN testified that Cascade County had a large enough population to have ten representatives, nine from Great Falls and one from rural Cascade County. The redistricting plan, however, leaves Cascade County with only nine representatives, all in Great Falls. **REP. GALVIN** contended that Cascade County has historically been considered last in the reapportionment process and used as the "equalizer". That is, portions of Cascade County are combined with the low population counties surrounding the county to create a district in each of the low population counties. **REP. GALVIN** stated that Cascade County considers the process unfair and wants to have its complete complement of legislators.

REP. ROSE stated that Teton County does not want a portion of Cascade County in their district. **REP. GALVIN** responded that no one he has talked to wants to have part of Cascade County in their district. **REP. ROSE** asked **REP. GALVIN** why Cascade county commissioners and county attorney were unwilling to pursue legal action on the redistricting plan. **REP. GALVIN** said they pleaded poverty, but other Great Falls attorneys were willing to challenge the Commission's plan.

REP. GALVIN stated the Commission has never been legally challenged. **Ms. Fox** clarified that the Commission has never been successfully challenged.

REP. RICE thanked **REP. GALVIN** for his perseverance in pursuing Cascade County's cause. She noted that none of the current Great Falls legislators would be affected by the proposed amendment.

REP. SPRING asked **REP. GALVIN** what the small population counties should do for representation. **REP. GALVIN** responded that his dispute is with the process of determining districts because in each reapportionment Cascade County has been used as an "equalizer". **REP. GALVIN** stated he thought the redistricting process should radiate from several locations rather than beginning in a corner of the state and working to the center of the state. He said the Commission was not receptive to changing their process.

Ms. Fox pointed out the Commission members decide their process, and the members are appointed by the Legislature's leadership. She noted that in each of the last three reapportionments, the Commission has started in a different corner of the state. **Ms. Fox** maintained the Commission did not deliberately use Cascade County as an equalizer. She added they did purposely choose Billings as an equalizer and the kind of divisions **REP. GALVIN** is opposing in Cascade County were made in areas surrounding Billings. **Ms. Fox** pointed out that the overriding principle for the Commission is one person/one vote.

REP. STOVALL commented he was from Billings and affected by the redistricting, but he did not understand how the process could be different.

REP. SIMPKINS proposed leaving consideration of amendments which involve only senate districts to members of the Senate State Administration committee. The committee agreed.

REP. SIMPKINS reviewed the committee's options on HJR 5: (1) Pass with no changes; (2) Accept any of the proposed amendments; or (3) Recommend that the Commission review particular amendments.

Motion: **REP. HAYNE MOVED THAT THE DISTRICTING AND APPORTIONMENT PLAN BE ACCEPTED INTACT.**

Discussion:

REP. GERVAIS stated he did not think the plan should be accepted as it is. He agreed that all the committee could do was make recommendations to the Commission. He stated the ethnic groups should be kept together.

REP. BARNHART stated she thought that each amendment should be considered separately.

REP. RICE stated it was difficult when the districts of respected colleagues may be affected, but that the issue was whether or not committee members believe Native Americans should have the opportunity to serve in the legislature in proportion to their population. **REP. RICE** declared her strong feeling that they should have such representation. She stated she opposed the motion. She said she wanted to move to accept the recommendations of the Native Americans.

REP. SIMPKINS stated the motion could not be made; **REP. RICE** responded she knew and would make the motion later.

REP. DAVIS commented that the question was whether the committee abided by the criteria set by the Legislature's Commission, or whether the committee made their recommendations based on the arguments offered by attorneys of other groups, such as the ACLU.

REP. SPRING agreed with **REP. DAVIS**, stating the Commission worked for a long time to develop the plan. He asked whether the committee would bow under to the threat of a lawsuit. **REP. SPRING** stated his support of the motion.

REP. GERVAIS said he knew the Commission had worked for a very long time. He said, however, that the Native Americans attended the Commission's meetings from the very first, asking for consideration of the Native American proposals. He asserted if the issue goes to court, then the State of Montana would not have any control over the redistricting. **REP. GERVAIS** suggested the ramification of a court case would be a judge from some other state deciding Montana's reapportionment.

REP. MOLNAR asked **Ms. Fox** whether the redistricting plan changes the Native American's ability to be represented. **Ms. Fox** responded that the Native Americans either maintained or increased populations in the districts the Commission considered. She did not have information about voter registration, voter turn-out, or discrimination in the elections.

REP. BARNHART stated if consideration of the Native American amendment occurred, she would not bow to threats by attorneys. She would bow to her conscience in her vote.

REP. STOVALL asked whether the primary issue was the amendment proposed by the Flathead, Blackfoot, and Salish-Kootenai Tribes. **REP. SIMPKINS** responded that the ACLU considers the amendments for both northeast and northwest Montana challengeable in court. He continued that legislative council attorneys do not agree, particularly for the amendment affecting northeast Montana, because of the issue of compactness.

REP. STOVALL asked whether the Native American amendments should be considered separately from the others.

REP. GALVIN stated according to his memory of Mr. MacMaster's presentation, Mr. MacMaster compared the northeastern Montana amendment to a situation in Florida, but concluded that Montana would not need to follow the Florida case. REP. SIMPKINS responded that Mr. MacMaster's comparison was in reference to Section 2 and Section 5 of the Voting Rights Act. Since Montana is not affected by Section 5, Montana does not have to follow the decision in Florida, which is affected by Section 5.

Sheri Heffelfinger explained that Mr. MacMaster referred to a portion of Section 2 which states "that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

REP. RICE asked for clarification of the motion.

REP. SIMPKINS stated that the motion on the floor is to accept the Commission report as is, non-amended, with no suggestions.

Vote: THE DISTRICTING AND APPORTIONMENT PLAN BE ACCEPTED INTACT. Motion carried 10 to 6 on a roll call vote. REPS. BARNHART, GALVIN, GERVAIS, RICE, SQUIRES, and STOVALL voted no. EXHIBIT 4

Motion: REP. HAYNE MOVED DO PASS HJR 5 WITH RECOMMENDATION THAT THE DISTRICTING AND APPORTIONMENT COMMISSION'S PLAN OF DECEMBER 1992 BE ACCEPTED WITHOUT CHANGES.

Discussion:

REP. ROSE asked why the committee could not amend the resolution. REP. SIMPKINS responded that members had just voted to accept the Commission's report with no change.

REP. SQUIRES asked why the committee was voting again. REP. SPRING and REP. SIMPKINS responded the motion was a formal matter to pass HJR 5. REP. SPRING stated that the first vote could be viewed a straw vote and the current motion is the formal vote.

REP. GERVAIS stated the Senate had recommendations on HJR 5. REP. SIMPKINS responded that they had the right to make recommendations.

REP. SQUIRES asked what effect Senate recommendations would have. REP. SIMPKINS responded that a conference committee would be formed.

REP. RICE repeated for the committee that the current motion is to pass the Joint Resolution with no amendments. She reminded the committee 17 legislators had asked for amendments which the motion precluded considering.

REP. BARNHART stated she did not understand the reason for a second vote on the issue. Ms. Heffelfinger explained that the

bill under consideration was HJR 5 and that there had been no motion on the resolution. The prior motion was on the Districting and Apportionment Plan.

REP. BARNHART contended **REP. RICE'S** statement should be considered: that all the legislators who had asked for changes were being ignored. Voting for the motion would mean not considering any of the requested changes.

REP. MOLNAR stated he does not want anyone to say the committee granted requests of Caucasians and denied Native American requests. He stated, for that reason, he voted to kill his own amendment. **REP. MOLNAR** expressed his faith in the work of the Commission and in their attempt to be fair. He stated he did not want to be considered a racist.

REP. DAVIS agreed with **REP. MOLNAR**, and urged the plan be accepted without changes.

REP. GERVAIS pointed out that the vote does not mean anything anyway; the Legislature has no authority over the Commission. He maintained, however, that if the State goes to court over the plan, the State will spend a great deal of money; and he suggested the action would still be on the Legislature's conscience. **REP. GERVAIS** responded to **REP. MOLNAR'S** statement saying that Native Americans should have the opportunity to vote for the candidate of their choice, whether Indian or non-Indian.

REP. REHBEIN asserted that acceptance of the Commission's report demonstrates the committee's faith in the legislative leadership.

REP. HAYNE reported she had been through three reapportionments. She contended that the plan would not be changed and everyone could not be happy. She recounted that the Commission had worked on the plan for two years; and, in her opinion, they had done a good job for everyone, more or less. **REP. HAYNE** stated, for that reason, she agreed with the plan.

REP. RICE pointed out the Commission had referred at least two of the amendments to the Legislature. She contended this was not an issue of trust, but the Commission expects some action from the Legislature. For this reason, she repeated her opposition to the motion.

REP. GERVAIS commented he was not personally concerned with the effect of the reapportionment plan. He suggested, however, that since 6-7% of the State's population was Native American, having greater representation by Native Americans would help in better understanding between groups.

REP. WALLIN suggested there are problems that will never be solved. He expressed his view that the Commission had been more than fair. **REP. WALLIN** said accusations of politics would always be present, but, in his opinion, the Commission had carried out

their duty. He asserted a vote against the plan would indicate the Commission had not done a good job. He urged passage of the resolution.

REP. GALVIN repeated that Cascade County is not satisfied with the plan and he would therefore vote against the plan.

REP. SPRING argued against dividing the districts according to ethnic groups. He stated the people of the State were all Montanans and all Americans.

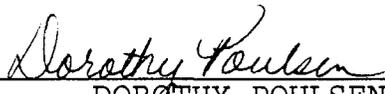
Vote: DO PASS HJR 5 WITH RECOMMENDATION THAT THE DISTRICTING AND APPORTIONMENT COMMISSION'S PLAN OF DECEMBER 1992 BE ACCEPTED WITHOUT CHANGES. Motion carried 9 to 7 on a roll call vote. REPS. BARNHART, GALVIN, GERVAIS, RICE (by proxy), SQUIRES, STOVALL, and SIMPKINS voting no. EXHIBITS 5 and 6

ADJOURNMENT

Adjournment: 9:35 a.m.



DICK SIMPKINS, Chair



DOROTHY POULSEN, Secretary

DS/DP

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION

COMMITTEE

ROLL CALL

DATE 1/28/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK SIMPKINS, CHAIR	✓		
REP. WILBUR SPRING, VICE CHAIR	✓		
REP. ERVIN DAVIS, VICE CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. PAT GALVIN	✓		
REP. BOB GERVAIS	✓		
REP. HARRIET HAYNE	✓		
REP. GARY MASON	✓		
REP. BRAD MOLNAR	✓		
REP. BILL REHBEIN	✓		
REP. SHEILA RICE	✓		
REP. SAM ROSE	✓		
REP. DORE SCHWINDEN	✓		
REP. CAROLYN SQUIRES	✓		
REP. JAY STOVALL	✓		
REP. NORM WALLIN	✓		

HOUSE STANDING COMMITTEE REPORT

January 28, 1993

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Mr. Speaker: We, the committee on State Administration report that House Joint Resolution 5 (first reading copy -- white) do pass with recommendations .

