

1983

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TRANSMITTING RECOMMENDATIONS TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION REGARDING ITS REDISTRICTING PLAN SUBMITTED UNDER ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION.

WHEREAS, a Montana Districting and Apportionment Commission was appointed in 1979; and

WHEREAS, the Montana Districting and Apportionment Commission has prepared its reapportionment plan for the legislative and congressional districts and delivered the plan to the 48th Legislature on January 5, 1983, pursuant to Article V, section 14(3), of the 1972 Montana Constitution and pursuant to 5-1-101, MCA; and

WHEREAS, the Senate must return the plan to the Commission with its recommendations on or before February 4, 1983, in accordance with the Montana Constitution; and

WHEREAS, the Senate chooses to return its recommendations in the form of a simple resolution; and

WHEREAS, the Senate of the State of Montana has considered the plan in its entirety and conducted a public hearing beginning January 20, 1983, at 10:30 a.m. and continuing for a period of 3 days; and

WHEREAS, no substantial objections were received as to the congressional redistricting; and

WHEREAS, substantial testimony and objections were received concerning the legislative reapportionment plan; and

WHEREAS, the Senate of the State of Montana, 48th Legislative Assembly, desires to express its approval of the congressional redistricting and disapproval of legislative redistricting; and

WHEREAS, the United States Constitution has recognized certain criteria to be implemented by the states in accordance with the one-man one-vote requirement of the 14th amendment to the United States Constitution; and

WHEREAS, this plan does not encompass a rational state policy; and

WHEREAS, this plan unduly tears apart political subdivisions; and

WHEREAS, this plan does not have compact districts of contiguous territories; and

WHEREAS, this plan does not preserve natural or historical boundary lines; and

WHEREAS, this plan does not incorporate the criteria of size and homogeneity of districts; and

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WHEREAS, this plan does not take into consideration the location of shopping centers; and

WHEREAS, this plan does not take into consideration the pattern of roads; and

WHEREAS, this plan does not include areas of coverage of daily and weekly newspapers or radio and television broadcast areas; and

WHEREAS, the Commission set an arbitrary deviation factor of 5% plus or minus from the ideal representative district population as its ultimate goal and disregarded all other criteria mentioned above; and

WHEREAS, Montana districts in several instances have an excessive deviation from the ideal representative district population; and

WHEREAS, in some districts it is obvious there was no good faith effort to achieve a goal of zero percent deviation from the ideal district population; and

WHEREAS, this plan is in violation of the one-man one-vote interpretation of the 14th amendment to the United States Constitution and Article V, section 14, of the Montana Constitution requiring "all districts will be as nearly equal in population as practicable"; and

WHEREAS, each Montana Senate district must have an identifiable representative; and

WHEREAS, the Commission failed to assign Senators to new districts who have terms which expire in 1986; and

WHEREAS, the Commission submitted an incomplete plan in that it failed to designate election dates for the new districts consistent with the Montana Constitution Article V, section 3; and

WHEREAS, a majority of states allow holdover Senators to serve under a new reapportionment plan and courts have held this not to be in violation of the people's constitutional rights; and

WHEREAS, in the relatively few states which have permitted the shortening of state senators' terms, one of the following has existed:

- (1) express provision in the state constitution or statute;
- (2) implementation by voter initiative; or
- (3) elected Senators were subsequently found by the courts to have been elected under a previously unconstitutional apportionment plan; and

WHEREAS, none of these special circumstances exist in the state of Montana; and

WHEREAS, the Attorney General of the state of Montana has issued an opinion to the President of the Montana Senate indicating the necessity of designating districts for holdover senators whose terms do not expire until 1986; and

WHEREAS, the 14th amendment to the United States Constitution requires that no state shall make or enforce any law which shall abridge

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the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law; and

WHEREAS, Article II, section 4, of the Montana Constitution provides that no person shall be denied equal protection of the law and no person shall be discriminated against in the exercise of his political rights on account of culture, social origin or conditions, or political ideas; and

WHEREAS, it is the intent of the Montana Constitution that the chairman of the Districting and Apportionment Commission serve in a nonpartisan capacity in order to preserve the rights of the people of Montana; and

WHEREAS, the preponderance of the testimony presented to the Senate Standing Committee on State Administration evidenced political discrimination by a majority of the members of that Commission against certain political-social groups; and

WHEREAS, the records of the actions of the Commission in formulating the plan indicate 61 contested votes, 2 of which were merely procedural, and 57 other votes where the majority was made up of members of one political party; and

WHEREAS, the chairman of the Districting and Apportionment Commission has admitted that he acted in a partisan capacity throughout the redistricting process and this resulted in the Commission acting in a partisan manner throughout the entire redistricting process; and

WHEREAS, the resultant legislative redistricting clearly evidences this political bias in favor of the Democratic party to the exclusion of all other bases for redistricting; and

WHEREAS, this resulted in an invidious discrimination against the people of Montana and their social, cultural, and political beliefs and ideas; and

WHEREAS, these actions by the Districting and Apportionment Commission yielded a constitutionally infirm plan for the redistricting of Montana's legislative districts under both the Montana and United States Constitutions; and

WHEREAS, the Commission members are not elected by the people or appointed by the Governor subject to confirmation by the Senate; and

WHEREAS, Montana Constitution Article V, section 14(2), does not provide for any regulation or control over the Commission; and

WHEREAS, the Commission members are not responsible to anyone; and

WHEREAS, large segments of people in the state of Montana are being deprived of their right to a republican form of government as provided by the United States Constitution Article IV, section 4, which provides "the United States shall guarantee to every state in the union a republican form of government . . ."

