



Montana Districting and Apportionment Commission

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

Commission members:

Janine Pease Pretty On Top
Presiding Officer
P.O. Box 447
Lodge Grass, MT 59050

Joe Lamson
612 Touchstone Circle
Helena, MT 59601

Jack D. Rehberg
2922 Glenwood Lane
Billings, MT 59102

Sheila Rice
913 3rd Ave.
Great Falls, MT 59401

Elaine Sliter
P.O. Box 118
Somers, MT 59932

Staff:

Susan Byorth Fox
Researcher Analyst
John MacMaster
Attorney

MINUTES

PLEASE NOTE: These are **verbatim** minutes. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMISSION CONFERENCE CALL MAY 4, 2001 ROOM 102, STATE CAPITOL

COMMITTEE MEMBERS PRESENT

Janine Pease Pretty On Top, Presiding Officer
Joe Lamson (In Person)
Jack D. Rehberg (In Person)
Sheila Rice
Elaine Sliter

STAFF PRESENT

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

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Adopted a resolution based on the May 4 version handed out by Commissioner Lamson with the understanding that the changes agreed to by the Commission at the meeting would be written into the resolution and mailed to the Commission for review
- Approved that the Commission not become a party in the Old Person v. Brown lawsuit

CALL TO ORDER AND ROLL CALL

The conference call was called to order by Commissioner Pretty On Top, Chair, at 10:35 a.m. Roll call

was noted. All Commission members were present. (ATTACHMENT #2) Following roll call, Commissioner Pretty On Top requested introductions from staff and public participants.

Commissioner Rehberg: Was the media notified of the meeting?

Commissioner Pretty On Top: There was a list of interested parties that included -- Susan could you let us know who those interested parties were? Jack, if you recall, we had a number of people who wanted to be notified of this.

Commissioner Rehberg: I realize that. I was just concerned that the media accepted the fact that this was an open meeting.

Susan Byorth Fox, Staff Researcher, Legislative Services Division: Because they were not here on the 18th, they were not on that list but they are on our interested persons' list. Bob Anez, Mike Dennison, and Chuck Johnson, all three, are on the interested persons' list.

Commissioner Pretty On Top: If there is no objection, I would like to begin by asking our Attorney General to make a couple of statements. Would you make your presentation Mr. McGrath.

Attorney General Mike McGrath: Thank you very much, Madam Chairman. I hadn't expected to be making a presentation. I don't have a whole lot to add. As you may recall, at your last meeting, I discussed sort of the background of the suit that was filed against the 1990 Reapportionment Commission and the fact that there had been some settlement negotiations between my clients, who are the Governor and the Secretary of State, and the attorneys for the plaintiffs in this particular case, about the potential for resolving the litigation, short of a second suit. At that time, we passed out copies of the opinion that was issued by the Ninth Circuit Court of Appeals and it was my request to this Commission that they consider--there is a motion pending in the litigation to join this Commission, the 2000 Commission, and it was my request that this Commission consider whether or not they want to join the litigation for the purposes of attempting to reach a long-term resolution to the litigation. That is where we are today. It is my understanding that the Commission has been thinking about that so I am just here to try to answer any questions if any of you have any questions.

Commissioner Pretty On Top: Thank you for that recap, and so, there has been no new developments since last we talked?

Attorney General McGrath: There are no significant legal developments, no.

Commissioner Pretty On Top: Members of the Commission, there are several documents that we had before us during our Commission meeting, and I wanted to be certain that we all have them on hand. Susan, could you recount for us the various documents that we have on hand to look at.

Ms. Fox: Each of the Commission members received a letter from the Attorney General and he had also attached the Circuit Court opinion, the Court of Appeals opinion. You also received a listing of my concerns that I had regarding the offer of settlement. John MacMaster had also prepared a document and general comments for you about the proposed settlement. So those are the specific documents. In the past, you had also received some of the past motions by both the plaintiffs and the defense regarding the case but those were previous documents that you had received.

Commissioner Pretty on Top: In addition, you sent maps, in the interim period, that we were to be able to review. Members of the Commission, did you receive all of those.

Commissioners Rice, Rehberg, Sliter, and Lamson: Yes, I did.

Ms. Fox: Just for information for those in attendance--what I did is I took maps that had been used during the trial that had the proposed districts, the 1990 ACLU proposed districts, and highlighted the areas just so they had a sense of what the 1990 proposed districts that are at issue were. They are fairly crude but they were to give better sense of the districts that were in contention.

Commissioner Pretty On Top: Members of the Commission, when we last met we did not have the opportunity to go over the issues that Ms. Fox prepared and I might be appropriate, at this time, if we ask her to review those. Would that be fine with all of you?

Commissioners Rice, Lamson, Rehberg, and Sliter: Yes.

Ms. Fox: These are prepared upon considering the offer of settlement. I am not an attorney so these are just my staff concerns from being involved with the lawsuit and from a research perspective. Right now, the Districting and Apportionment Commission is the constitutional body that has the authority for redistricting and I believe that the authority and integrity of the Commission is highlighted by its autonomy. Only four states have a similar Commission who membership is from the citizenry and not public or elected officials. The issue before the Court is the plan of the 1990 Commission, and the plaintiffs have filed motions for a remedy that includes the 2002 election. The lawsuit has a short-term life until the next plan is filed but that remedy could be ordered at any time up until the new plan comes into effect. The Commission, as a long-term ramification, must consider the 2000 Commission is not a party in the lawsuit and the 2004 election and beyond are not before the Court at this time. Not only does the settlement agreement propose that the Commission and districts for 2004 be brought into the lawsuit, but it tells the Commission how it must accomplish the remedy without reference to other criteria. The Commission is not a part of the suit at this time and the Commission's authority and responsibility are not before the Court at this time, but the remedy that the Court may order may be implemented by the defendants as this Commission has no authority to redraw existing districts anymore than the defendants do. The Court would give that authority right now but the 1990 Commission has since been dissolved and that is why Attorney General McGrath is before the 2000 Commission. The Court of Appeals has reversed, in part, and remanded, in part, the District Court decision for further proceedings, so we don't have any further information except what Attorney General McGrath shared with us at our last meeting. The 2000 Commission gains nothing, in essence, in this proposal because it doesn't give you anymore authority than you already have and, it may, in fact, restrict that authority. There is no assurance that this settlement can insulate you from litigation. It may, with the parties at hand, and it may not with any other parties that are obviously free to exercise their right to bring either the Commission or the new proposal before the Court. The question of representation of the Commission and the proceedings--the Commission has an attorney, the Attorney General is representing, obviously, the defendants at this time, so that would be an issue that we would need to resolve. Also, the resolution of attorneys' fees. The Court may or may not order the remedy sought by the plaintiffs as we don't know if there will be further proceedings or if further evidence will be allowed. There are unresolved issues and that is why I'd ask each of you to look at the plaintiff's motion for entry of judgment and the defendant's opposition to the plaintiff's motion. The Commission has already begun its duties for the next round, and we can continue to do so with or without the settlement at this time. If the Court were to order the new districts for the 2002 election, the defendant's are responsible for a redistricting plan but not the Commission, unless the Court would direct that. There is consideration of holdover Senators--how many counties or districts, estimates go anywhere

from 7 to 10 counties, 12 to 20 districts. I said 12 or 13 other people--Commissioner Lamson has estimated about 20 districts and then corresponding Senate districts. We will be revisiting those districts in our current redistricting process and if we did have to redistrict a second time for 2004, we would be able to make further improvements on those districts. That's a brief summary of what I had.