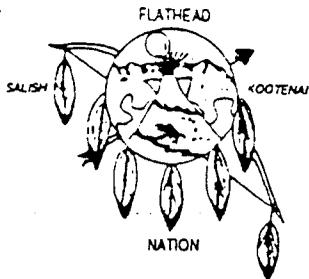
Signed: 
Dick Simpkins, Chair

And, that such recommendations read:

1. The Committee on House State Administration recommends that the Districting and Apportionment Commission's plan of December 1992 be accepted without changes.

Committee Vote:
Yes 1, No 1.

221002SC.Wss



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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Joseph E. Dupuis - Executive Secretary
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Bernice Hewankom - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. "Mickey" Pablo - Chairman
Laurence Kenmille - Vice Chairman
Elmer "Sonny" Monigeau, Jr. - Secretary
Antoine "Tony" Incashola - Treasurer
Louis Adams
Lloyd Irvine
Patrick Lefthand
Henry "Hank" Baylor
John "Chris" Lozeau
D. Fred Matt

November 30, 1992

(Sent by facsimile)

Honorable Jean Fallon Barrett
Chairperson
Montana Districting and
Apportionment Commission
State Capitol - Room 138
Helena, Montana 59620

Re: Legislative Redistricting on the Blackfeet and Flathead
Indian Reservations-November 30, 1992 Comments

Dear Chairperson Barrett:

The Confederated Salish and Kootenai Tribes of the Flathead Nation submit the following written comments to the Commission at your November 30, 1992, hearing in Helena. We are unable to be present at the hearing today, but Representative Bob Gervais has kindly agreed to put in a word for us in his remarks.

On March 13, 1992, the Flathead Nation, the Blackfeet Nation, the Montana-Wyoming Tribal Chairmens Association, and the ACLU of Montana submitted to the Montana Districting and Apportionment Commission a redistricting proposal which combined portions of the Flathead Indian Reservation with the Blackfeet Indian Reservation (hereafter "tribal redistricting proposal"). The Flathead Nation, Blackfeet Nation, ACLU of Montana, and others provided testimony at the Commission's redistricting hearings held in Kalispell and Shelby in support of the tribal redistricting proposal.

The Commission rejected our proposal at its April 29, 1992 meeting. At the hearing in Shelby, tribal attorney Pat Smith testified and requested that the Commission reconsider its action. The Commission rejected our request for reconsideration. Once again, the Flathead Nation respectfully requests the Commission to reconsider its actions and endorse the tribal redistricting proposal. We

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reiterate this request because the configuration of the districts that the Commission proposes for the Flathead and Blackfeet Reservations do not comport with the requirements of Section 2 of the Federal Voting Rights Act. In fact, the redistricting alternative the Commission has selected for the Flathead Reservation--Alternative 100A--is the alternative that most dilutes the Indian vote.¹

The tribal redistricting proposal remedies this defect. It complies with the Federal Voting Rights Act and ensures that the Indian people on our Reservations have an opportunity to elect legislators of their choice. It ensures that the voting power of the Indian communities on our reservations are not diluted or fractured through redistricting.

Computer analysis of the 1990 census data reveals that two Indian majority house districts can be drawn which are "reasonably compact and contiguous." Both house districts would have 60% or greater Indian population. By combining these two districts, an Indian majority Senate district with greater than 60% Indian population is also possible. (See map enclosed in our March 13, 1992, letter to the Commission.)²

The Federal Voting Rights Act Requirements ...

Under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973), a legislative redistricting plan is unlawful, without regard to racial motive, if it "results" in discrimination. In City of Mobile, Alabama v. Bolden, 446 U.S. 55, 60-61 (1980), the U.S. Supreme Court ruled that a plaintiff must show discriminatory intent to prevail in a voting rights case. Congress responded in 1982 by expressly overriding the Bolden holding by amending Section 2 of the Voting Rights Act "to make clear that plaintiffs need not prove a discriminatory purpose in order to establish a violation." S. Rep. No. 97-417, p. 27, U.S. Code Cong. & Admin. News (1982).

¹ The Tribes also believe that Commissioner Pinsonneault's failure to abstain on voting on the configuration of the boundaries of the Senate District held by his brother constitutes--at the very least--a glaring appearance of impropriety.

² At present, there is only one Indian majority house district in the western Congressional district, which is based on the Blackfeet Reservation.

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In 1982 Congress re-wrote § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test." Thornburg v. Gingles, 478 U.S. 30, 35 (1985).

As explained below, the Commission is required under Section 2 of the Federal Voting Rights Act to draw legislative districts which do not dilute or fracture the voting strength of the Indian population on the Blackfeet and Flathead Reservations. Our analysis plainly demonstrates that it is possible to draw two house districts with a majority Indian population in excess of 60%. To not do so would, in our view, have a discriminatory "effect" and deny Indian people their right "to participate in the political processes and to elect representatives of their choice" under Section 2.

There is no question that Section 2 applies to Indian country. Windy Boy v. County of Big Horn, 647 F.Supp. 1002 (D. Mont. 1986). Like in Big Horn County, racially polarized voting is evident in Glacier County and Lake County. Where voting is racially polarized, Section 2 requires a jurisdiction to create minority controlled districts where it is possible to do so. Thornburg v. Gingles, 478 U.S. 30 (1986); Jeffers v. Clinton, 730 F.Supp. 196 (E.D. Ark. 1989), aff'd mem., 59 U.S.L.W. (1991). The Indian population on our respective reservations is sufficiently large and geographically compact enough to constitute a 60% majority in both District 1 and District 2. See Thornburg, 478 U.S. at 50; Jeffers v. Clinton, 730 F.Supp. 205.

The Natural Features Factor

The Blackfeet and Flathead Nations are aware that the continental divide lies between our two Reservations. This mountain range has never prevented interaction between our two Tribes. In this century, motor vehicles and highways have greatly facilitated this interaction. While the mountain terrain may have some impact on campaigning and the political process, this is already the case with other Montana counties and legislative districts.³ The Flathead

³ For example, Senate District 33 stretches over 200 miles from Condon in the north to the Big Hole in the south, crossing the Continental Divide. Senate Districts 24 and 36 also straddle the Continental Divide. Lewis and Clark County straddles the Continental Divide. SD 14, between Mosby and Glendive, covers 214 road miles. SD 7, between Inverness and Geraldine covers

Nation submits that the Commission creates a double standard when it rejects the tribal redistricting proposal on the grounds of natural feature considerations--yet the State has in numerous other instances ignored these same considerations in its redistricting plans. (See footnote 2).

In Jeffers v. Clinton, 730 F.Supp. at 214-15, the court held that a State can not argue that natural barriers justify failure to comply with Section 2 when existing State districts already cross natural barriers. The one-person, one-vote rule inevitably requires that county lines and natural barriers be crossed at times. Id. at 207. The mountains do not provide a sufficient basis to excuse compliance with the Voting Rights Act.

While some of the district lines we propose may appear unusual, the Supreme Court has never rejected a reapportionment plan solely because it had strangely shaped districts. Lawful redistricting can often result in some "oddly shaped" districts. "But compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for state legislative districts." Gaffney v. Cummings, 412 U.S. 735, 752 n. 18 (1973). See also Jeffers v. Clinton, 730 F.Supp. at 207 (districts not improper because they "look rather strange"). Where districting decision-makers are attempting in good faith to comport with standards of racial fairness, plans are afforded wide latitude with respect to shapes of districts. See Cook v. Lockett, 735 F.2d 912, 915 (5th Cir. 1984).

Community of Interest

The Commission has identified "communities of interest" as one of its non-mandatory redistricting criteria. The Blackfeet and the Salish-Kootenai people share a "community of interest"--as do all Montana Indians. Our cultures, traditions, history, and treaties may differ in certain respects, but we are of one race and share a common commitment and bond to Indian culture and tribal sovereignty. We share a common and unique appreciation of the contributions, concerns, and needs of Indian people. We have a common understanding of Indian people and Indian country.

We are a "cohesive minority voting community." See Robinson v. Commissioner's Court, 505 F.2d 674, 679 (5th Cir.

153 road miles and straddles the Missouri. In SD 37 one must drive 206 miles from Wisdom to West Yellowstone. In SD 16, the distance is 233 miles, across King's Hill, from Belt to Melstone, and 117 miles (down Deep Creek Canyon) from Belt to Townsend. In SD 12, the distance is 266 miles from Glendive to Alzada (unless you take the poor gravel roads.)

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1974). Communities of interest have been generally discounted by the courts except where they have defined concentrations of protected racial minorities. Where avoidance of abridging a minority's voting rights is the purpose, the courts permit the use of racial criteria. The permitted use of "racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment." United Jewish Organizations v. Carey, 430 U.S. 144, 161 (1976).

The Commission's position that no community of interest exists between the Indian communities of the Flathead and Blackfeet Reservations is erroneous. Your discussion of this issue in your April 29, 1992, conference call reflects a lack of understanding of the Montana Indian community, and the common interests that bond this community. Just as the Indian communities of the Fort Belknap and Rocky Boy Reservations share a community of interest, so does the Flathead and the Blackfeet. One of the most obvious areas of shared interests is legislative issues that come up at the Montana Legislature.

Under "Section 2, it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important." Thornburg, 478 U.S. at 68 (emphasis in original). The Federal Voting Rights Act safeguards a realistic opportunity for minorities to elect candidates of their choice--which may or may not be someone of their race. Armour v. State of Ohio, 775 F.Supp. 1044, 1059 (N.D. Ohio 1991); Ketchum v. Byrne, 740 F.2d 1398, 1410 (7th Cir. 1984). The Voting Rights Act disallows a State's interest in protecting incumbents to override the need to comply with the Voting Rights Act. See Ketchum v. Byrne, 740 F.2d at 1408.

In closing, we appreciate the reiterate our position. If you have any specific questions on the tribal redistricting proposal, tribal attorney Pat Smith and Bill Cooper of the ACLU's Virginia office will be happy to respond to your inquiries. Mr. Smith can be reached at the tribal office phone number, and Mr. Cooper can be reached at (804) 644-8022.

We strongly urge you to reconsider your action. The Tribes reserve our right to enforce our voting rights through the federal courts.

Honorable Jean Fallon Barrett

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November 30, 1992

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael T. Pablo".

Michael T. Pablo
Chairman of the Tribal Council

cc: Blackfeet Nation
Montana ACLU

Testimony of Laurence Kenmille
Vice-Chairman of the Confederated Salish & Kootenai
Tribes
of the Flathead Nation

Montana Districting and Apportionment Commission
Hearing

Kalispell - April 3, 1992

Good evening. On behalf of the Confederated Salish and Kootenai Tribes of the Flathead Nation, I extend you a warm welcome to the Flathead.

The Kootenai people were living in this valley long before Christopher Columbus got lost. It has always been our home. We ceded this valley to the United States Government in 1855. In return, we reserved the Flathead Indian Reservation. Our treaty rights, like our voting rights, are protected by federal law. This federal law is the "supreme law of the land." It takes precedence over state laws and the Montana Constitution.

The tribal governments of this state have unanimously spoken on the redistricting issue before the Commission. The Flathead Nation, the Blackfeet Nation, and the Montana-Wyoming Tribal Chairman's Association have passed resolutions supporting the redistricting plan jointly submitted by the Flathead and Blackfeet Nations. This plan was drawn with the assistance of the Atlanta, Virginia, and Montana offices of the ACLU. It is the only plan being considered tonight that complies with Section 2 of the Federal Voting Rights Act. All of the other plans being considered for the Flathead Reservation dilute or fracture the Indian population.

