



North Dakota Native Vote
PO Box 226
Bismarck, North Dakota
58502
info@ndnativevote.org

FOLLOW-UP TO PROVIDE REQUESTED INFORMATION TO REDISTRICTING BOARD

On December 7, 2021, Lisa Deville, Vice Chair of North Dakota Native Vote and enrolled citizen of the Mandan, Hidatsa, and Arikara Nation, provided testimony to the Redistricting Board to advocate for the establishment of five single-member commissioner districts with the creation of two Native majority districts, as required under federal law. The Board agreed to withhold approving a redistricting plan to allow North Dakota Native Vote to submit additional information requested by the Board, which the Board directed to be submitted by December 9, 2021 at 4 p.m.

I am Nicole Montclair-Donaghy, Executive Director of North Dakota Native Vote. I am Hunkpapa Lakota from the Standing Rock Sioux Nation, and also a descendant of the Mandan, Hidatsa, Arikara Nations, and the Turtle Mountain Band of Chippewa. Among other things, North Dakota Native Vote advocates for fair redistricting that provides an opportunity for meaningful representation of tribal members.

At the December 7th meeting, the Board asked for several pieces of additional information, which are provided in this letter. Specifically, the Board requested: (1) a more detailed version of our proposed map to make the boundaries more easily identifiable; (2) an explanation of how two majority Native districts can be drawn based on the County's overall Native Voting Age Population of about 29.8%; (3) a more detailed racially polarized voting analysis that incorporates more County election data; and (4) an explanation of why the establishment of single-member districts (as opposed to an at-large voting system) is required under the law. We have done our best to respond to the Board's requests despite the brief time-frame provided.

The map we submitted to the Board, if adopted, would create two Native voter majority districts. As drafted, the map's District 1 has a Native Voting Age Population of about 59%, and District 2 has a Native Voting Population of about 62%. Due to the short turnaround time, we were not able to provide a legal description of the proposed district lines. However, we have input the map into the Dave's Redistricting website, which can be accessed at this link (<https://davesredistricting.org/maps#viewmap::ca9097ee-0e9f-4c16-9aaa-cfeed0a5b010>).

Accessing the map at the link will allow the Board to view the precise location of all the proposed district lines. We have also attached a cleaner copy of the map, along with figures depicting some zoomed in areas of the map.

At the last meeting, a Board member asked how two Native districts can be drawn if the County's Native Voting Age Population is only 29.8%; implying that it would require 40% to create two Native districts out of the five total districts. However, a mathematical majority of a single district, in a five district system of equal population, would only require 10% plus one of the County's population. Districts 1 and 2 of our proposed map would create Native majorities sufficient not only to form a majority of each district, but sufficient voting strength to allow the Native voters in each district the ability to elect the candidates of their choice.



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Please also find included with this letter two charts. The first reflects how Native and White voters in Mountrail County voted, respectively, in certain 2016 state and federal elections; the second provides these results in 2018 state and federal elections.

As we noted in our testimony at the prior Board meetings, the degree to which voting in a county is racially polarized is one important factor in determining whether that county must implement district-by-district elections (so that each commissioner is elected only by residents of his or her district) in order to comply with the Voting Rights Act.¹

A county's voting patterns are said to be "racially polarized" where the candidate preferred by White voters receives a substantial majority of the White vote but very little of the Native vote, while the candidate preferred by Native candidates receives a substantial majority of the Native vote but very little of the White vote. No specific percentages are required to demonstrate that racially polarized voting exists in a jurisdiction. Rather, the question is whether the White voters vote sufficiently as a bloc to consistently defeat the Native candidate of choice. As the attached tables show, such a pattern has borne out consistently in Mountrail County.

In 2016 and 2018's national and statewide elections, the White vote of Mountrail County overwhelmed the Native vote in race after race. The Native-preferred candidate for insurance commissioner in 2016 received virtually all of the Native vote, while the commissioner's White-preferred opponent received more than 75% of the White vote. 2018 statewide races showed similar patterns, with well over 97% of Native voters in Mountrail voting for Native-preferred candidates in each race and over 75% of White voters supporting those candidates' White-preferred opponents.

Courts have found racially polarized voting sufficient to raise VRA concerns in jurisdictions with far less extreme polarization than Mountrail County. The Eighth Circuit Court of Appeals, which includes North Dakota, has found such polarization where "the Indian-preferred candidate for state senate lost even though he received 70 percent of the Native-American vote."²

Again due to the short timeframe given to provide this response to the Board, we have not been able to compile voter data on every recent election in the County. However, these tables demonstrate a consistent pattern of racially polarized voting sufficient to raise serious concerns under the VRA.

At the last meeting, the State's attorney, who is serving as a Redistricting Board member, raised concerns with our proposed map complying with North Dakota State law, and stated that we should address any conflicts between State law and the VRA with the State Legislature. As stated in our prior testimony, our proposed map follows North Dakota's own laws governing redistricting.³ It draws districts that have contiguous and compact shapes. Each district is as "substantially equal

¹ *Thornburg v. Gingles*, 478 U.S. 30, 49-50 (1986).

² *Bone Shirt v. Hazeltine*, 461 F. 3d 1011, 1021 (8th Cir. 2006).

³ See N.D.C.C. § 11-07-03.



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in population as possible,” all deviating less than 1% from ideal population. Further, under the Supremacy Clause of United States Constitution,⁴ the federal Voting Rights Act preempts any state laws that may conflict with it. Specifically, any state laws that direct an at-large system of voting would be superseded by the Voting Rights Act where a Native majority district(s) would be required to be drawn under the VRA.⁵ An overwhelming legal precedent requires the formation of single-member districts in Mountrail County with the establishment of two Native majority districts.

Additionally, any potential lawsuit challenging a County redistricting plan as out of compliance with the VRA would be against the County, not the State. Therefore, it is incumbent upon the County and this Board to ensure that its approved plan is fair and legal. Our proposed map complies with applicable redistricting laws; while the other maps currently being considered by the Board do not.

I once again restate our request that the Board approve a single-member district plan that provides for two Native majority districts in compliance with the Voting Rights Act. I hope this follow-up letter adequately addresses each of the Board’s requests. We are happy to provide additional information if requested. North Dakota Native Vote appreciates the Board’s efforts and engagement on this important issue.

⁴ Article VI, Clause 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

⁵ See *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (D.S.D. 2004) (Single-member districts required in South Dakota despite state law providing for multi-member districts.).