Commissioner Pretty On Top: Member of the Commission, are there any points of clarification, questions, or comments on that presentation that you would like to pose at this time.

Commissioners Rehberg, Lamson: I don't.

Commissioner Rice: Susan, I note that you said that there was no gain in the Commission from agreeing to this settlement. Is there a gain for the state as a whole for this Commission to agree to any settlement?

Ms. Fox: The state as a whole in any settlement regardless of the Commission's, I guess, regardless of whether the Commission participates or not, I think the real issue is the 2002 election and whether redistricting has to happen prior to that and then would have to happen again after that fact. I believe Attorney General McGrath pointed out that would be a burden on the counties and on the election process as a whole. So, I think that is a statewide issue of concern if the redistricting has to happen twice, both for the 2002 election and then after the Commission does its process for the 2000 census. But, I guess, that is unknown at this time whether that would happen and the timeliness, I guess of it, is also the issue. If there was a settlement earlier than later, it would give the counties and people who are filing for those seats advance notice of that situation whereas the Court could impose that up until the election I suppose.

Commission Rice: Would it also be true that settlement would mean that the legal fees would at least end and, as I understand it, there may be a case for the plaintiffs to actually recover the fees that they have spent on this case and additional fees that they may spend for further litigating it.

Ms. Fox: I think you would have to talk to the attorneys about how legal fees work. My point in this concern was that if the Commission is enjoined, who would be the responsibility for attorneys' fees. Do we have that money set aside and has the Legislative Council been apprized of its potential need to appropriate money or spend money on that. As for the responsibility for legal fees, that would be better answered by one of the attorneys.

Attorney General McGrath: One of the concerns that I mentioned at the last meeting was the potential for increased liability for attorneys' fees. As you recall, the case was tried, about a 3-week trial in front of Judge Hatfield. Then it was appealed and went to the Ninth Circuit of Appeals. Now, it has been remanded for the District Judge to make findings that are consistent with the Ninth Circuit opinion that, in our estimation, would require additional evidentiary hearings, at least that is what we requested. So, under a voting rights case, the plaintiffs do have the potential of recovering their attorneys' fees from the state. In terms of the Commission itself and attorneys' fees, obviously, the Commission wouldn't be liable for any attorneys' fees for what's happened to this point. It is important to keep in mind, my request for the Commission to join the litigation is for the purposes of achieving a settlement; and if we achieve the settlement, then there wouldn't be significant attorneys' fees as far as the Commission is concerned. You would have to make a decision, and I assume you would want, at least, John MacMaster to participate in the settlement discussions. But, as long as our interests were not inconsistent, we could certainly represent the Commission as well as the other two defendants in this case. So I don't think the Commission, per se, in this case has a problem with attorneys' fees but the state of Montana, in general,

does. If we continue the litigation and ultimately we lose, the fees are going to increase substantially. If I could, I would like to make one other comment. This is--my request is not to adopt the proposed settlement that we have from the ACLU. My request is to continue to negotiate. I can assure you we would not agree to the proposed order that's been presented but we need to make a determination as to whether or not the Commission is going to be a party so that then we can develop some negotiation.

Commissioner Rehberg: I would like to ask the Attorney General a question. Mike, was it your attitude or opinion that we should redistrict prior to 2002 or that we should continue to do what we would normally do, have the redistricting done in 2004?

Attorney General McGrath: Well, that is the advantage of the settlement. My opinion is that, if we can, settle this matter so that there is not a redistricting prior to the 2002 election; but rather that the Commission would then be allowed to continue its work as it would normally and that any redistricting that would be done would be done and presented to the 2003 Legislature just like you're scheduled to do now. Part of why I'm recommending that we attempt to settle this is so that we avoid redistricting on a short-term and in an almost crisis situation prior to the 2002 election, and then have to force people in however many districts this effects, it would be quite a few counties, that would then have to go through a second redistricting prior to the 2004 election. That is the situation that we are interested in trying to avoid at this point.

Commissioner Pretty On Top: Commissioner Sliter, do you have any comments or questions for Susan at this time.

Commissioner Sliter: I would, actually, like to ask Jack's question to the attorney from the ACLU.

Commissioner Lamson: Not an attorney. A representative, Elaine.

Commissioner Sliter: Oh, a representative. I'm just wondering if maybe they have any comment in regards to what McGrath just talked about, you know, dealing with the 2002 versus the 2004 redistricting if the Commission was to come on board.

Commissioner Pretty On Top: Yes, the representative from ACLU. Is there any comment that you might be able to make on that?

Sue Bartlett, ACLU: This is Sue Bartlett and I am an employee of the ACLU, and I am monitoring this meeting. But, I'm sure much to your disappointment, I have to make you aware again that I'm not authorized to speak for the ACLU. Both our attorney and our Executive Director were unable to attend this meeting because they are both out of town, and they simply asked me to come so that they would have a report on what occurred here.

Commissioner Pretty On Top: Any other questions or comments of Ms. Fox at this time on her areas of concern. Ms. Fox, I have a question about our standing as a Commission. Our legal counsel is our staff attorney is that correct?

Ms. Fox: Correct.

Commissioner Pretty On Top: We now have actually a correspondence from Mr. MacMaster on hand. Commissioners, if there are no objections, could we have Mr. MacMaster review briefly his memo that he sent to us.

John MacMaster, Staff Attorney, Legislative Services Division: I don't know if I can do it briefly but I assume you have all read it. One of the most important points is that the suit relates to a specific plan that--the current redistricting plan in a specific time period which ends with the 2002 election basically.

Whereas the settlement is proposing that an alleged illegality in that plan covering that period of time is going to be remedied by a new plan that is going to cover time starting with the 2004 election. And, I am not aware of any redistricting cases where this has been done. It doesn't mean that you can't be creative and do it in this case. Along the same lines, what the proposed settlement, and I realize as Attorney General McGrath says the proposal is open to being redrawn, it's asking that the district will preserve the lines of an existing majority Indian house district; create a new or another majority, adjacent house district; and then combine the two to create an additional Indian Senate district. I guess I have a problem with the Commission settling along those lines when the Commission and staff haven't had time to look at the census data and the population data to see if that can be done up in that area and also to see if it can be done and still follow the redistricting criteria that the Commission has adopted for legislative districts. As I point out in the memo, there is a recent line of U.S. Supreme Court cases that say that you can't redistrict with the sole purpose or predominant purpose of giving a racial minority a majority of the residents in that district. You have to look at your other redistricting criteria.