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Although I am Vice-Chairman of the Confederated Salish and Kootenai Tribes, I speak not so much for Tribal Government as I do for the Indian people who reside on the Flathead Reservation. These people have historically been disenfranchised. In some cases, this was a matter of deliberate policy. In some cases, this was a result of not taking the interests of American Indians seriously. We have had less opportunity than other American citizens to elect representatives of our choice.

When I say representatives of our choice, I do not necessarily mean Indian representatives. It is our right as voters, just as it is the right of every American, to expect our representatives to present our interests in the Legislature. This has not been done.

The plan that we present to you is fair. It ensures that the voices and the interests of American Indians are not submerged in a white majority where they are either ignored or not heard. This plan provides American Indians the equal opportunity, now enjoyed by non-Indians, to participate in the political processes. No other plan does this.

We know that the Commission will do what is right. Our plan helps you to do what is right, because it is also required by federal law.

I will leave it to Mr. Laughlin McDonald of the American Civil Liberties Union's Southern Regional Office, and one of the country's leading experts on the Voting Rights Act of 1965, to explain the law to you. I would like to make some observations.

When we proposed this plan, the first thing that happened is that the Lake County Democratic and Republican parties got together and cooked up arguments to oppose it. I can see why the Republicans feel this way, since we Indians vote overwhelmingly Democratic. But why would the Lake County Democratic Party oppose this? I think that they have never counted us among them, but only count upon us to vote for their candidates.

There is substantial evidence of racial polarization in Lake County politics. In 1982, Dr. Joe McDonald ran for the Legislature. He would have been a fine legislator. However, there was a large crossover in the general election. Dr. McDonald won in the Indian precincts but lost overwhelmingly in non-Indian precincts. And this was in a district that was generally viewed as a Democratic district. Other examples of racially polarized voting include Tribal member Fred Houle's 1988 race for Lake county Commissioner and Tribal member Frank Webster's and Chris Lozeau's 1975 race for the Ronan school board.

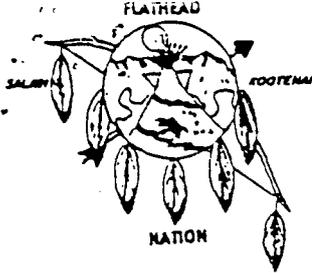
Second, Montana now has legislative districts that are bisected by the Continental Divide and which overlap more than one mountain range. Senate District 33 extends from the upper Swan Valley, southeast of here, 110 miles south to the Big Hole River. If such a district is good enough for those white voters, why should not the plan we propose be good enough for us? After all, who shares a more of a community of interest: the voters of Heart Butte and Arlee, or the voters of Swan Lake and the Big Hole?

Third, we have heard that the Blackfeet and the Flathead

are historic enemies. What nonsense. The Crow and Northern Cheyenne fought against each other at the Little Big Horn. That did not stop a federal judge from ordering a change in Big Horn County's elections. The fights between our peoples were things of the Nineteenth Century. You are drawing this plan for the Twenty-first Century. One only has to observe Blackfeet and Flathead people interacting at pow-wows or testifying together in support of Indian legislation in Helena to rebut the myth that the Blackfeet and Flathead are enemies today. The Indians on our two reservations are all part of the Montana Indian community.

This plan we propose create contiguous and compact districts. The districts we have drawn are over 60% Native American. We hope that the Commission looks at the Twenty-first Century and adopts our proposal.

Thank you.



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806



Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. "Mickey" Pablo - Chairman
Laurence Kenmille - Vice Chairman
Eimer "Sonny" Morigeau, Jr. - Secretary
Antoine "Tony" Incasnoia - Treasurer
Louis Adams
Lloyd Irvine
Patrick Lefthand
Henry "Hank" Baylor
John "Chris" Lozeau
D. Fred Matt

March 13, 1992

Honorable Jean Fallon Barrett
Chairperson
Montana Districting and
Apportionment Commission
State Capitol - Room 138
Helena, Montana 59620

Re: Legislative Redistricting on the Blackfeet and Flathead
Indian Reservations

Dear Chairperson Barrett:

On behalf of the Blackfeet Nation and the Flathead Nation, we submit the enclosed redistricting proposal. The two proposed districts comply with the Federal Voting Rights Act and ensure that the Indian people on our Reservations have an opportunity to elect legislators of their choice. It ensures that the voting power of the Indian communities on our reservations are not diluted or fractured through redistricting.

To date, this proposal is endorsed by the Flathead Nation, the Blackfeet Nation, the Montana-Wyoming Tribal Chairmens Association, and the ACLU of Montana (resolutions enclosed).

The American Civil Liberties Union directly assisted in preparing the enclosed redistricting plan, with participation from the ACLU's Atlanta, Virginia, and Montana offices. Though the Flathead Nation will soon have redistricting computer capabilities that are compatible with the Commission's computers, we relied heavily on the redistricting computer resources and expertise supplied by the ACLU's Virginia office in drawing the proposed districts.

EXHIBIT 1
DATE 1/28/93
TB HJR 5

Computer analysis of the 1990 census data reveals that two Indian majority house districts can be drawn which are "reasonably compact and contiguous." Both house districts would have 60% or greater Indian population. By combining these two districts, an Indian majority Senate district with greater than 60% Indian population is also possible. At present, there is only one Indian majority house district in the western Congressional district, which is based on the Blackfeet Reservation. For convenience we have referred to our proposed districts as District 1 and District 2. (See enclosed map.)

Under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973), a legislative redistricting plan is unlawful, without regard to racial motive, if it "results" in discrimination. In City of Mobile, Alabama v. Bolden, 446 U.S. 55, 60-61 (1980), the U.S. Supreme Court ruled that a plaintiff must show discriminatory intent to prevail in a voting rights case. Congress responded in 1982 by expressly overriding the Bolden holding by amending Section 2 of the Voting Rights Act "to make clear that plaintiffs need not prove a discriminatory purpose in order to establish a violation." S. Rep. No. 97-417, p. 27, U.S. Code Cong. & Admin. News (1982).

In 1982 Congress re-wrote § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test." Thornburg v. Gingles, 478 U.S. 30, 35 (1985).

As explained below, the Commission is required under Section 2 of the Federal Voting Rights Act to draw legislative districts which do not dilute or fracture the voting strength of the Indian population on the Blackfeet and Flathead Reservations. Our analysis plainly demonstrates that it is possible to draw two house districts with a majority Indian population in excess of 60%. To not do so would, in our view, have a discriminatory "effect" and deny Indian people their right "to participate in the political processes and to elect representatives of their choice" under Section 2.

There is no question that Section 2 applies to Indian country. Windy Boy v. County of Big Horn, 647 F.Supp. 1002 (D. Mont. 1986). Like in Big Horn County, racially polarized voting is evident in Glacier County and Lake County. Where

voting is racially polarized, Section 2 requires a jurisdiction to create minority controlled districts where it is possible to do so. Thornburg v. Gingles, 478 U.S. 30 (1986); Jeffers v. Clinton, 730 F.Supp. 196 (E.D. Ark. 1989), aff'd mem., 59 U.S.L.W. (1991). The Indian population on our respective reservations is sufficiently large and geographically compact enough to constitute a 60% majority in both District 1 and District 2. See Thornburg, 478 U.S. at 50; Jeffers v. Clinton, 730 F.Supp. 205.

The Blackfeet and Flathead Nations are aware that the continental divide lies between our two Reservations. This mountain range has never prevented interaction between our two Tribes. In this century, motor vehicles and highways have greatly facilitated this interaction. While the mountain terrain may have some impact on campaigning and the political process, this is already the case with other Montana counties and legislative districts. For example, Senate District 33 is approximately 110 miles in length, crosses the Continental divide, includes several mountain ranges and extends from the Swan Valley to the Big Hole River. Senate Districts 24 and 36 also straddle the Continental Divide. Lewis and Clark County straddles the Continental Divide.

In Jeffers v. Clinton, 730 F.Supp. at 214-15, the court held that a State can not argue that natural barriers justify failure to comply with Section 2 when existing State districts already cross natural barriers. The one-person, one-vote rule inevitably requires that county lines and natural barriers be crossed at times. Id. at 207. The mountains do not provide a sufficient basis to excuse compliance with the Voting Rights Act.

While some of the district lines we propose may appear unusual, the Supreme Court has never rejected a reapportionment plan solely because it had strangely shaped districts. Lawful redistricting can often result in some "oddly shaped" districts. "But compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for state legislative districts." Gaffney v. Cummings, 412 U.S. 735, 752 n. 18 (1973). See also Jeffers v. Clinton, 730 F.Supp. at 207 (districts not improper because they "look rather strange"). Where districting decision-makers are attempting in good faith to comport with standards of racial fairness, plans are afforded

EXHIBIT 1
DATE 1/28/93
BY HJR-5

wide latitude with respect to shapes of districts. See Cook v. Lockett, 735 F.2d 912, 915 (5th Cir. 1984).

One of the leading civil/voting rights litigators in the nation reviewed the boundaries of the proposed districts and finds that the boundaries look "perfectly fine." (See attached letter from Laughlin McDonald, Director of the the ACLU's Southern Regional Office and attorney for the Indian plaintiffs in Windv Bov v. County of Big Horn.)

The Commission has identified "communities of interest" as one of its non-mandatory redistricting criteria. The Blackfeet and the Salish-Kootenai people share a "community of interest"--as do all Montana Indians. Our cultures, traditions, history, and treaties may differ in certain respects, but we are of one race and share a common commitment and bond to Indian culture and tribal sovereignty. We share a common and unique appreciation of the contributions, concerns, and needs of Indian people. We have a common understanding of Indian people and Indian country.

We are a "cohesive minority voting community." See Robinson v. Commissioner's Court, 505 F.2d 674, 679 (5th Cir. 1974). Communities of interest have been generally discounted by the courts except where they have defined concentrations of protected racial minorities. Where avoidance of abridging a minority's voting rights is the purpose, the courts permit the use of racial criteria. The permitted use of "racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment." United Jewish Organizations v. Carey, 430 U.S. 144, 161 (1976).

Under "Section 2, it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important." Thornburg, 478 U.S. at 68 (emphasis in original). The Federal Voting Rights Act safeguards a realistic opportunity for minorities to elect candidates of their choice--which may or may not be someone of their race. Armour v. State of Ohio, 775 F.Supp. 1044, 1059 (N.D. Ohio 1991); Ketchum v. Byrne, 740 F.2d 1398, 1410 (7th Cir. 1984). The Voting Rights Act disallows a State's interest in protecting incumbents to override the need to comply with the Voting Rights Act. See Ketchum v. Byrne, 740 F.2d at 1408.

Honorable Jean Fallon Barrett
Page 5
March 13, 1992

In closing, we appreciate the opportunity to present this redistricting proposal to the Commission. Mr. Bill Cooper of the ACLU's Virginia office will be happy to respond to any inquiries on the boundaries of the proposed districts. He can be reached at (804) 644-8022. Please let us know when the Commission will be holding public hearings on this issue so that we may again present our views on the need to comply with Section 2 of the Federal Voting Rights Act.