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate recommends that the Montana Districting and Apportionment Commission adopt the congressional redistricting plan;

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission redraw its redistricting plan of the legislative districts of Montana in order to meet the constitutional requirements and objections mentioned above; and

BE IT FURTHER RESOLVED, that the attached recommendations be adopted by the Commission in redrawing the legislative districts of Montana (see attached maps and recommendations); Attachment B, pages 1 through 4 (11 maps).

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission designate senatorial districts for each senator whose term expires in 1986 in such a manner that each Senate District have an identifiable representative; and

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission establish election dates for the Senate Districts consistent with Montana Constitution Article V, section 3; and

BE IT FURTHER RESOLVED, that if there is insufficient time for the Commission to accomplish such task that the Montana Supreme Court assume the responsibility of redistricting and reapportionment; and

BE IT FURTHER RESOLVED, that copies of the following documents be attached to this resolution:

- (1) Attorney General Opinion to Senator Stan Stephens dated January 21, 1983; Attachment C, 3 pages.
- (2) The Senate Journal for the third legislative day; Attachment D, 3 pages.
- (3) Minutes of the meeting of State Administration Committee of January 20, 1983, at 10:30 a.m. regarding Reapportionment Commission. Attachment E, 28 pages.

BE IT FURTHER RESOLVED, that copies of this resolution and attachments be sent by the Secretary of State to the chairman of the Montana Districting and Apportionment Commission; the Honorable Ron Marlenee, Congressman from the Second Congressional District; and the Honorable Pat Williams, Congressman from the First Congressional District.

#### RECOMMENDATIONS

- (1) Senate Districts 25, 28, 29, 32, 33, and 34, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

50 and 57  
56 and 58  
55 and 63  
64 and 65  
66 and 67  
68 and 49;

(2) House Districts 64 through 66, as adopted by the Commission, be withdrawn and the plan for Ravalli County referred to by the Commission as plan B be adopted. (Plan B creates three house districts solely within the boundaries of Ravalli County. Generally, one house district is in the southern half of the county; the northern half of the county is divided into an eastern and a western house district);

(3) House Districts 9, 11, and 12, as adopted by the Commission, be withdrawn and the plan for Glacier, Pondera, and Teton Counties referred to by the Commission as plan 2 be adopted. (Generally, plan 2 places eastern Pondera County in a house district with Teton County and places western Pondera County, including Conrad, in a house district with a portion of Glacier County, including a portion of Cut Bank);

(4) The house districts consisting generally of Glacier and western Pondera Counties, as recommended in subsection (3), be paired to form a senate district and the house district consisting of Teton and eastern Pondera Counties, as recommended in subsection (3), be paired to form a senate district with the Commission's proposed House District 10.

(5) Senate Districts 17 through 19, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

33 and 37  
34 and 35  
36 and 38;

(6) House Districts 23, 24, 27, 28, 99, and 100, as adopted by the Commission, be withdrawn and the plan referred to by the Commission as plan X for Big Horn, Powder River, Carter, Fallon, Wibaux, Dawson, McCone, Garfield, Rosebud, and Treasure Counties be adopted. (Plan X generally combines: all of Powder River, Carter, and Fallon Counties into one House District; Wibaux and a part of Dawson County into one House District; the remainder of Dawson County and McCone County into one House District; Garfield, Treasure, and a portion of Rosebud County into one House District; the remainder of Rosebud County and a portion of Big Horn County, including all of the Northern Cheyenne Reservation and a portion of Hardin, into one House District; and the remainder of Big Horn County, including a portion of Hardin and all of the Crow Reservation contained in the county, into one House District);

(7) Senate Districts 7 and 8, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

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13 and 16;

(8) House Districts 83 and 86 through 90, as adopted by the Commission, be amended so as to place areas in Yellowstone County which are urban in nature with predominantly urban districts and areas which are rural in nature with the district consisting primarily of rural Stillwater County. This recommendation additionally shifts an area in the eastern portion of House District 87 into House District 88, an area in the southern portion of House District 88 into House District 89, and an area in the southwest portion of House District 89 into House District 87.

(9) The following plans be studied by the Commission and be worked into a form that can be incorporated into the legislative redistricting plan:

(a) The plan for northeast Montana, which includes House Districts A through F in Sheridan, Daniels, Roosevelt, Valley, Phillips, Blaine, and portions of Fergus and Chouteau Counties; and

(b) The plan for Gallatin, Madison, and Silver Bow Counties, which includes 11 house districts.

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