As I understand what is being purposed in the settlement--another one of my concerns is that the proposal doesn't take into account the ripple effect on the surrounding district throughout the state. There is a case from 1997 where, I believe, it was a 7-member Miami City Commission was challenged and the challenger drew up a district that would solve the problem but didn't take into account the ripple effect on the other district, and the plan did not redistrict all seven district. The Court threw that out and said that you couldn't do that. As to the particular settlement proposal that is before you, the rest of my memo goes into that. There is the statement that the Court recognizes that the defendants in the state of Montana have the right to make redistricting decisions in the first instance. I don't agree with that. I don't think any defendant has any authority to redistrict under Montana law, only the Commission does.

There is a place where it says that "all parties have concurred that there is a reasonable or substantial factual and legal basis for the plaintiffs claim". I personally think there is a reasonable basis; I don't think it is substantial. It goes on to say, in my opinion, the Court of Appeals in this case believe that there is a reasonable or strong basis in evidence of concluding that the factors identified in the Senate Report (these are factors that you look at to see if there has been a Section 2 violation). I again think there is a reasonable basis of the evidence with respect to that statement, but not strong. Where it says that "there is a basis in evidence for concluding that the factors identified in the Senate Report are probative of minority dilution are present--I would change that to say--instead of saying "the factors", I would say "some of the factors" because the Ninth Circuit and the District Court clearly thought that, with respect to all those factors, some of them show there was a Section 2 violation, some of them do not so show.

There is essentially three places in the settlement proposal where is says "the 2004 plan shall contain an additional majority Indian House district in the area of existing House District 73 and existing House District 85 shall be retained as a majority Indian district so that it can be combined with the additional majority Indian House district and create a additional majority Senate district". In each of those three places, you are simply saying, you are going to create three safe Indian districts. I don't have any problem creating safe Indian districts as long as all of the other traditional redistricting criteria that have already been adopted by the Commission are also followed and the population data and census data allow you to do that. In those three places, I would insert in each place a statement that this will be done with respect to each of the districts if doing so is consistent with the redistricting criteria of the Commission.

There is a place where it says “Except as specifically altered by the terms of this order, state law shall continue to govern the legislative redistricting”. I would say “state and federal law”. I would delete the whole last paragraph of the order starting at the bottom of page 4 because it says that the order is binding upon the parties and their successors. If the Commission is brought in as a party, to me, that means that successive Commission--10 years from now, 20 years from now, and 30 years from now, is bound by this order. It says “Any redistricting that may be required to comply with one person, one vote shall be done in a manner that complies with the terms and intent of this order”. Again that is binding. It is writing this order and the three safe districts. I simply don’t think that you could do that. I would delete the whole paragraph.

Commissioner Pretty On Top: Mr. MacMaster, you’re referring to the order from the Court, is that what you are referring to?

Mr. MacMaster: Well, this would be--the settlement would become part of a Court order if the parties agree to a settlement.

Commissioner Lamson: This is the actually drafted proposed settlement.

Commissioner Pretty On Top: I would like to ask the Commissioners, beginning with Commissioner Lamson, if there are any comments or questions for Mr. MacMaster.

Commissioner Lamson: No, I understand the points raised by John in his area. I don’t have a major disagreement except in the area of the Miami case because my reading of this particular case by the plaintiffs that they did, in fact, brought forth a plan that took care of ripple effects. It dealt more than with these few districts. There were some areas of the memo that I did disagree with in terms of the findings around the socioeconomic factors in their relationship to voting that I think the Court ruled pretty strongly on and Mr. MacMaster, in his memo, had a different opinion in that, and I would tend to side with Court in those particular points there. But nothing major, I think John raises some excellent points about maintaining the autonomy of the Commission and cleaning up some of this particular language.

Commissioner Rehberg: Did the Ninth Court say that we did violate, 10 years ago, Section 2 of the Voting Rights Act?

Mr. MacMaster: No. The District Court held that Section 2 was not violated. In doing so the Court looked at numerous factors that Court’s traditionally look at to see if there is a Section 2 Voting Rights Act violation. A number of those factors, just about 9, 10, or 11 of those factors, was set forth in a U.S. Senate Report on the Voting Rights Acts. There have also been a number of other factors that have been developed by the case law and the Court ruled on each of these factors. With respect to two of the factors, those being white bloc voting and Indian bloc voting, and with respect to the factors of what’s the percentage of the Indian population in the state and what the percentage of legislative seats do they hold, the Circuit Court held that you were erroneous in making two of those findings. The Circuit Court overruled those two findings and the Circuit Court specifically said “We are not ruling on the underlying substantive question of whether or not there has been a Section 2 Voting Rights Act violation”. We are just telling the Court, you made a mistake on these two issues or these two factors. We find on these two issue or rather these two factors and in light of your new findings on these two factors, make a decision again on whether or not Section 2 of the Voting Right Act was violated. The understanding being that once they make hopefully correct findings this time on those two factors, those findings may sway the District Court’s decision the other way and they may not.

Commissioner Rehberg: Boy, if that isn't a legal answer, I don't know what it is.

Attorney General McGrath: I certainly agreed with him.

Commissioner Rehberg: I'm sure the other attorneys in the room would agree with it too, but I don't know what he said and you don't need to repeat it.

Commissioner Lamson: I think John said that there were two areas on the proportionality and the bloc voting that Judge Hatfield erred in. In reading Canby's decision, he outlines that, page after page, specifically why he believed that and why this case was remanded back to the other Court.

Commissioner Rehberg: Are you of the opinion that Canby was saying that we should gerrymander the district to accomplish what the ACLU wanted us to do?

Commissioner Lamson: I object, as I did in the previous thing, that I do not consider this gerrymandering at all. Judge Canby was citing positions in the Voting Rights Act that meet with this Commission's adopted criteria and my understanding of the criteria of the previous Commission in terms of representation. So I don't think its gerrymandering at all.

Commissioner Rehberg: Having sat on that Commission 10 years ago, I question whether that definitely was a gerrymander if we were to do it that way, and I felt that we followed the criteria. Sarah Bond would like to make a comment.

Sarah Bond, Assistant Attorney General: Actually, I thought I would honor Jack with a short answer to his question, and the answer is no. As Attorney General McGrath pointed out in his April 17 letter to the Commission, the Ninth Circuit Court opinion specifically held that it did not make the finding on the ultimate issue of vote dilution. That was, I think, the question, and the answer is no, it did not, that is why it remanded. But, it did find two errors in Hatfield's analysis and that is why the case was remanded.