Sincerely,



Michael T. Pablo
Chairman of the Tribal Council

cc: Blackfeet Nation
Montana ACLU

Enclosures

EXHIBIT 1
DATE 1/28/93
BY HJR 5



SOUTHERN REGIONAL OFFICE

44 Forsyth Street, N.
Suite 202
Atlanta, GA 30303
(404) 523-2721

Laughlin McDonald
DIRECTOR

Neil Bradley
ASSOCIATE DIRECTOR

Kathleen L. Wilde
STAFF COUNSEL

Mary E. Wyckoff
PALMER WEBER COUNSEL

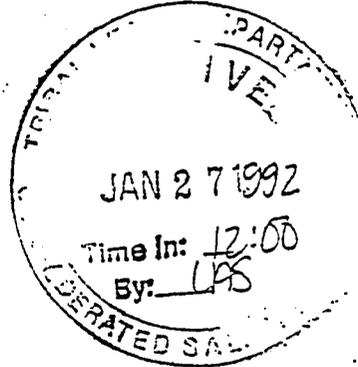
Jim Grant
PARALEGAL

National Headquarters
132 West 43 Street
New York, NY 10036
(212) 944-9800

Nadine Strossen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

January 23, 1992



Pat Smith
Flathead Nation
P. O. Box 278
Pablo, Montana 59855

Re: Montana Redistricting

Dear Pat:

I have looked over the map and other material you sent. The actual lines look perfectly fine to me. In any event, compactness is a "second tier" state interest and doesn't trump federal law.

The mountains pose a different problem, but I don't think they provide a sufficient basis for excusing compliance with the Voting Rights Act, provided they do not make campaigning and participation in the political process virtually impossible or too burdensome. I suspect there are other political subdivisions in the state (counties, for example) with mountain ranges running through them.

You can throw cold water on any plan, but the proposed districts affecting the Flathead and Blackfeet Reservations look "reasonably compact and contiguous," and I think that is all that is required.

Best wishes.

Sincerely,

Laughlin McDonald

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1010

RESOLUTION OF THE BOARD

WHEREAS, the Confederated Salish and Kootenai Tribes and the Blackfeet Tribe of Indians have proposed and adopted a plan for legislative reapportionment; and

WHEREAS, this reapportionment plan provides for two House Districts and one Senate District each of which has a Native American population in excess of sixty per cent; and

WHEREAS, this reapportionment plan satisfies the interests of Native American voters in the region and carries out the requirements of the Voting Rights Act of 1965,

IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE AMERICAN CIVIL LIBERTIES UNION OF MONTANA:

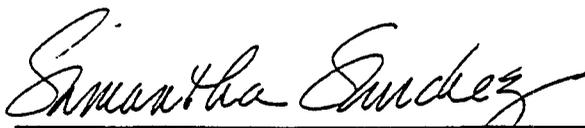
The American Civil Liberties of Montana supports the proposed plan for legislative reapportionment and will support the proposed plan in hearings before the Montana Reapportionment Commission and, if necessary, in any court proceedings.

UNANIMOUSLY ADOPTED this 19 day of February, 1992.



CARL DONOVAN, PRESIDENT

Attest:



SAMANTHA SANCHEZ, Secretary

EXHIBIT 1
DATE 1/28/93
TB HJR 5

RESOLUTION
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION, MONTANA

BE IT RESOLVED BY THE COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES THAT:

WHEREAS, the Tribal Council of the Confederated Salish and Kootenai Tribes is the duly constituted governing body of the Flathead Nation; and

WHEREAS, every ten years the Montana Districting and Apportionment Commission develops a legislative redistricting plan for the State's 100 house districts; and

WHEREAS, this Commission is required to comply with Section 2 of the federal Voting Rights Act (42 U.S.C. § 1973) which requires the Commission to create minority controlled districts where it is reasonably possible to do so. See Thornburg v. Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Windvbov v. Big Horn County, 647 F.Supp. 1002 (D. Mont. 1986), state-sponsored voting schemes in Montana were struck down by the federal court as violative of the voting rights of Montana Indian people under Section 2 of the federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a "community of interest" and have similar needs, concerns, and identity-- as Indian people; and

WHEREAS, a minority's "community of interest" is a legitimate and rational factor, recognized by the federal courts, that must be fully considered by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two house districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house district would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the

political process in the district, these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

WHEREAS, these mountains--today and throughout history--have never presented a serious obstacle to the interactions and dealings between the Indian communities on the Blackfeet and Flathead Reservations.

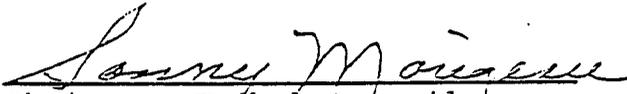
NOW, THEREFORE, BE IT RESOLVED:

1. That the Confederated Salish and Kootenai Tribes of the Flathead Nation joins with the Blackfeet Nation of the Blackfeet Indian Reservation to support a redistricting plan for our Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).

2. That the Flathead Nation will work with the Blackfeet Nation and the American Civil Liberties Union Voting Project to propose legislative districts that avoid the dilution and splintering of the Indian community vote, and to submit these proposed districts to the Montana Districting and Apportionment Commission.

C E R T I F I C A T I O N

The foregoing Resolution was adopted by the Tribal Council on the 7th day of February, 1992, with a vote of 9 for, 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Section 1(a), (h) and (u) of the Tribes' Constitution and Bylaws; said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.


Chairman, Tribal Council

ATTEST:

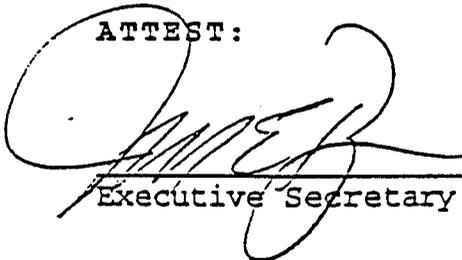

Executive Secretary

EXHIBIT 1
DATE 1/28/93
BY HJR 5

BLACKFEET NATION

EXECUTIVE COMMITTEE

P.O. BOX 850

BLACKFEET TRIBAL BUSINESS COUNCIL

BROWNING, MONTANA 59417

(406) 338-7179

EARL OLD PERSON, CHAIRMAN
ARCHIE ST. GOCCARD, VICE-CHAIRMAN
AL POITS, SECRETARY
ELAINE GUARDIPEE, TREASURER

EARL OLD
ARCHIE ST. GOCCARD
AL POITS
BOB C
DAN
CHARLES COOK
GEORGE KICKING
TED WILLIAMS
JESS BLACKHAWK

RESOLUTION

NUMBER: 119-92

WHEREAS, the Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation; and

WHEREAS, the Blackfeet Tribal Business Council has been organized to represent, develop, protect, and advance the views, interests, education and resources of the Blackfeet Indian Reservation; and

WHEREAS, every ten years the Montana Districting and Apportionment Commission develops a legislative redistricting plan for the State's 100 house districts; and

WHEREAS, this Commission is required to comply with Section 2 of the federal Voting Rights Act (42 U.S.C. § 1973) which requires the Commission to create minority controlled districts where it is reasonably possible to do so. See Thornburg v. Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Windvohov v. Big Horn County, 647 F. Supp. 1002 (D. Mont. 1986), state-sponsored voting schemes in Montana were struck down by the federal court as violative of the voting rights of Montana Indian people under Section 2 of the federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a "community of interest" and have similar needs, concerns, and identity-- as Indian people; and

WHEREAS, a minority's "community of interest" is a legitimate and rational factor, recognized by the federal courts, that must be fully considered by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two house districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house district would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the

political process in the district; these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

WHEREAS, these mountains--today and throughout history--have never presented a serious obstacle to the interactions and dealings between the Indian communities on the Blackfeet and Flathead Reservations.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Blackfeet Nation joins with the Confederated Salish and Kootenai Tribes of the Flathead Nation to support a redistricting plan for our Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).

2. That the Blackfeet Nation will work with the Flathead Nation and the American Civil Liberties Union Voting Project to propose legislative districts that avoid the dilution and splintering of the Indian community vote, and to submit these proposed districts to the Montana Districting and Apportionment Commission.

ATTEST:

THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION



Al Potts, Secretary



Earl Old Person, Chairman

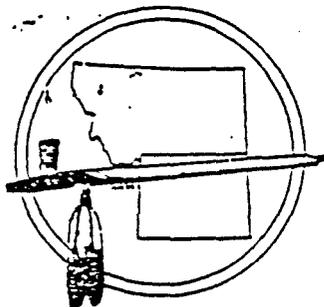
CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed, and convened Session held the 6th day of February, 1992, with members present to constitute a quorum, and by a vote 9 For and 0 Opposed.



Al Potts, Secretary
Blackfeet Tribal Business Council

EXHIBIT 1
DATE 11/28/93
B ATR 5



Montana - Wyoming

Tribal Chairmen Association

Resolution No. 92-02

ARAPAHOE BUSINESS COUNCIL
P.O. Box 396
Fort Washakie, WY 82514
(307) 332-5006
FAX: 332-7543

BLACKFEET TRIBAL BUSINESS COUNCIL
P.O. Box 350
Browning, MT 59417
(406) 338-7276
FAX: 338-7530

CHIPPEWA CREE BUSINESS COMMITTEE
Rocky Boy Route, Box 544
Box Elder, MT 59521
(406) 395-4282
FAX: 395-4497

CONFEDERATED SALISH & KOOTENAI TRIBES
P.O. Box 278
Pablo, MT 59855
(406) 675-2700
FAX: 675-2306

CROW TRIBAL COUNCIL
Box 159
Crow Agency, MT 59022
(406) 633-2601
FAX: 633-7233

FORT BELKNAP COMMUNITY COUNCIL
Box 249
Harlem, MT 59526
(406) 353-2205
FAX: 353-2979

FORT PECK EXECUTIVE BOARD
P.O. Box 1027
Poplar, MT 59255
(406) 762-5155
FAX: 762-5473

LITTLE SHELL TRIBE
P.O. Box 347
Havre, MT 59501
(406) 265-2741
FAX: 265-2741

NORTHERN CHEYENNE TRIBAL COUNCIL
Box 123
Luna Deer, MT 59043
(406) 477-6234
FAX: 477-6210

SHOSHONE BUSINESS COUNCIL
P.O. Box 538
Fort Washakie, WY 82514
(307) 332-3532
FAX: 332-3055

RESOLUTION OF THE MONTANA-WYOMING TRIBAL CHAIRMEN ASSOCIATION

SUPPORTING COMPLIANCE WITH SECTION 2 OF THE FEDERAL VOTING RIGHTS ACT IN REDISTRICTING AND SUPPORTING THE FLATHEAD NATION'S AND THE BLACKFEET NATION'S PROPOSED LEGISLATIVE DISTRICTS

BE IT RESOLVED BY THE MONTANA-WYOMING TRIBAL CHAIRMEN ASSOCIATION THAT:

WHEREAS, every ten years the Montana Districting and Apportionment Commission develops a legislative redistricting plan for the State's 100 house districts; and

WHEREAS, this Commission is required to comply with Section 2 of the federal Voting Rights Act (42 U.S.C. § 1973) which requires the Commission to create minority controlled districts where it is reasonably possible to do so. See Thornburg v. Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Windvbov v. Big Horn County, 647 F.Supp. 1002 (D. Mont. 1986), state-sponsored voting schemes in Montana were struck down by the federal court as violative of the voting rights of Montana Indian people under Section 2 of the federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a "community of interest" and have similar needs, concerns, and identity--as Indian people; and

WHEREAS, a minority's "community of interest" is a legitimate and rational factor, recognized by the federal courts, that must be fully considered by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two House districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house districts would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the political process in the district, these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

WHEREAS, Montana's seven Indian reservations contain the highest concentration of minority voters in the state of Montana and the Montana redistricting schedule should redistrict these seven reservations first to ensure that such schedule is not prejudicial to the minority voters residing on these Reservations or their rights under Section 2 of the federal Voting Rights Act.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Montana-Wyoming Tribal Chairmen Association supports the Flathead Nation's and the Blackfeet Nation's efforts in proposing a redistricting plan for their Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).

