PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Montana Districting and Apportionment Commission

TO: Montana Districting and Apportionment Commission members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: Summary of Montana court cases and attorney general opinions regarding redistricting
DATE: September 24, 2009

COURT CASES

Wheat v. Brown, 2004 MT 33, 320 M. 15, 85 P3d 765 (2004)

The 2003 Districting and Apportionment Commission plan for redistricting House and Senate districts assigned holdover Senators who were elected under the old districting system to redrawn districts under the new system. In response, the Legislature passed 5-1-116, MCA, granting to itself the power to assign holdover Senators to districts for the remainder of their terms and prohibiting the Commission from making those assignments. The Legislature then passed further legislation implementing its recommendations. Three of the holdover Senators challenged the legislative assignments. The District Court declared 5-1-116, MCA, and the implementing legislation unconstitutional, and the Supreme Court affirmed. Under this section, the mandate that the Districting and Apportionment Commission effect redistricting is self-executing, and the power to assign districts for holdover Senators is historically an inherent part of the redistricting process. The constitutional grant of redistricting power to the Commission constitutes a denial of any latitude to the Legislature to invoke its plenary powers. Thus, the 2003 legislation designed to transfer the power to assign holdover Senators from the Commission to the Legislature was unconstitutional and of no force and effect.

Brown v. Commission, Cause No. ADV 2003-72, 2003 ML 1896 (1st Jud. Dist., July 2, 2003)

On February 5, 2003, the Commission adopted the final redistricting plan (with some minor amendments). Commissioners submitted the plan to the Secretary of State as provided in the Montana Constitution. Bob Brown, Secretary of State, refused to accept the plan based on HB 309, which had been signed into law by Governor Martz on February 4, 2003. House Bill No. 309 required a plus or minus 1% deviation and the plan had been drawn using a criterion of plus or minus 5% deviation.

Secretary of State, Bob Brown, filed a complaint for declaratory judgment on February 5, 2003 requesting "the court to determine the constitutionality and statutory validity of the Statewide Redistricting Plan adopted by the Montana Districting and Apportionment Commission." A hearing for partial summary judgment on the complaint was held May 15, 2003, at the First Judicial District Court in Helena. Judge McCarter ruled, in summary, that "HB 309

impermissably conflicts with Article V, Section 14, of the Montana Constitution, and is void on that basis. HB 309 is not a valid implementation of Article V, Section 14, because that constitutional provision is self-executing, and because Article IV, Section 3, of the Montana Constitution does not authorize the legislature to interfere with the redistricting process beyond the express authority given to it in Article V, Section 14. The Secretary of State was required to file the Commission's plan, and his refusal to do so was therefore in violation of the Montana Constitution. Finally, the Secretary of State does not have standing to seek a declaratory judgment on the constitutionality of the Commission's plan."

The Secretary of State filed the plan and the 2005 districts became law on July 2, 2003.

Old Person v. Brown, 312 F3d 1036 (2002) (Pl. Petition for Cert. denied by U.S. Supreme Court, Nov. 17, 2003)
Plaintiffs contended that the 1992 redistricting plan for the Montana House of Representatives and Senate diluted the voting strength of American Indians in violation of section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. The plaintiffs also alleged that the redistricting plan was adopted with a discriminatory purpose in violation of section 2 of the Voting Rights Act. The federal District Court rejected both claims. The Ninth Circuit Court of Appeals determined that the District Court's finding that the plan did not dilute the voting strength of American Indians was based upon two errors. The errors were that white bloc voting in majority-white House districts was not legally significant and that American Indians were proportionally represented under the 1992 redistricting plan. The Ninth Circuit Court of Appeals reversed and remanded with instruction to determine whether, in light of the totality of the circumstances, vote dilution had occurred. On remand, the District Court held that the plaintiffs had limited standing and to prevail had to show, but did not show, vote dilution in the specific legislative districts where they resided. Also, the District Court held that even if the plaintiffs had shown vote dilution, their claim failed because of the unavailability of an adequate remedy. The District Court reasoned that the state would be redistricting in 2003, and the 2002 elections (the last elections to be conducted under the 1992 plan) were fast approaching. The plaintiffs appealed. The Ninth Circuit Court held that under the totality of the circumstances, it was not clearly erroneous for the District Court to determine that there was no vote dilution. The District Court's ruling dismissing the Voting Rights Act of 1965 claim based on the conclusion that there was no vote dilution was affirmed.

United States Department of Commerce v. Montana, 503 U.S. 442 (1992)

On appeal, the Supreme Court concurred that the method of equal proportions achieves the smallest relative difference between the populations of districts in different states. As between alternative methods, each of which measured equality differently, the Court held that Congress had not abused its discretion in selecting the method of equal proportions. Montana was left with only one congressional seat.

Montana v. Department of Commerce, 775 F. Supp. 1358 (D. Mont. 1991)
Since the 1930 census, Congress has apportioned seats in the House of Representatives using the mathematical formula called the "method of equal proportions." The formula had been

recommended by a committee of respected mathematicians appointed by the National Academy of Sciences to evaluate the various possible methods of apportionment. The committee chose the method of equal proportions as being the best for reducing both the relative difference between states in the population of districts and the relative difference between states in the number of persons per representative. Those ratios differ between states because every state is entitled to at least one representative, and the number of representatives assigned to a state must be a whole number. Thus, the congressional districts in each state must be the same size, but their size differs from one state to another.