Commissioner Pretty On Top: Commissioner Rice, do you have any questions or comments?

Commissioner Rice: Yes. It sounds, John, from your analysis that you would be in favor of settlement but you would have some clear points that you would like to negotiate into that settlement. Am I correct in assuming that?

Mr. MacMaster: I personally agree with Susan. I don't see that the Commission has much to gain from a settlement. It's not my decision to make, of course. If there is to be a settlement, I do have some real problems with the wording of the current proposed settlement.

Commissioner Rice: Do you think that beyond the Commission, the state of Montana, again from the idea of not having to redistrict in 2002, timeliness, and the legal fees, has an interest in settlement?

Mr. MacMaster: From my point of view as a lawyer who is suppose to be telling the Commission what the laws are and giving them legal advice, doing what I can to see that this Commission makes legal decisions, doesn't take any illegal action, and that if they do get into Court on their new plan, that they can successfully defend their actions, from my point of view, the state of Montana benefits the most if the law is followed. I personally think the law was followed with respect to the last plan and I think the law should be followed with respect to this plan. If the census data up in the area in question in the suit and the application of the redistricting criteria supports creation of more Indian districts, I'm not so sure but what the Commission isn't going to do that anyway. This is the third Commission I have served. The other two that I have served have a history of creating Indian districts. Now, that's not to say some people won't think that more should have been created, but I personally think that the last Commission did the best it could given the criteria under which it was operating, one of which was compactness, that the

law was followed. Purely from a redistricting perspective, I don't see that the state is going to gain much more out of the settlement; and from a factual basis, I have a hunch that a settlement is going to result in anything more than application of the redistricting criteria and this Commission redistricting is going to come up with anyway.

Commissioner Lamson: Just for the record, we should also note that neither the defendants nor the plaintiffs, as noted in Canby's decision, questioned the compactness of the districts that are proposed in the settlement. They agreed that they were compact.

Commissioner Pretty On Top: Commissioner Sliter, do you have some comments or questions?

Commissioner Sliter: The questions have already been asked and answered.

Commissioner Pretty On Top: Mr. MacMaster, were you a party to the case that we are talking about now as an attorney.

Mr. MacMaster: No, I'm not. The defendants in the case are the Governor and the Secretary of State and they are being represented by the Attorney General's Office. I'm not a party to the case, the Commission is not a party, and I'm not an attorney for either of the parties.

Commissioner Pretty On Top: Was the 1990 Commission a party originally though?

Mr. MacMaster: No.

Ms. Bond: If I can clarify how that happened. I was lead counsel for that case. Also to clarify with respect to the compactness issue, it was not the defendants contention at trial that the proposed districts were compact, that the state did not stipulate to compactness. What I think Judge Canby meant was that the state did not appeal that part of the decision. But of course, since the defendants won below (the District Court level), we didn't appeal anything. There wasn't anything to appeal because we had won the case, just so the record was clear on that point. There were a number of stipulations but compactness was not one of them. The Commission was not originally named as a defendant because there no Commission to name at that time. The case was filed in 1996. The Commission pursuant to state law which is in the Constitution and in Title 5 of the Montana Codes had been disbanded. After it presents its plan to the Secretary of State and the plan becomes final, the Commission is disbanded. So, the only defendants around--we contemplated moving to dismiss for failure to name the proper party but there wasn't a Commission that existed at the time. So we concluded that, based on the authority of the statewide elected officials that Secretary of State and the Governor are traditionally the defendants in such cases. I think if you review the December filing that the state made in response to the plaintiff's motion for entry of judgment, you will see a review of the relevant Montana cases. We concluded there that the Secretary of State and Governor were the appropriated defendants after that Commission.

Mr. MacMaster: With respect to compactness, I guess I wasn't quite clear when I mentioned it. I was talking about the last Commission. I know that that Commission had a problem because in certain areas of the state, the Indian population was so dispersed that it was really impossible or almost impossible, especially taking into account the other redistricting criteria, in their viewpoint, it was impossible to create more Indian districts than they could. Theoretically, you could have twice the Indian population you have in Montana, and if they are so dispersed throughout the state, it may not justify any Indian districts. Now, in most cases, that's not the case of course. You have large Indian populations in certain areas so that you can do it. But, the Commission didn't figure it could go any further. Another problem they had with compactness is that you don't just look at--the main test for compactness is if it looks like a "duck". You

look at to see what the lines look like, but there are Court cases that support the theory that a district also has to be functionally compact. I have always been worried about creating in Montana a district that crosses a divide, particularly the Continental Divide, in an area where there are no roads open in the winter so that you cannot go from one part of that district to the other part of district by motor vehicle.

Commissioner Rehberg: What about contiguity? We were concerned about contiguous areas and you addressed that a bit with the Continental Divide, but wasn't that something that we also took into consideration?

Mr. MacMaster: Compactness means, for example, the most compact district in my opinion would be a circle. You probably all seen some of the diagrams in some of the cases where the lines are all over the place. It's also not compact if you have a district 2-miles wide and 150 miles long. Contiguity basically means that it has to be all one piece. You can't have a district that is in two pieces, and it does, in some cases, get down to a question of, for example, what if you have a district that literally looks like an hour glass where at the narrowest point, it might only be 100 yards across. You can make an argument that that is not a contiguous district. Under the strict definition it is, but functionally it isn't. I have never had a problem with contiguity in Montana. My problems have been with compactness.

Commissioner Pretty On Top: We have a matter at hand that we have been asked by the Attorney General very succinctly in letter to consider--in the very last paragraph, I see that he said "we will be asking you to make a decision at that time that include a decision to join us as a party and agree to a settlement of this case or select other potential options". I would ask the Commissioners if we could move on to discuss or acquire something the table to discuss at this time.

Commissioner Lamson: Since we last met, I been wrestling in my mind and visiting with as many people as I possibly could to try to come up with some kind of a solution that maintains the autonomy of the Commission through the facts that were raised by the staff on this particular thing. But also, at the same time, assist the state of Montana, both at the state and county levels, to resolving this matter which would save us considerable resources in terms of time and money and not having to redistrict twice. I got the feeling when I was just looking at and when I boiled all of these things down, that we were very close to reaching a potential path that could preserve both our autonomy and also give the Attorney General some room and the plaintiffs some room to proceed with their settlement. Yesterday I e-mailed to members of the Commission a draft resolution. I have since, over the evening and this morning, received more input and I have some more changes in that particular draft. I can pass around copies. **(EXHIBIT #1)** My hope is that if we pass a resolution in which we are fairly specific in terms of recognizing the principles of where we are in this particular case and short of becoming an official party on there, I think that gives us considerable latitude. We could lay this particular thing out. The plaintiffs and defendants could take a look at it, after we have gone on record as this is what our position of the Commission is, and make their decision and move on with their settlement. If they decided that it was not acceptable, then I think we are back at the other situation where the Court would then make its decision about whether they want to make us a party to this particular suit or not. I feel much more comfortable becoming that as part of a Court order as opposed to voluntarily giving up some of our autonomy as a Commission because we are a unique body.