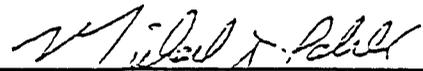
2. That the Montana Districting and Apportionment Commission revise its schedule so that the areas of the state with the highest concentration of minority voters--its seven Indian reservations--are redistricted first.

3. That the Montana Districting and Apportionment Commission fully comply with Section 2 of the federal Voting Rights Act in redistricting on Montana's Indian reservations.

EXHIBIT 1
DATE 1/28/93
E HJR 5

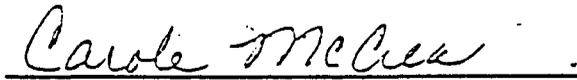
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Montana-Wyoming Tribal Chairmen Association certify that the foregoing resolution was duly presented and passed by a vote of 9 for and 0 against and 0 not voting at a regular called and convened meeting of the Association held this 12th day of February, 1992.



Chairman Montana/Wyoming
Tribal Chairmen Association

ATTEST:



Secretary

Please note:

A set of sixteen maps of House and Senate Districts can be found at the Historical Society. The cover map is identified as Exhibit 1, 1/28/93, HJR 5.

January 27, 1993

TO: Rep. Simpkins

FROM: John MacMaster

The attached memo takes the position that part of the Crow Tribe should not be placed in a district with Cheyennes (in 1982). One of the main arguments is the differences between the Crow and Cheyenne Indians.

The current issue is different: should the Blackfeet and Salish-Kootenai Tribes be combined into a district?

The argument as to tribal differences being so great the Crow and Cheyenne are too incompatible, or too different from each other, to put them in the same district and thereby say you have protected the minority of the Indian race as a whole can also be used to say that the Blackfeet and Salish-Kootenai are so incompatible or so different from each other that they are not entitled to be lumped together in a district in which they can combine to give Indians a majority of the district population. In other words, the argument works ways. You cannot say the differences matter for one purpose and should be ignored for the other.

In addition, the fact is that proposed district 12 in 1982 would have combined Crows and Cheyennes, and the Crow did not want that and said that they and the Cheyenne were too different.

EXHIBIT 2
DATE 1/28/93
HB HJR 5

Fredericks & Pelcyger

ATTORNEYS AT LAW
1007 PEARL STREET, SUITE 240
BOULDER, COLORADO 80302

(303) 443-1683

THOMAS R. ACEVEDO*
TOM W. ECHOHAWK**
THOMAS W. FREDERICKS
ROBERT S. PELCYGER***

13 September 1982

* ADMITTED ONLY IN VIRGINIA
** ADMITTED ONLY IN UTAH
*** ADMITTED ONLY IN CALIFORNIA AND NEW YORK

John MacMaster
Office of the Legislative Council
Room 138
State Capitol Building
Helena, MT 59620

Dear Mr. MacMaster:

I am sending you the enclosed memorandum as a response to a question raised by the Montana Districting and Apportionment Commission, concerning the constitutionality of division of the vote of Crow tribal members. One of the Commissioners asked whether such division was impermissible where the districting scheme divided the Crow Reservation, but combined a portion of that reservation with another Indian tribe: the Northern Cheyennes. The basis for the inquiry was the contention that there is no division of a racial vote when Indians share a district with other Indians. My memorandum addresses this contention, and concludes that the U.S. Supreme Court opinions invalidating districting schemes under the Fifteenth Amendment support invalidation of the proposed Montana scheme, considering the unique characteristics of Indian Tribes.

I hope that this information can aid your own preparation of a legal memorandum for the Commission. I am enclosing extra copies and I would appreciate your distributing them to the Commissioners.

Sincerely,

Barbara Lavender

Barbara Lavender

BL:a1
enclosures

EXHIBIT 2
DATE 1/28/93
TB HJR A 5

MEMORANDUM

TO: John MacMaster, Montana Districting & Apportionment
Committee

FROM: Barbara Lavender

DATE: September 13, 1982

RE: Constitutionality of proposed districting scheme for
Big Horn County, Montana

Two of districting schemes proposed for Big Horn County would divide the Crow Indian Reservation into two districts. In District 11, the Crows would be combined with a non-Indian population. In District 12, the Crows would be combined with non-Indians and with the Northern Cheyenne Reservation. These schemes constitute an unconstitutional division of the vote of Crow Tribal members and consequently of the Indian vote, in spite of the fact that part of the Crow Reservation is being combined with another Indian reservation.

I. Section 2 of the Voting Rights Act of 1965 is applicable to Montana Redistricting.

Section 2, as amended by P.L. 97-205, June 29, 1982, 96 Stat. 131-135, states that:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgement of the right of any citizen....

The clear meaning of this language is that any voting practice or procedure which has the prohibited effect is invalid. The Section in no way limits its application to voting practices in areas which are subject to sections 4 and 5 of the Voting Rights Act of 1965. The Supreme Court has confirmed this

interpretation of Section 2. In South Carolina v. Katzenbach, 383 U.S. 301 (1966), the Court defined the parameters of the Voting Rights Act of 1965. Sections 4, 5, 6(b), 7, 9, and 13(a) were said to constitute "a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." 383 U.S. at 315. Other sections, 8, 10(d) and 12(e), "prescribe subsidiary cures for persistent voting discrimination." 383 U.S. at 316. However, "the remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds." 383 U.S. at 316.

The U.S. Justice Department has repeatedly relied on this interpretation of Section 2 in its challenges to voting schemes in jurisdictions which are not subject to Section 5. The most recent case is U.S. v. King, Civil No. 82-67-M, which has been argued and is awaiting judgment by the U.S. District Court for the District of New Mexico. In that case, the U.S. has challenged the validity of legislative districts within certain New Mexico counties which are not subject to Section 5. The allegation is that the districts violate Section 2 of the Voting Rights Act of 1965, the equal protection provision of the Fourteenth Amendment and the Fifteenth Amendment because they were drawn in such a way as to split or fracture the Indian community.

Further support for applicability of Section 2 is found in the legislative history of the recent amendment. The Senate Judiciary Committee report states at p. 2 that the purpose of

the amendment is "to prohibit any voting practice or procedure [which] results in discrimination"¹ (emphasis added). At p. 41, the committee notes that:

[A] question raised by several witnesses in the subcommittee hearings is whether Congressional authority to enact the amendment to Section 2 is contingent upon a detailed showing of voting rights discrimination throughout the country. They suggest an analogy to the record of abuse in covered jurisdictions that the Supreme Court emphasized in South Carolina v. Kalzenbach, as one basis for upholding the importance of preclearance on those jurisdictions. The committee finds this concern... without merit because the analogy to Section 5 is fatally flawed for several reasons.

First, the analogy overlooks the fundamental difference in the degree of jurisdiction needed to sustain the extraordinary nature of preclearance, on the one hand, and the use of a particular legal standard to prove discrimination in court suits on the other. It is erroneous to assume that Congress is required for this amendment to put forth a record of discrimination analogous to the one relied on by the Court in South Carolina when it upheld Section 5.

The report quotes the testimony of Professor Dorsen as support for their conclusion:

While nationwide racial discrimination in voting might be necessary to justify or make "appropriate" extending Section 5 to the entire country, such finding would be unnecessary to justify amending Section 2 because it is less intrusive on state functions.... [A]mended Section 2 does not require federal preclearance of anything: it merely prohibits practices that can be proven in a court of law to have discriminatory results.

¹ Voting Rights Act Extension, Report of the Committee of the Judiciary, U.S. Senate, No. 97-417, May 25, 1982.

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C. HJR 5

Norman Dorsen, prepared statement, p. 5.

These statements clearly establish the authority of Section 2 as being separate from that of Section 5. Where, in addition, the clear and literal meaning of Section 2 has been affirmed by the Supreme Court and consistently applied by the U.S. Justice Department, there remains no basis for contending that an alternative, non-literal interpretation should be adopted. The Montana Districting and Apportionment Committee must therefore follow the mandates of Section 2 of the Voting Rights Act of 1965.

II. The proposed scheme dividing the Crow Reservation violates Section 2 of the Voting Rights Act of 1965 and the Fifteenth Amendment by dividing and diluting the Indian vote.

A districting scheme is unconstitutional if it prevents a particular class of citizens from having ^{the opportunity to gain} fair representation and meaningful participation in the political process. Rogers v. Lodge, 50 L.W. 5041 (1982), Gomillion v. Lightfoot, 364 U.S. 339 (1960), White v. Regester, 412 U.S. 755 (1973), City of Mobile v. Bolden, 446 U.S. 55 (1980). Under the newly amended version of Section 2 of the Voting Rights Act of 1965, such a scheme is invalid if it has a discriminatory effect, even if it was not enacted for a discriminatory purpose. In discussing what is necessary to meet the plaintiff's burden of proof, the Senate Judiciary Report states at p. 28:

If, as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and elect candidates of their choice, there is a violation of this section. To establish a violation, plaintiffs could show a variety of factors, depending on the kind of rule, practice or procedure called into question.

The Committee Report goes on to set out in some detail the so-called Zimmer factors, which courts have recognized as evidence of discriminatory effect.

In my previous memorandum to the Montana Districting and Apportionment Committee, I demonstrated that these factors are present in the districting scheme proposed for Big Horn County, and that they combine to invalidate any scheme which divides the Crow Reservation. This conclusion is not altered by the fact that a scheme includes part of the Crow Reservation in a district which also contains the Northern Cheyenne Tribe. The effect of such a scheme is discriminatory, in that it has the effect of diluting the Indian vote, as well as of dividing the Crow tribal vote. The population of the Crow Tribe is much larger than that of the Northern Cheyennes and the Crows have recently organized a political mobilization which could increase the political participation and influence of Crow tribal members. The effectiveness of this political organization depends on a unified structure. When the Crow vote is divided, the tribe is unable to use the tribal structure to facilitate the organizational process. As a result, those interests common to all Indians in Big Horn County will be under-represented, as well as the interests which are unique to the Crow Tribe. Because of the cultural and language differences between the two tribes, it would be difficult to organize a consolidated Indian political effort within a district which includes part of the Crow reservation and the Northern Cheyennes. Common Indian goals can most readily be reached if the two tribes are permitted to use their structural and cultural integrity to organize

political participation by tribal members,

III. The proposed scheme dividing the Crow Reservation violates Section 2 of the Voting Rights Act of 1965 and the Fifteenth Amendment by dividing and diluting the vote of the Crow Indians.