Applying the method of equal proportions to the 1990 census count had caused Montana to drop from two congressional seats to one. Montana sued the Department of Commerce, home of the Census Bureau, alleging that the method of equal proportions did not achieve the greatest possible equality in the number of persons per representative. The District Court found the statute unconstitutional and enjoined the Government from reapportioning the House of Representatives using the method of equal proportions.

McBride v. Mahoney, 573 F. Supp. 913, 40 St. Rep. 1907 (D.C. Mont. 1983)
The 1983 Reapportionment Commission established five criteria to follow in redistricting that addressed governmental boundaries, geographic boundaries, communities of interest, consideration of existing district boundaries, and an attempt to stay within a 5% plus or minus deviation from the ideal district population. The court held that these criteria were considerations and that conflicts between them as they existed within a district or between districts must be balanced in arriving at a plan embracing the entire state. The Commission interprets its own criteria, such as what constitutes a community of interest and the possible ripple effects of any particular change; thus when the Commission made a good faith effort to balance the criteria, the reapportionment plan could not be struck down on the contention that it failed to exactly follow its own criteria.. In the 1983 reapportionment plan, the population deviation between the largest and smallest House districts was 10.94% and between the largest and smallest Senate districts was 10.18%, which created a prima facie case of discrimination because the totals exceeded 10%. To be upheld, the deviations must be justified by legitimate state objectives. The court determined that legitimate state objectives were stated in criteria established by the Reapportionment Commission. The criteria addressed governmental boundaries, geographic boundaries, communities of interest, consideration of existing district boundaries, and an attempt to stay within a 5% plus or minus deviation from the ideal population. A reapportionment plan will not be struck down for failure to consider projected population growth when the Reapportionment Commission did not consider population projections and it was not presented with data that would have enabled it to apply population projections in a systematic manner.

State ex rel. Greely v. Mont. Districting & Apportionment Comm'n, First Judicial District, No. 46873 (Aug. 12, 1981)
After the 1980 census, the Attorney General sought a writ of mandamus to compel the Districting and Apportionment Commission to submit its plan to the 1981 Legislature. The District Court determined that the Commission must submit its plan to the first regular session of the Legislature following the Commission's appointment or to the first regular session of the Legislature following the availability of census figure, whichever came later. In this case, the

Commission was required to submit its plan to the 1983 Legislature meeting in regular session.

ATTORNEY GENERAL OPINIONS

Reapportionment -- Holdover Senators: Article V, sec. 3, Mont. Const., provides that state Senators be elected to 4-year terms on a staggered basis. The constitution and statutes provide no authority for changing Senators' terms after reapportionment. The reapportionment plan is the responsibility of the Montana Districting and Apportionment Commission. The Commission has the inherent authority under Art. V, sec. 14, Mont. Const., to do what is necessary to implement a plan that complies with the state's laws. How to deal with holdover Senators is the responsibility of the Commission. The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting. 40 A.G. Op. 2 (1983).

When Plan to Be Submitted -- Recess and Reconvening: The Commission to Redistrict and Reapportion is required under 5-1-109, MCA, to submit its plan to the 47th Legislature if census data is available in December 1980. The Legislature may recess and reconvene at a later date and still be within its regular session to receive and make recommendations, according to 5-1-110, MCA, on the Commission's plan. 38 A.G. Op. 99 (1980).

Procedure for Submitting Reapportionment Plan: The reapportionment plan should be submitted, with a cover letter signed by each commission member, to each house of the Legislature by the 10th day of the legislative session; and within 30 days of the return of the reapportionment plan from the Legislature, the final plan should be submitted, with a cover letter signed by each commission member, to the Secretary of State for filing. 35 A.G. Op. 50 (1973).

Constitutional Grant of Power to Apportion -- Historical and Current: Prior to the adoption of the 1972 Montana Constitution, the apportionment power was granted to the Legislature. (See Art. VI, 1889 Mont. Const.) However, with the adoption of the new Constitution, the people of this state divested the Legislature of all power concerning apportionment of the Legislature, except for the power of recommendation in Art. V, sec. 14, 1972 Mont. Const. 35 A.G. Op. 12 (1973).

Legislative Determination of Size of Legislative Assembly -- Not Controlling: The Commission to Redistrict and Reapportion was not bound by a legislative determination of the size of the Legislative Assembly, and sections 43-106.6 and 43-106.7, R.C.M. 1947 (repealed by sec. 1, Ch. 14, L. 1975), enacted prior to the adoption of the 1972 Montana Constitution, are not controlling. 35 A.G. Op. 12 (1973).

Reapportionment Commission -- Exclusive Power to Apportion Legislative and Congressional Districts: The Commission to Redistrict and Reapportion has the exclusive power to determine the size of the legislative houses and the geographical makeup of the legislative and congressional districts, subject only to the restrictions of Art. V, Mont. Const. 35 A.G. Op. 12 (1973).

Reapportionment Plan Becomes Law: Upon submission of the apportionment plan, proposed by the Commission to Redistrict and Reapportion, to the Secretary of State, the plan becomes law and all previous statutory provisions in conflict with that plan are, in effect, repealed. 35 A.G. Op. 12 (1973). Cl0425 9266ljna.