Commissioner Pretty On Top: I want to confirm that we have the actual draft at hand. Commissioners Rice, Sliter, and Rehberg, do you have the draft at hand?

Commissioners Rice, Sliter, and Rehberg: Yes.

Commissioner Rehberg: Do those who aren't here have date draft May 4?

Commissioner Lamson: You have May 3, which was of course yesterday. This morning, after talking over with staff some concerns about some other legal cases, have revised some of the language. If the Commissioners that aren't here would pull out their May 3 draft, there are basically three areas that I added there and I will read through this particular area so that you have an idea. Basically the change in the language in all three areas is very similar and again I did that with the intention of making sure that we are not overstepping the bound and that we are addressing some of the concerns that were in the Shaw v. Reno aspect of the case.

(An electronic version of the draft was inserted and changes indicated by striking deletions and underlining additions.)

DRAFT - May 4, 2001

By Joe Lamson

WHEREAS, on April 18, 2001, the 2000 Montana Districting and Apportionment Commission was formally requested by Montana Attorney General Mike McGrath to assist in the resolution of the (Old Person v. Brown) case through the creation of an additional majority Indian house district and an additional majority Indian senate district that would provide Montana's Indian populations on the Blackfeet and Flathead Reservations with the equal opportunity to elect candidates of their choice in the 2004 and subsequent legislative elections; and

WHEREAS, the 2000 Montana Districting and Apportionment Commission at its November 16, 2000 meeting adopted districting criteria that recognize the critical importance of upholding the Voting Rights Act and voted to not recognize as a criteria the existing legislative district lines drawn by the 1990 Montana Districting and Apportionment Commission; and

WHEREAS, the adoption of these criteria place the Commission in an excellent position to achieve the goals articulated by US Court of Appeals for the Ninth Circuit Judge William Canby's opinion to resolve this matter in a timely fashion; and

WHEREAS, the 2000 Montana Districting and Apportionment Commission at their April 18, 2001 meeting unanimously voted to instruct their staff to begin preparation of new legislative districts in the region of Montana encompassed by the (Old Person) suit; and

WHEREAS, it is the intention of the Commission to have new legislative districts that encompass the Old Person suit region prepared for public hearings and Commission action in the fall of 2001; and

WHEREAS, the Commission recognizes that the 2000 Census data and the evidence of racial bloc voting and other factors ~~showing~~ regarding the dilution of Indian voting strength identified by the court of appeals in the (Old Person) case further supports an additional majority Indian House district and additional majority senate district on the Blackfeet and Flathead Indian Reservation areas to provide Indian voters the equal opportunity to elect candidates of their choice in the 2004 and subsequent legislative elections; and

NOW, THEREFORE BE IT RESOLVED THE 2000 MONTANA DISTRICTING AND APPORTIONMENT COMMISSION:

Commends the plaintiffs and defendants in the (Old Person v. Brown) for their efforts to reach a settlement for resolution of this case that upholds the findings and opinion of the US Court of Appeals for the Ninth Circuit filed October 27, 2000 by Judge William Canby.

BE IT FURTHER RESOLVED, that the Commission recognizes its unique role in providing a remedy in the Old Person case in its redrawing of legislative districts that ~~implements the goal decision~~ meet the adopted redistricting criteria and implements the goal of the decision of the court of appeals of providing an equal opportunity for Indians to elect candidates of their choice through the creation of an additional majority Indian house district and an additional majority Indian senate district in the area of the Blackfeet and Flathead Reservations for the 2004 and subsequent legislative elections.

Commissioner Lamson: I realize that this is a lengthy resolution. I'm a little bit of a victim of coming out of the legislative process for the last four months, but I think it was important to try to flush out things a little more fully so that all parties involved could see where we stand and hopefully would take this as a signal, short of enjoining the Commission, that their goals could be also met and we could settle this matter and move on with the rest of the work of the Commission.

Commissioner Pretty On Top: I would ask the member of the Commission, did you follow the changes in the draft that you have in front of you?

Commissioner Rice: Could you repeat the very last paragraph?

Commissioner Lamson: (Repeated the last paragraph.) Just an explanation of why I chose this language. I think it was important that the Commission is on record that these districts will not only meet the goal of providing a voice for our Indian citizens of the state, but also these districts will be subject to the other criteria that we have adopted for all of the districts we will be drawing. Commissioner Lamson **moved** that the Commission adopt the resolution.

Commissioner Sliter: I would just like to say that without having a better draft at this time makes it a little bit more difficult and having these last minute changes doesn't give us much time to really review this resolution.

Commissioner Pretty On Top: Commissioner Sliter has expressed her concern about having just received the revisions. Is there any other discussion?

Commission Lamson: If I may address Commissioner Sliter's concerns. Basically, what I did in the additional changes was to make clear that we were not guaranteeing any particular outcome of an

election in the drawing of these particular districts but that we were giving Indian citizens as well as nonIndian citizens there an equal opportunity of electing a candidate of their choice to represent them from those districts. That was the key point that was made in the changes. I additionally wanted to make clear in the final FURTHER BE IT RESOLVED section that we made it very clear that these districts would also be adopted under all of the other criteria that we adopted as a Commission.

Commissioner Sliter: Does Mr. MacMaster have any comments on the resolution?

Ms. Fox: We have lost Commissioner Rice and I'm trying to get her connected back. I would ask that the Commission not vote until we get Commissioner Rice back.

Commissioner Pretty On Top: We have a number of people in the audience and there might be an opportunity toward the conclusion of our call to hear from our audience. Is there any comment or feeling on that?

Commissioner Lamson: I think that would be terrific, especially with folks coming all the way down from Cut Bank. I'm sure that they have something they would like to share with the Commission.

Commissioner Sliter: Joe, I would like to know, in your preparation of this resolution, and you said that you discussed with many people, was one of your discussions with the plaintiffs on the resolution and any reaction that they may have given you?

Commissioner Lamson: I spoke with members of the staff. I also spoke with the defendants, the Attorney General's Office, and with some of the plaintiff's representatives. They seemed encouraging to me. I think they want to look at what we do here today before they make a final determination on what their opinion would be.

Commissioner Pretty On Top: I'm wondering if the wording that you use in the first NOW FOR BE IT RESOLVED that commends the plaintiffs and defendants for their efforts to reach a settlement and when we received the letter from the Attorney General, it said "we would be asking you to make a decision that would include the decision to join us as a party and agree to a settlement". Here, what we are doing is encouraging them to make a settlement but not necessarily--I don't really see the word "join". Is there a reason why you did that?