In addition to its effect on the voting rights of all Indians in Big Horn County, the scheme dividing the Crow Reservation has an impermissible effect on the voting rights of Crow Indians. The logic and analysis in the judicial opinions regarding the voting rights of racial minorities is consistent with characterization of individual Indian tribes as minority groups which are entitled to representation of their unique interests.

The Supreme Court's description of unconstitutional districting systems frequently refers to impermissible effects on groups which are defined by characteristics other than race. Thus, in Rogers v. Lodge, supra, the Court invalidated a system in which "a distinct minority, whether it be a racial, ethnic, economic or political, group, may be unable to elect any representatives." 50 L.W. p. 3. In Wallace v. House, 515 F.2d 619 (1975), the Fifth Circuit Court of Appeals stated that "in order for there to be substantial, and therefore illegal impairment of minority voting rights, there must be some fundamental unfairness in the election system, some denial of fair representation to a particular class," 515 F.2d at 633. Similarly, the Supreme Court noted in Fortson v. Dorsey, 379 U.S. 433 (1965) that the constitutionality of a scheme is suspect if it "would operate to minimize or cancel out the voting strength of racial or political elements of the voting population," 379 U.S. at 439. Since these cases did involve

racial groups, the statements quoted are dicta, but they demonstrate that the protection afforded by the Fifteen Amendment and the Voting Rights Act extends to minorities which are distinguishable on the basis of characteristics other than race. Therefore, the Fifteen Amendment guarantees fair representation to the Crow Tribal members, as a particular, discrete class of citizens, although those citizens are not technically of a different race from the Northern Cheyennes.

The factors upon which the courts have relied in determining that a particular scheme is unconstitutional are equally applicable to the situation in Big Horn County. One of these factors is the finding of a cultural and language barrier, making full participation in community processes difficult, White v. Regester, supra. This kind of barrier exists between tribes as well as between the individual tribes and the non-Indian population. The first language among the Crows is Crow and the second language is English. Similarly, the first language of the Cheyennes is Cheyenne and the second is English. Therefore, communication between Crows and Cheyennes is difficult. The two tribes have different interests which they seek to bring to the attention of their government. These interests can be best represented by a system in which each of the two tribes is consolidated.

Another important factor is the past failure of a member of the minority group to be elected in fair proportion to their representation in the population, City of Mobile, Ala. v. Bolden, supra, White v. Regester, supra. No Crow or Cheyenne has ever been elected to the state legislature. This fact is more

significant regarding the Crow Tribe, because the Crows constitute a much larger percentage of the state population than do the Cheyennes. The greatest opportunity for an Indian of either tribe to be elected is provided by a districting system which consolidates the votes of the individual tribes, so that they can work within their cultural frameworks to achieve common goals.

Indian tribes are unique entities - semi-sovereign states, each possessing its own political system for governing internal affairs. This factor, combined with the individuality of tribal languages and cultures, creates differences and barriers between tribes which are greater than those between many racial groups. The tribal political systems also provide a mechanism for effective coordination of political mobilization within the tribe, for representation of common interests. Division of the reservation prevents such mobilization and consequently prevents representation of tribal interests.

In one case dealing specifically with a reapportionment plan which divided an Indian reservation, the District Court for Arizona held that such a plan was unconstitutional. Klahr v. Williams, 339 F.Supp. 922 (1972). The Court found no evidence of an adequate state purpose for dividing the Navajo reservation among three legislative districts and concluded that the plan must have been adopted "in order to destroy the possibility that the Navajo, if kept within a single legislative district, might be successful in electing one or more of their own choices to the legislature." 339 F.Supp. at 927. Finding this to be an "invidious purpose", the court held that the plan was unconstitutional.

In March, 1982, the U.S. Department of Justice, Civil Rights Division, refused to preclear House Bill 2001, which provided for the reapportionment of the Arizona Legislature. The Arizona state government is subject to Section 5 of the Voting Rights Act, which requires preclearance of any reapportionment plan. Under Section 5, the state had the burden of proving the absence of both discriminatory purpose and effect in a newly devised legislative reapportionment plan. City of Rome v. United States, 446 U.S. 156, 183 n.18 (1980), Beer v. United States, 425 U.S. 130, 140-41 (1976). The submitted plan would have divided the population of the San Carlos Indian Reservation into three legislative districts. One district would have included a small portion of the San Carlos Reservation as well as the Papago Reservation. A second district combined a larger area of the San Carlos Reservation with a large non-Indian population. The third section of the San Carlos Reservation was included in a district with the Ft. Apache Reservation. This plan was rejected as violating the Voting Rights Act of 1965 by dividing the vote of the San Carlos Indians. The fact that the San Carlos were placed in districts with other tribes did not prevent the Justice Department from concluding that the legislative plan had a discriminatory effect. The Department noted that the state had offered no satisfactory explanation for, or governmental interest in, the division of the San Carlos Reservation, and that a reasonable alternative plan could be drawn which would avoid the fragmentation.

An alternative plan is also available in Big Horn County, and would avoid impermissible fragmentation of the Crow Tribe.

Although the San Carlos case was analyzed under Section 5 of the Voting Rights Act of 1965, which has its own "discriminatory purpose or effect" standard, application of the Section 2 standard to the division of the Crow Reservation would yield the same conclusion of invalidity.

EXHIBIT 2
DATE 1/28/93
B HJR 5

On 1-13-93 at the Capitol I was chastised for wanting cascade county to be represented by 16 representatives in the minus category - Please refer to my letter to the commission of 8/29/92 pp 2 first paragraph.

I propose an amendment to see that Cascade County has a total of ten representatives

AMOUNT 3
DATE 1/28/93
HB HJR 5

Sunday, January 24, 1993

On our mind

Plan isn't fair

The reapportionment plan proposed for Cascade County is unfair to rural Cascade County residents.

If you consider that the city limits of Great Falls, the town of Black Eagle, and the grounds of Malmstrom Air Force Base is the area people think of when they consider urban Great Falls, their needs are well represented by the current plan. But what about the 15,700-plus who reside in the county and need local representation outside those boundaries? All current House representatives are from urban Great Falls, as are the majority of their constituents whom they are obligated to represent.

This leaves the rural resident with some unique problems. If a rural resident needs help at the state level, he must turn to an urban representative or a representative from outside for help. The rural residents of this county comprise a minority in any district in which they reside.

Should a rural resident of Cascade County choose to run for the Legislature to strongly represent the interests of the outlying communities, he or she must run in an urban district or a multi-county district in which most of the electorate is from outside this area.

The next 10 years is too long for these residents to be held without an effective voice. The number of important issues that will profoundly impact their lives — school consolidation, property tax reform (especially agriculture), and possible cutbacks in services to name a few — demand local representation.

Rep. Pat Galvin is right. Rural Cascade County is not fairly considered in the plan as currently proposed. This issue should be handled in a non-partisan and civic-minded manner that provides fairness to the citizens of Montana. It definitely should not be pushed through in order to finish.

DON RYAN, 2101 7th Ave. S.

EXHIBIT 3
DATE 1/28/93
TB HJR 5

January 19, 1993

Honorable Fred Van Valkenberg- Senate President
Honorable John Mercer- Speaker of the House

RE: Apportionment- Cascade County

Gentlemen:

I am writing this communication to you to once again try to understand just exactly what is the purpose of the "Apportionment Commission".

My understanding has been that the Commission is a politically non-biased group charged with apportioning the various legislative districts under the "Guidelines and Criteria for Legislative Redistricting" set by the Montana Legislative Council- October 1991, consisting of "Mandatory Criteria" and something called "Consideration".

It has been my assignment by the Cascade County Democratic legislative delegation and Cascade County Democratic Party to be the spokesman for them on the question of re-apportionment since August 26, 1992. The day of the Commissions hearing at the Cascade County Court House in Great Falls.

As the enclosed copies of correspondence indicate, Cascade County singularly, is entitled to ten representatives. The criteria the Commission is changed to adhere to is plain on the question.

One of the most obvious dispositions of the commission from the outset is that their opinion and only their opinion is dictatorial without regard to any other. I have always been taught that in these United States including Montana that other facts and opinions are to be a part of all governing bodies decisions. Such consideration has not been given to Cascade County on the apportionment question. I cannot accept that any political body has dictatorial power anywhere in this republic.

As you can readily ascertain from the enclosed, the commission has set itself above and beyond any criticism or disagreement to or of them. Once again I claim we of Cascade County have that right and have been denied by the commission from the outset.

The question here, of course is; should rural Cascade County be entitled to representation by a Cascade County resident? i.e. one of their own. The commission's answer is a flat "no". Their opinion is that they can fragmentize Cascade County to the benefit of bordering and other counties regardless of the redistricting criteria.

The net result of the Commission's decision is 10% of Cascade Counties residents- mostly rural- are represented by legislators who are not a part of Cascade County concerns. This situation is not to be tolerated any longer.

One of the most repeated questions put to me during these discussions was "where were you ten years ago? Twenty years ago?". This has been done to Cascade County for two decades. Once again, the imperialistic viewpoint of the Commission is manifested.

Most recently the Hon. Marc Racicot, now governor, at the time Attorney General, traveled to Washington, D.C. and appeared before the United States Supreme Court to plead for the State of Montana to keep two Congressmen in the U.S. Congress. Mr. Racicot and Montana were denied. Nowhere was it considered that Montana be given additional population from any bordering state or Province in order to be made whole and retain its second congressman. In so doing the U.S. Supreme Court has set the precedent on Cascade Counties disagreement with the commission.

Let us turn to the report of the Redistricting and Apportionment Commission of December 1992 to the 53rd Legislature. Page 17- Computer Use- excellent idea- one must also realize a computer returns only that information given it. Page 18- Lack of conformity led to difficulty in following precinct and school district lines. Is this an excuse to disregard county lines- it leaves out any reference to fragmentation, why? It also points out that Cascade County was entitled to 10.13 representatives (ideally) in the 1980's. At that time the commission saw fit to divide rural Cascade County into two bi-county districts- why? Also on page 17-18 it refers to voter tabulation- one knows such information is available at the county Court House and it can be readily placed into any computer- why was the reference made in the first place?

Now we come to the presentation by the Commission of their study to the 53rd Legislature January 13, 1993 at 4:00 p.m. "Old Supreme Court" room at the capitol.

Not only did some members of the Commission berate the Cascade County legislators in their comments, they berated, chastised, and ridiculed this representative for doing what his constituents elected him to do. Represent them. I feel that although I represent House District 40 in Cascade County, I represent the County and the State as well. In that capacity my intelligence and office should not be impugned by anyone regardless of their office. I will weigh my service to this nation and state with anyone else's.

In conclusion, I ask you gentlemen and your respective Houses to throw-out the Commissions recommendations insofar as Cascade County is concerned and reconsider their actions.