Commissioner Lamson: Yes. I think that we may be able to reach a settlement short of us formally joining that; and in doing so, we would maintain our unique autonomy as a Commission. I personally am very proud of this Commission. Our makeup of this Commission, at least when Commissioner Rice and I sat down and had our discussions with Commissioners Rehberg and Sliter, had the Old Person case very much on our minds and support at that time a Commissioner "Rhonda Whiting", who has had considerable experience and is a tribal member in Montana, as the Chair. We felt that as a Commission the whole issue around how we represent our native populations has always been a sticking point on the other Commissions. The Old Person case was a prime example of that and we thought that maybe we could avoid that problem in the future. I think we can and I just want to think that we have done some good work and we will do good work in the future. I take a little bit of a personal offense of being a defendant because we weren't that 1990 Commission, not to disparage that Commission. This is a new Commission and I was hopeful that if we could do something in between, short of becoming a party and if it was acceptable to the both the defendants and the plaintiffs, then I thought everybody won.

Commissioner Pretty On Top: (Reconnection of Commissioner Rice.) I asked Commissioner Lamson about the wording of the first THEREFORE BE IT RESOLVED and the matter of joining. He

was explaining that he was interested to preserve the specific and unique nature of the Commission. So we didn't actually go on to the discussion of the resolution at hand.

Commissioner Sliter: My question to John MacMaster is still pending and I would like his comments on this draft of the resolution and I would also like to reiterate my concern about having just received the draft. I would feel a little more confident if the draft was given to the staff to actually write before a vote is taken.

Mr. MacMaster: I haven't had time to really study it either, I just finished reading it. On the first read through, I don't have any problems with any of the WHEREAS clauses. In both of the THEREFORE clauses-- in the second line of the first one where it says "settlement for resolution of this case that uphold the findings and opinions of the US Court of Appeals"--to me you are saying that the settlement that is before the Commission that the plaintiffs have proposed upholds the findings and opinion of the Ninth Circuit. To me that says that the Ninth Circuit has said that you have to do what the settlement proposes. I would feel much more comfortable rewording that to simply say "Commends the plaintiffs and defendants in the Old Person v. Brown for their efforts to reach a settlement for the resolution of this case ensuring that Section 2 of the Voting Rights Act is followed". I think that is what both the District Court and the Circuit Court are essentially trying to do.

I have a similar comment with the last RESOLVED. I would reword that to say "BE IT FURTHER RESOLVED, that the Commission recognizes its unique role in addressing ~~providing a remedy in~~" because I don't think you are really providing for this case. We are not in the case, the Commission isn't party, and I would feel more comfortable by stating that "the Commission recognizes its unique role in addressing the Old Person case in its redrawing of legislative districts that implement the goal of the decision of the Court of Appeals. . ."

Commissioner Lamson: Remember, John, I added that part in there about our criteria.

Mr. MacMaster: Right. And after the words "decision of the Court of Appeals", I would simply say "implements the goal of the decision of the Court of Appeals of ensuring that Section 2 of the Voting Rights Act is followed". What Joe has said essentially that follows that where it states "providing an equal opportunity for Indian to elect", I would delete that. What he has done obviously is insert part of Section 2 of the Voting Rights Act. I would feel comfortable saying we are going to follow everything in Section 2, and then as Joe said, you should add at the end words such as, "and that are justified by census data and that comply with the Commission's redistricting criteria". You would additionally be saying that the districts are justified by census data and comply with the Commission's redistricting criteria.

Commissioner Pretty On Top: Commissioner Lamson, this is your resolution. How do you look at some of the comments that he had made?

Commissioner Lamson: On the first THEREFORE on the Voting Rights Act, I don't have any real strong objection to that particular part. I think that sounds fine. In terms of the BE IT FURTHER RESOLVED, that the Commission recognizes its unique role in addressing", as opposed to remedy, may very well work on that area. I am always looking to find a solution to these things. I think it is important to state what is stated in the Voting Right Act which is what I incorporated. Maybe a way to do that is say something along the lines "as stated in the Voting Rights Act, provides an equal opportunity for Indians to elect candidates of their choice through the creation". I think I want to keep that part in

there.

Commissioner Rehberg: Joe, I have a little problem with the WHEREAS that says “it is the intention of Commission to have new legislative districts that encompass” The word “have” definitely bothers me. I think other words could be used because it is kinda like telling us we definitely have to do it, and I don’t know that you know what we can do. Then go on to the next one where you talk about the census. Where do you get this information?

Commission Lamson: If you will read what was provided to us by the census already, Judge Canby in one of his rulings, he kept coming back to the Indian voting age population of the state was 4.8% and that was the basis he made for believing that Judge Hatfield did not correctly rule on proportionality. Since that time and under the new data, I believe the census figure in the voting age population has increased to 5.2%. So, if anything, it is larger than what Canby thought was a threshold that there should be another Senate district there. I have also taken the time to download off of the Department of Commerce’s excellent section on census data. Their population data, which does divide it out by race in the state, and it looks like this is very doable.

Commissioner Rehberg: I think that’s fine, but I think we need to be cautious of about it, follow the process that we are going to follow in all of the legislative districts, and not just assume right off the bat, from your census figures or the census figures that were presented to us at the last meeting, that this is definitely accurate. Now, it may be totally accurate, I don’t know.

Commissioner Lamson: That is what is says in the WHEREAS is that we are keeping with the process. We have to begin somewhere in the state and we directed staff to begin in this particular region. The process is that staff goes out there, starts talking with local folks, we obviously got some people from Cut Bank here today. I imagine that we will be holding meetings up in that particular area when we get some proposals. I clearly say in there that we are going to have public hearings and we will move from there.

Commissioner Rehberg: Why does this have to be in a resolution proposing a settlement? I know you have an answer, but to me, I don’t see a reason why. Personally, I don’t think the resolution is all that important to the settlement of the lawsuit and I expressed that to you in my e-mail yesterday. Do we know that the plaintiffs are going to drop the lawsuit if something like this is passed?

Commissioner Lamson: We know that the plaintiffs will look at this and make that judgment. The plaintiffs will look at it very carefully and I am hopeful that it can be a vehicle so that Secretary of State, Bob Brown, doesn’t have to talk to a bunch of angry Clerks. The worst case scenario is that the Courts rule very strongly in favor of the plaintiffs and somebody, either the Secretary of State or our office, has to redistrict the 2002 elections. So, I don’t think it hurts anything and it seems like it could be a very positive thing for resolving this issue.

Commissioner Rehberg: Could we interject a WHEREAS or a BE IT FURTHER RESOLVED that if the plaintiffs do not drop the lawsuit, this draft resolution or the resolution that is passed, is void?

Commissioner Lamson: I don’t particularly see what that uses as a purpose. Let’s keep this thing positive and let’s see where it goes. If it goes in a different way, we can adopt another resolution at the next Commission meeting.