Respectfully,

Patrick G. Galvin
Representative, HD 40- Cascade County

PG:ag
Enclosure

cc: Hon. Marc Racicot, Governor
Senator Franklin
Senator Doherty
Senator Mesaros
Senator Christiaens
Senator Wilson
Apportionment Commission-
Capitol- Room #138
John Murphy- Cascade County
Democrats

Rep. Dolezal
Rep. Sheila Rice
Rep. Ryan
Rep. Simpkins
Rep. Strizich
Rep. Tuss
Rep. Wiseman
Rep. Wyatt
Steve Hudspeth-
Esquire Great Falls

EXHIBIT 3
DATE 1/28/93
TB HJR 5

Comments by Representative Galvin, House District 40

8/26/92

I would like to express my appreciation to the Commission and especially to Ms. Susan Fox who has worked so diligently on this project. Cascade County has a population, according to the information I have received, of 77,691. Dividing that figure by the "ideal" of 7991, we come up with 9.6 representatives by dividing it by 7590, the mean figure, we come up with 10.25 representatives. Dividing by 8390, the extreme figure, we come up with 9.13 representatives. Using the mandatory and discretionary criteria for redistricting proposed by the Montana Legislative Council in November 1990, I feel Cascade County alone should be entitled to 10 representatives.

1. "The commission should apply the same mandatory and discretionary criteria to each district." (General Instructions pp 1) *Have you split ANY other county five ways?*
2. "If the commission were to follow county lines when possible but not do so in one county although it was possible to do so, a court may well hold this action to be unconstitutional." (pp 2 para 1) i.e. Jefferson County.
3. With the division, as set up in the current plans, one can readily see and claim "fracturing" of Cascade County (pp 5 para 3)
4. "Each district shall consist of compact and contiguous territory." (pp 6 para 3)
5. "A court would almost certainly not consider a district shaped like an hour glass to be compact." (pp 7 para 1 - HD 40)
6. Criteria
 - a) Following the lines of political units Districts are often drawn to follow, to the extent possible, the boundary lines of cities, towns, school district, Indian Reservations and the government units.
7. Communities of Interest
 - a) Communities of interest can be based on such things as trade areas, communication and transportation networks and prevalent occupations and lifestyles. (pp 8 para 1 and 3) Great Falls is in the center of Cascade County - not Lewistown, Helena, or Townsend.

In my opinion, Cascade County has been shortchanged in the legislature for the past decade. I feel the county has been fractured long enough to the advantage of other communities and I feel corrective measures should be taken to make Cascade County whole.

Thank you



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

RECEIVED
SEP 01 1992
MONTANA LEGISLATIVE
COUNCIL

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
105 29TH AVE., NW
GREAT FALLS, MONTANA 59404

COMMITTEES:
HIGHWAYS & TRANSPORTATION
HUMAN SERVICES & AGING
STATE ADMINISTRATION

Aug. 29, 1992

Montana Districting and Apportionment Commission
Room 138 State Capitol
Helena, Mt. 59620-1706

EXHIBIT 3
DATE 1/28/93
B HJR 5

Re; Cascade County

Dear Commissioners;

In response to your invitation, at the close of the Aug. 26th. meeting in Great Falls, I am submitting some suggestions. First, let me re-state that I feel Cascade County solely is entitled, by virtue of the census and the prevailing current law, to ten representatives in the Montana state legislature. With this in mind please review what transpired at the Aug. 26th. meeting; Rep. John Cobb H.D. 42 desires to relinquish from Great Falls, Sun Prairie Village, Vaughn, Ulm, Cascade, Sun River and Fort Shaw. I feel H.D. 42 should be out of Cascade County entirely. I believe Mr. Cobb's only reason to retain Simms is to retain a bi-county district.

Although I do not have a copy of Rep. Mike Foster's letter to you, I have had personal conversation with him and he described how he was not accepted by Cascade County voters and was asked to leave their property. He was told that he did not represent them when he campaigned in the Belt-Stocket-SandCoulee area. I do not blame him a bit for wanting out of Cascade County.

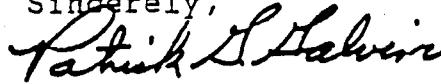
With respect to H.D. 11, Mrs. DeBruycker too, expresses a bit of dubiousness about campaigning in Cascade County.

As I have stated in my Aug. 26th. remarks, insofar as H.D. 29 is concerned, Cascade County has very little in common with Lewistown. To wit: Cascade County is not represented by its own people, but by others whose interests do not include Cascade County. Bear in mind also the remarks of Co. Commissioner Harry Mitchell and County Clerk and Recorder Joe Tropila to the effect that Cascade County voters want to be represented by Cascade County legislators. My own conversations with people in the Stockett-Sand Coulee-Tracy-Giffen area denotes no interest in voting for a legislator from outside of the area.

I would probably agree, in general, with the 200 plan with revisions. I would take the crescent shape described by Rep. Sheila Rice, including in that area the area east, south and west of Great Falls, Belt from the Highwood mountains, Monarch, Neihart, Eden, Giffen, Stockett, Sand Coulee, Tracy, Fife, Ulm, Cascade, Vaughn, Sun River and Gordon, all of which are foothills farmers and ranchers.

Because of the already made decision on Teton and Liberty Counties, I concede Simms-Fort Shaw to H.D. 11. If the new district doesn't have sufficient population, after revisions, to meet the mean population figure of 7590, then consider part or all of Meagher County or part or all of Judith Basin County. I realize this still makes two bi-county districts in Cascade County. Perhaps an earlier notification of the plan for Cascade County might have enlightened the Commission of the thoughts of Cascade County residents. Looking to the future, Great Falls and Cascade County finally seem to be moving toward increased population. The fact that much new construction is underway at this time. Three new sorely needed motels are under construction. McLaughlin Center is well underway, as is Sam's Club, the new juvenile detention center and of course the ethanol plant. Most of the new home construction at the present is in House Districts 39, 40, 41 and with the installation of water and sewer lines in the "Lower Sun River" area of H.D. 40 we envision much new home construction in that area. Once again, I offer my congratulations to you for taking on a very difficult task, many would have thrown up their hands long ago. Please consider my suggestions as constructive. I hold Cascade County foremost.

Sincerely,



Patrick G. Galvin

cc; file

Jean F. Barrett, Cperson
S.S. Frisbee
J.J. Pasma
H.J. Pinsoneault
J. D. Rehberg
Susan Fox, staff

Enclosure (1)



The Big Sky Country

RECEIVED

SEP 21 1992

MONTANA LEGISLATIVE COUNCIL
MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
105 29TH AVE., NW
GREAT FALLS, MONTANA 59404

COMMITTEES:
HIGHWAYS & TRANSPORTATION
HUMAN SERVICES & AGING
STATE ADMINISTRATION

Sept. 15. 1992

Montana Districting and Apportionment Commission
Room 138 State Capitol
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen:

I am in receipt of your Sept. 9, 1992 plans 400 and 500, they, like your plans 100 and 300, are entirely unacceptable. Please bear in mind that Cascade County is entitled to ten representatives. I cannot accept anything short of that. There is no alternative.

Respectfully,

Patrick G. Galvin

cc: file

BE - Susan Fox, Staff person

EXHIBIT 3
DATE 1/28/93
B HJR 5



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

RECEIVED
OCT 13 1992
MONTANA LEGISLATIVE
COUNCIL

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:
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HELENA, MONTANA 59620

HOME ADDRESS:
105 29TH AVE., NW
GREAT FALLS, MONTANA 59404

COMMITTEES:
HIGHWAYS & TRANSPORTATION
HUMAN SERVICES & AGING
STATE ADMINISTRATION

Oct. 12, 1992

Montana Districting and Apportionment Comm.
Room 138-State Capitol
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen;

I am in receipt of your notice of Oct. 2, 1992. Thank you. May I make one more effort to ask you to please adhere to the "Mandatory and Discretionary Criteria for Redistricting" prepared by the Montana Legislative Council--November 1990 insofar as Cascade County is concerned. I ask you to please refer to my remarks and correspondence to you of July 26, 1992--July 29, 1992 and September 15, 1992. My understanding as to the makeup of your commission is that it is and should be non-partisan. Are you non-partisan? Let me say one more time: Have you split any other county five different ways? Do you follow county lines? Are you fracturing Cascade County? Are Cascade County's districts compact and contiguous? Have you taken into consideration communities of interest? Are you gerrymandering Cascade County for some others interest and/or gain? Will you advise me as to which type of attorney I should contact if I deem it necessary on this question?

Thank you,

Patrick G. Galvin
Patrick G. Galvin

cc: file



The Big Sky Country

RECEIVED

MONTANA HOUSE OF REPRESENTATIVES

MONTANA LEGISLATIVE COUNCIL

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
105 29TH AVE., NW
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COMMITTEES:
HIGHWAYS & TRANSPORTATION
HUMAN SERVICES & AGING
STATE ADMINISTRATION

Oct. 13, 1992

Montana Districting and Apportionment Commission
Room 138 State Capitol
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen;

I am in receipt of your Oct. 5, 1992 letter to "Interested Persons". Thank you. I am an interested person. I am sorry that the enclosed Great Falls Tribune article is so tardy in being published. It could have saved my Oct. 12, 1992 letter to you. I am sending it to you in the hope that you too can now see how you are using Cascade County to the benefit of others and in so doing are denying Cascade County residents their rightful representation. It also proves that I am not singular with my opinion. One can readily see why Mr. Roskie would be jumping for joy at your decision, were I in his shoes I too would be "laughing up my sleeve". Just think, by your action how you have turned a six to three majority in Cascade County into a seven to six minority! I would like to participate in your November thirtieth hearing, but all indications at this time are against my being able to attend. Therefore, I desire that in case I cannot attend personally, that you read into the record all of my correspondence to you. (Dated 7/26; 7/29; 9/15; 10/12, 1992).

Also, although it means little to nothing, as Susan Fox and I have verbally discussed, I would like the boundaries of new district 558 to be extended east to the Missouri river on the "frontage road" then south (upstream) to meet the former line of HD 40. Also, on the extension west, where the frontage road and I-15 meet (34th. St, N.W.) use Interstate 15 as the northern border instead of the frontage road to wherever "between Manchester and Sun Prairie Village" is.

Sincerely,

Patrick G. Galvin

Patrick G. Galvin

cc: file

EXHIBIT 3
DATE 1/28/93
TB HTR 5



Montana Districting and Apportionment Commission

Room 138 State Capitol
Helena, MT 59620-1708
(406) 444-3064
FAX (406) 444-3036

Commission members:

Jean Fallon Barrett
Chairman
2042 Gold Rush Avenue
Helena, MT 59601

Selden S. Frisbee
13 East Main
Cut Bank, MT 59427

James J. Pasma
5 Curve Drive
Havre, MT 59501

H.J. "Jack" Pinoneault
215 West Broadway
Missoula, MT 59802

Jack D. Rehberg
2922 Glenwood Lane
Billings, MT 59102

Staff:

Susan Fox
Tom Gomez
Researchers
John MacMaster
Attorney
Ellen Garrity
Secretary

October 16, 1992

Representative Patrick Galvin
105 29th Ave., NW
Great Falls, Montana 59404

Dear Rep. Galvin:

I am writing in response to your October 12 letter to the Commission.

Much of your letter can be answered by the letter I wrote earlier today to Rep. Strizich. A copy of that letter is enclosed.