Commissioner Sliter: Joe, just kind of continuing on the WHEREAS that Jack thought up about have the new legislative district the encompass the Old Person suit, I believe down below where John talked

about we use the “addressing needs” to be put in there because when you look at our other criteria that we have to take into consideration, that may not encompass everything that they want. We might lose small amounts here or there, but I think that would need to be reworded. I’ll make a **substitute motion** to have John MacMaster draw up the resolution and present it to the Commission with some of the--and I guess we haven’t made the special amendments and maybe we have to do that--at which time then we can see the draft in full and we can meet again. Joe, I understand your reason for the resolution and I believe that looking at the makeup of our Commission, I would think that the plaintiffs shouldn’t have too much problem with anything waiting until the 2004 election because I think that their concerns will be addressed then. But my motion is to postpone ruling on the resolution until we are able to have John MacMaster draw up the resolution for all the Commissioners to see in full.

Commissioner Lamson: My understanding while visiting with the Attorney General’s Office is that they have been trying to get this thing resolved and that time is of the essence. I would think that with--we all have our e-mail. If we wanted to adjourn this Commission for an one-half hour or some break, I think we could resolve this thing today rather than just keep dragging it on. I think these changes that were suggested by Mr. MacMaster and other members of the staff could be incorporated and e-mailed to all within one-half hour easily.

Commissioner Sliter: It was not my in my intention to delay this at all. In fact, it is smart to get it resolved. I understand that the Attorney General is in a hurry, but in all fairness, to be thorough and complete, that was the reason for my asking.

Commissioner Pretty On Top: Commissioner Sliter, the suggestion of Commissioner Lamson, would that meet your concern.

Commissioner Sliter: Yes, that is fine.

Commissioner Rehberg: I have a conflict at noon today. It thought the meeting would be completed in an hour and one-half. I’m going to be there late.

Commissioner Lamson: Or we could move ahead. I appreciate, Elaine, that this is a long thing but really these changes aren’t that--I don’t feel that they are that hard to incorporate in there and we could do it right now if you want to just not adjourn and go over it again.

Commissioner Pretty On Top: Commissioner Sliter placed a motion on the floor. Should we bring that to a vote or Elaine, are you interested to work through the wording at this time or would you rather appreciate a vote on you motion at this point.

Commissioner Sliter: If we can go over the few changes that there is going to be, I guess that would be fine at this time so I’ll----

Commissioner Pretty On Top: If we make the changes amongst us right at this time, you’d be willing to withdraw your motion?

Commissioner Sliter: Yes.

Commissioner Pretty On Top: Joe, could you help us walk through the changes and be very precise about those last two paragraphs?

Commissioner Lamson: The last two paragraphs how I understand this would say:

On the first NOW, THEREFORE:

“ . . . Commends the plaintiffs and defendants for their efforts in reaching a settlement for resolution of the Old Person case that upholds the Voting Rights Act”. Is that what you were saying,

John?

Mr. MacMaster: I would say, “that ensures that Section 2 of the Voting Rights Act is followed”.--with perhaps a minor change in grammar. You would cross off the words “upholds” through the end of the sentence--through the word “Canby”. That sentence would say: “Commends the plaintiffs and defendants in the Old Person v. Brown for their efforts to reach a settlement for resolution of that case that ensures that Section 2 of the Voting Rights Act is followed”. Because I think that is what everybody is after in that case.

In the second NOW, THEREFORE, and Joe and I have been talking about this, I think we are pretty much agreed that what we would say is:

“BE IT FURTHER RESOLVED, that the Commission recognizes its unique role in ~~providing a remedy in~~ addressing the Old Person case in its redrawing of by drawing (for grammatical purposes) legislative districts that implement the goal of the statement of the Court of Appeals of providing an equal opportunity for Indians to elect candidates of their choice through the creation of an additional majority Indian house district and an additional majority Indian senate district in the area of the Blackfeet and Flathead Reservations for the 2004 and subsequent legislative elections.

Then I would add more of Section 2 of the Voting Rights Act. What you would say is:

“It was also the goal of the Circuit Court to see that the political process leading to nomination or election in the state are equally open to Indians in that Indians have the same opportunity as other members of the electorate to participate in the political process and elect representatives of their choice”. Add in the concept that: “The districts will also be justified by census data and will comply with the Commission redistricting criteria”.

With respect to the WHEREAS clause that Commissioner Rehberg was concerned with, I don’t have any problem with that. All it says is that it is the intent of the Commission to have new legislative districts that encompass the Old Person suit region. It is not going to say that the districts are going to address Old Person and it is not going to say remedy the Old Person problem. It just says that the Commission intends to have new districts that encompass the Old Person region and to have those districts prepared for public hearing.

Commissioner Rehberg: So you don’t see any obligation?

Mr. MacMaster: No. We are not saying that we are going to redraw districts--I don’t read that WHEREAS clause that we are going to redraw district in a majority or nonmajority.

Ms. Fox: But you do say that in the final RESOLVE statement. WHEREAS statements are usually explanations. The resolution is in the---

Mr. MacMaster: Yes, and I think the Commission understands.

Commissioner Lamson: The reason I put that in there was again as a signal to the plaintiffs that we are serious about addressing their concerns and our seriousness is manifested in that this is the very region that we are going into to draw.

Mr. MacMaster: There are a couple of other options: (1) you could agree to have this rewritten and either faxed or e-mailed to you as soon as possible. You could agree to meet next week, which would have given you time to look at it, if you still feel uncomfortable with it. Another possibility is if you all feel

comfortable with the rewording that Joe and I have gone over is that if you do vote on it now and you vote to adopt this resolution, it would be rewritten and sent to you. If you feel uncomfortable and says “well that is not my understanding of what it read”, that person could call for another meeting and you could at that meeting make a motion to reconsider your actions, which is to reconsider the vote on this-- Mason’s allows for that. If that motion passes, you can say “I want it reworded to say this instead”.

Commissioner Pretty On Top: I’m wondering if we could receive the revised resolution and vote by ballot through the mail. Do our procedures allow us to do that?

Mr. MacMaster: The procedures that we’ve adopted don’t. We have agreed that we are going to abide by Mason’s. Mason’s is really geared toward a legislative body, particularly the Legislature itself. It doesn’t really address legislators voting by mail. On the other hand, it does address voting by proxy, whereby a legislator does not have to be in the room at a meeting when a vote is made. We do also have provisions in Montana law for the Legislative Council to poll the Legislature when they are not in session, when they are at home, and tally the results of that poll. I guess I think it would be okay but the only possible problem would be that somebody could say “well, you’re taking a vote and the substantive action is either going to live or die on the basis of this vote”. The vote was not taken at a public meeting and I think that is a good argument for not doing it that way.

Commissioner Pretty On Top: We could possibly take a vote if you’re satisfied with the discussion at this point.

Commissioner Rehberg: I’m still distressed about the fact that I think--I don’t know why Joe thinks it’s negative--I still want to know what is going to happen. We pass a resolution and they choose not to settle.

Commissioner Lamson: My understanding is if they choose not to settle, then it gets remanded back to the District Court.

Commissioner Rehberg: I don’t want to support a resolution to this effect if, in fact, we don’t know that they are going to. We are giving up everything and we are getting nothing at this point in time. I don’t any problem with the resolution subject to what their attitude is going to be.

Commissioner Lamson: Again, the spirit of this resolution is to try to move the state forward.

Commissioner Rehberg: I agree, but what is wrong with the simple statement that says that if they choose not to settle, then this resolution is void. I know the Attorney General doesn’t want it, but I think it is very important.

Commissioner Rice: I believe in this resolution from the spirit of the resolution, and I don’t believe that it would be void if the suit was not dropped. I think this is a response to Section 2 of the Voting Rights Act. Therefore, I **move** adoption of the resolution as reworded.

Commissioner Pretty On Top: There has been a motion on the floor to adopt the resolution as reworded. I would like to have discussion on that motion.

Commissioner Lamson: I think that we’ve got a good solution that Mr. MacMaster outlined that we are real close to the final dotting of i’s and crossing of t’s. I think we know the spirit of what we are trying to accomplish and if someone strenuously objects after receiving this, they can move to try to have another meeting and redraft it in another fashion. I think we can move forward this afternoon. The Attorney General can go forth, and the plaintiffs can continue on with their negotiation, and hopefully we can get this thing resolved.

Commissioner Sliter: I am sure that this resolution will pass. I would hope that the staff would be able to be involved with more discussions with the Secretary of State, Governor's Office, and the Attorney General in regards to the settlement, possibly even have a more active role.

Commissioner Pretty On Top: I would like to move to calling for the vote.

Commissioner Rice's motion passed on a 3 to 2 vote with Commissioners Sliter and Rehberg voting no and Commissioners Lamson, Rice, and Pretty On Top voting yes.

Commissioner Pretty On Top: Commissioner Lamson, you will work with Mr. MacMaster on the rewording of the resolution. Staff member are directed, then, to take the resolution and convey it officially on behalf of the Commission to the Attorney General, the Secretary of State, the Governor, and the plaintiffs. Ms. Fox, is there any other items of business that we need to cover on this conference call.

Ms. Fox: Even though you have adopted the resolution, the motion did not actually give the Attorney General an answer on his offer of enjoining the Commission. Would it be possible to make an affirmative motion to that effect? And also I need you to tell me whether you want to have your first public hearing in July or if September will suffice.

Commissioner Sliter: I **move** that the Commission does not become a party to the lawsuit. As Joe said, may be this resolution will take care of it itself, be done, and it won't be necessary. I hope you would all agree.

Commissioner Lamson: I think that it is our decision, right now, that we are in passing this motion saying that we are not going to voluntarily join as parties to the lawsuit. I don't have any problems with that motion.

Commissioner Sliter's motion passed unanimously.

Attorney General McGrath: Even though I didn't get what I requested, I appreciate that you have some very serious concerns about joining as a party. I will make an effort now to continue to try to resolve the litigation and I appreciate your consideration and time.

Ms. Fox: At our last meeting, you did adopt a starting point and there had been some discussion of whether or not we needed to seize the moment and redistrict that area right away this summer. It would potentially be July before we could hold a public hearing. Or would September be a sufficient starting time to hold your public hearing? Once you choose a month, I can set forth a schedule and have it distributed. I need to know if I need to start my staff visits right away and try have maps and plans ready for a July meeting or a September public hearing. We have also had a request to take comments from the public.

Commission members agreed that September would be a sufficient time to begin public hearings.

PUBLIC COMMENT

James Suta, City Superintendent of Cut Bank, said that at this time and with the information that has been provided to us, we are adamantly opposed to this redistricting. This would create a district in which

Cut Bank, MT, would become a minority in amongst an Indian district, and we believe that this is in direct violation of the U.S. Supreme Court Shaw v. Reno that held that race cannot be the sole and predominant factor of drawing district lines, which is very apparent to us that that is what the Commission is proposing doing. The entire Old Person lawsuit states Indian district which is a race demanding a district that is against the U.S. Supreme Court ruling. I do not believe that anyone can look at this and say that that is not what is transpiring here and I feel that at this time, there is an effort to Cut Bank an minority in that district. I would further like to ask, in seeing the map of the proposed district lines by the ACLU, I would like to ask those people what correlation do they see between Cut Bank and Arlee, MT. There is absolutely nothing in common between the two communities, your crossing the Continental Divide, your creating a district that is not compact, and I see many violations in creating a district as such. I think when you look at the redistricting in Montana, you need to look at population and not who lives where. Everyone in Montana is a resident or citizen of Montana and race should not be a party to redistricting at all, only numbers.

Commissioner Lamson: We haven't drawn these lines yet or even put a proposal on the table. We will be traveling up there and getting the input of local people on that particular area. Hopefully, we can address some of the concerns that you raised. I think that it is a little premature to oppose a nonexistent plan.

Commissioner Pretty On Top: We have made a commitment of the Commission to start in the general area in your county and a series of counties there. Early in the fall, it is likely that we will begin our discussions there, and that is exactly what they are is discussions. We are anxious to visit with you and others in your community about how all of those plans would be drawn.

Tom Shock, Alderman, Cut Bank, said Linda Holden provided us initially with a series of maps that shows the political subdivision going from 7th Ave S.E. (the main street) all the way down to what we call the river bridge on the Cut Bank Creek. The subdivision that would be included with the Blackfeet tribal redistricting, essentially cuts in one-half that portion of our opposing voting district being a republican house. There are a number of people out there who are very concerned about that and there are also representative concerns in dealing with this issue that we have work through. We are also wondering about the compactness issue of this. It is obvious. I just don't understand how that can be considered to be a compact political subdivision when it covers more than one-half the state.

Commissioner Lamson: I think some of those early maps that Rep. Holden had were based on 1990 census data. Obviously, we will be making our decision based on the 2000 census data. Cut Bank as a community, as you are well aware, has been split by successive redistricting plans. The upside is that you two representatives rather than one. In Helena, you have two people looking out for your interests in the House. If happened to break out in the Senate, you would have two Senators. You are ahead of Livingston, Miles City, Glendive, and many communities that are much larger. Lets look at the data and see what we can come up with to see if we can find some solutions that meet a lot of different people's concerns.

Commissioner Pretty On Top: Ms. Fox, could you provide member of the audience copies of our criteria so that as we prepare for our fall hearings and our work ahead of us, they may also have copies of that criteria.

Ms. Fox: Yes, I would be happy to do so.

There being no further business; the meeting adjourned at 12:20 p.m.

CI2255 1138loxa.