You request that the Commission adhere to the redistricting criteria that it adopted. A copy of those criteria is also enclosed. The Commission has adhered to those criteria. Please note that criteria II, 1, states that "Consideration will be given to the boundary lines of existing local government units, including counties." (emphasis added) As I pointed out in my letter to Rep. Strizich, there is no law that requires a county to be given as many districts as possible completely within the county or that even requires consideration of county lines for any purpose. The Commission could have chosen to completely ignore county lines, and there would be no legal remedy against the Commission or its redistricting plan.

As to the Commission's nonpartisanship, I have attended every meeting but one of the Commission and can assure you that it is definitely nonpartisan. Most of its votes have been unanimous. I have seen the Republican members speak and vote against what Republicans wanted and Democratic members speak and vote against what Democrats wanted. The Commission has not gerrymandered any county or area to favor any party, legislator, candidate, person, political subdivision, entity, group, or area. I believe that the minutes and record of the Commission's public meetings demonstrate that there has been no gerrymandering, and I am certain that a poll of people attending the public meetings would show that a vast majority of them saw no partisanship.

The Cascade County districts are compact, and they are clearly and obviously contiguous.

The simple fact is that Cascade County's population declined by 3005 persons between

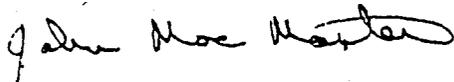
Rep. Galvin
October 16, 1992
page 2

1980 and 1990. Despite this decline, the Commission has tentatively adopted a plan that gives the county nine house seats completely within the county, the same number it now has.

Since your letter implies the possibility of legal action, it would not be proper for me or the Commission to recommend an attorney to you. However, in view of my opinion that there is no legal basis whatever for a suit, I recommend that you get the best attorney you can find, although I also believe that any attorney well-versed in redistricting law will tell you that you have no basis for a suit.

I was the staff attorney for the last Redistricting Commission, 10 years ago, and have during that time kept current on redistricting cases nationwide. No state in the union has had fewer cases brought against its redistricting plans than Montana has in the 20 years since the 1972 Montana Constitution mandated redistricting by Commission, and the state has won every one of those few cases. This is a record to be proud of and is testimony to the quality and fairness of the Commission plans.

Sincerely yours,



John MacMaster

enclosures

ppe 2290jmx.b.

EXHIBIT 3
DATE 1/28/93
HJR 5



Montana Districting and Apportionment Commission

Room 138 State Capitol
Helena, MT 59820-1708
(408) 444-3064
FAX (408) 444-3036

Commission members:

Jean Fallon Barrett
Chairman
2042 Gold Rush Avenue
Helena, MT 59601

Seiden S. Frisbee
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Cut Bank, MT 59427

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Billings, MT 59102

Staff:

Susan Fox
Tom Gomez
Researchers
John MacMaster
Attorney
Ellen Garrity
Secretary

October 16, 1992

Rep. Bill Strizich
736 27th Ave. N.E.
Great Falls, Montana 59404

Dear Representative Strizich:

At its September 30 meeting in Billings, the Commission voted to have me respond by letter to the last point raised in the letter that the Commission received from you on September 24.

The last part of your letter raises the possibility of legal action by one or more Great Falls and/or Cascade County persons or entities if the Commission does not adopt for that area a plan that gives the county a rural district completely within the county. As you noted, the Commission currently contemplates a plan that provides parts of four rural districts, none of which will be entirely within the county. The plan also provides for nine house districts that are urban, urban-suburban, or urban-suburban-rural and that are completely within the county.

There is no federal or Montana constitutional, statutory, or case law that requires that legislative districts be drawn so as to place as many as possible in each county, nor is there any law requiring the Commission to even consider county lines.

The Commission may, if it wishes, choose a discretionary standard such as following county lines to the extent possible or giving consideration to county lines. It could also set a priority on such a standard with respect to how the standard fits in with other discretionary standards. Any discretionary standard would have to give way if its application conflicted with one or more of the mandatory standards of population equality, compactness and contiguity, and nondilution of the Native American vote.

One discretionary standard chosen by the Commission is that "Consideration will be given to the boundary lines of existing local government units, including counties." In addition to this discretionary standard and the mandatory standards noted above, the Commission adopted six other discretionary standards that it must consider and did not give a priority to any of the discretionary standards. The other discretionary standards are that the Commission will consider voting precinct lines, school district lines, communities of interest, geographical boundaries, and existing legislative district lines and that it will not draw lines to favor a political party or protect or defeat an incumbent legislator. To the extent that one or more of these discretionary standards are important to the people and officials in any given part of the state, the Commission has attempted to fulfill them to the extent possible, always bearing in mind that the mandatory standards take precedence

Rep. Strizich
October 16, 1992
page 2

and that each discretionary standard must be balanced against the other discretionary standards for a given county or area and against all standards, mandatory and discretionary, for surrounding counties and areas and for the state as a whole.

In McBride v. Mahoney, 573 F. Supp. 913 (D.C. Mont. 1983), the court stated:

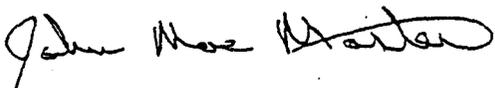
We now turn to the contention that the Commission did not follow its own criteria. It is apparent, however, that the criteria were not inflexible. It is clear from the wording of the criteria and the Commission discussions that they were considerations only and that the conflicts between the criteria as they existed within a district and as they existed between districts had to be balanced in arriving at a plan embracing the entire State.

The "Commission" referred to in the court's statement is the 1979 Montana Districting and Apportionment Commission, whose discretionary standards were almost identical to those of the 1989 Commission.

Your letter states that Great Falls will always be unfairly pulled apart to compensate for population shifts from east to west. The Commission's census data shows that Great Falls itself lost population. It is this factor, not the east-to-west population shift in the 1980s, that accounts for any perceived pulling apart of Great Falls and Cascade County. Despite this population loss, under the plan tentatively adopted by the Commission for the Cascade County area, the county retains nine house districts wholly within the county. The Commission thus feels that it has been more than fair to the city and county.

Section 5-1-108, MCA, requires only one public hearing, in Helena, on the legislative redistricting plan, when the plan for all house and senate districts is completed. In an effort to give all who are interested in redistricting a maximum chance for input, the Commission decided to also hold 12 public meetings in the various regions of the state, each meeting limited to that region. I attended all but one of these meetings and all of the organizational meetings and teleconferences at which the Commission discussed testimony at the public meetings and materials submitted by mail and chose tentative plans for the various regions. I can personally assure you that the Commission made every effort to take into account the interests of counties. It was, however, impossible for each person and entity interested in each of the seven discretionary criteria (many of which are composed of subcriteria) to be given everything the person or entity wished.

Sincerely yours,



John MacMaster

ppe 2290jmx.

EXHIBIT 3
DATE 11/28/93
BY HJR 5



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

RECEIVED
OCT 26 1992

MONTANA LEGISLATIVE
COUNCIL

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:

CAPITOL STATION

HELENA, MONTANA 59620

HOME ADDRESS:

105 29TH AVE., NW

GREAT FALLS, MONTANA 59404

COMMITTEES:

HIGHWAYS & TRANSPORTATION

HUMAN SERVICES & AGING

STATE ADMINISTRATION

Oct. 21, 1992

Montana Districting and Apportionment Commission
Room 138-State Capitol
Helena, Mt. 59620-1706

Re; Cascade County

Ladies and Gentlemen;

I am in receipt of a letter (with enclosures) dated Oct. 16, 1992 over the signature of John MacMaster, who is listed on your letterhead as a researcher. He sends me no surprises. In the third paragraph he emphasizes the word "consideration". That is exactly the manner which this state is being governed by the current administration. To wit: find a loophole and circumvent the intent of the law to the administrations benefit. I fully realize the redistricting criteria is just that, and is not law. My experience for twenty-two years as a union representative taught me that lesson--if the question is not specifically set down in black and white and signed by the parties involved the question is of course moot. This is a prime example of a law containing the word "may" instead of "shall". However, I find it strange that the committee will apply the criteria in one manner when it pertains to our Indian nations and another application when it applies to Cascade County. You apply it one way when it pertains to Jefferson County but another manner when it pertains to Cascade County. I feel the whole difficulty here is about the abuse of power and betrayal of trust. Not gerrymandering? Why then is Cascade County fractured to the benefit of counties which do not have sufficient population to maintain a representative? Cascade County has lost 3005 persons? If so, how many representatives was Cascade County entitled ten years ago? The criterias main reason for existance is to guarantee the one man one vote concept. (voting rights act of 1965) I feel by shattering Cascade County-as you have, you are again "voting livestock". Am I wrong, when I believe the A.C.L.U. brought suit in the name of the Salish-Kootenai or some other Indian nation against you and won? If not, why then did you bow to the Rocky Boy and Fort Belknap group on their demands?

In closing, please enlighten me to this: If the Guidelines and Criteria for Legislative Redistricting are merely to be treated with "consideration" of what value are they and for that matter, the commission itself? Please read this into the minutes of Your 11/30/92 meeting.

Jim ...



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

RECEIVED

JAN 11 1993

MONTANA LEGISLATIVE
COUNCIL

January 11, 1993

Montana Apportionment Commission
Ms. Susan Fox
Room 138
Capitol Station
Helena, MT 59620

RE: Cascade County

Please accept this as my protest to your shattering of Cascade County. As a representative of all of Cascade County and the state of Montana, I cannot, for any reason, understand your obstinacy on the question.

Sincerely,

Patrick G. Galvin

Rep. Patrick G. Galvin
House District # 40

PGG:sh

3
DATE 1/28/93
P HJR 5



The Big Sky Country

RECEIVED

JAN 11 1993

MONTANA HOUSE OF REPRESENTATIVES
LEGISLATIVE COUNCIL

Montana Districting and Apportionment Commission
Room 138 State Capitol
Helena, MT

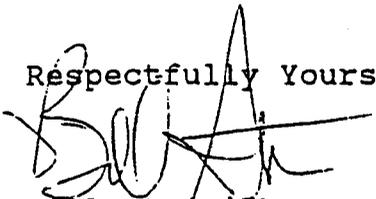
Dear Commission Members:

I only wish to reiterate my ardent objection to the impact your proposed "final plan" would have on the citizens of my home county. The district I represent would be largely without much change, but overall I must continue to take exception with the impact the plan has on the rural extremities of the county which are being amputated from our community under your plans.

I believe the Commission has chosen to ignore the central community of interest, Great Falls which is clearly the cultural and market center of Cascade County. Voters in these outlying portions of the County, whose votes are being distributed to Lewis and Clark, Teton and Fergus counties are being effectively disenfranchised from the political process. Because of the shift of influence to population centers outside Cascade County it is highly unlikely that folks in many of our effected rural communities will have an opportunity to serve in the legislature or elect representatives who adequately represent their needs in terms of tax policy and all other major issues affecting their lives and businesses.

Please re-consider your course of action which I feel is unfair to the rural citizens of Cascade County and will ultimately be irrevocable for the next decade.

Respectfully Yours,


Bill Strizich

XII III
VII I

4/28/92

Bob Bennett for my

proxy for voting

on HJR 5

(Cooperating)

Shuk Rice

NO

EXHIBIT 6
DATE 4/28/92
HB HJR 5

