

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3053

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3053

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 02/26/09

Recorder Job Number: 9821

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3053.

Rep. Mock offered testimony in support of HCR 3053. See Attachments #1 and #2.

Rep. Hatlestad: When you talked about the districts similar population, compact, contiguous, consistent in size

Rep. Mocka: Population.

Rep. Hatlestad: Oh okay, population. I was thinking physical size.

Rep. Griffin: Looking at section 3 of the bill, where it says, at the first general election we elect all new senators and representatives. What was the purpose of that?

Rep. Mock: When I approached the legislative council to draft this stuff, the thought was after redistrict lines are drawn, it's possible that there will be some legislators that will either live in new districts. Perhaps there will be overlap. The purpose was also to have complete new elections so that all electorates are not appointed. There are constitutional questions whether or not the electorate can be represented by somebody who they did not elect. So if you were to merge districts or if you have lines that overlap, there were concerns regarding that.

Rep. Meier: Why did you decide on district judges to be on the committee?

Rep. Mock: The reasons why district judges were appointed in this is because they're independent. Right now any dispute regarding district lines, it goes before our judicial system. I kept this so that it dealt directly with district judges and left the Supreme Court out of the mix entirely. In the constitution there are guidelines they would follow to remove the jurisdiction from those that directly benefit from the lines to an already elected or chosen member of our government to interpret the law. This would give the full interpretation to their commission with the guidance of a professional to ensure that the lines are drawn fairly and to protect the interest of the population. North Dakota is in a very interesting situation. We don't have voter registration. As you may have seen from that packet, some states actually have, they use parties to select the list of party officials and they create a bipartisan representation of non-elected officials. So people that don't benefit from the lines, you address the partisan issue up front. You do it by having those that have been registered with a specific party for years. North Dakota doesn't have voter registration so it makes it nearly impossible to create a nonpartisan or a bipartisan commission without keeping it with some form of government entity. All of those concerns were addressed in the conversation when drafting this. There are other professionals across the state seeing that this is the most fair to truly create a new district.

Rep. Schatz: You said seven district judges, one from the department of geography and one professional?

Rep. Mock: It's actually eight. The member selected by the state university department of geography is a professional. That is the closest entity that would be directly related to political geography so they select someone that would preside over this committee. They are approved by the commission so it's that individual who is deemed to be the professional.

Rep. Mock: You said a member from the department of geography chosen by the commission. Which commission?

Rep. Mock: A member selected by the state university's department of geography. They would select a professional in the field of geography that cannot run for statewide office five years prior and two years after the commission. It has to be approved by the seven members on the commission.

Rep. Kretschmar: I'm looking at Section 10 of Article VI of the constitution. One of the things it says in there is that no justice of the supreme court or judge of the district court of this state shall engage in the practice of law, or hold any public office, elective or appointive, not judicial in nature. I'm wondering if that would be kind of in conflict with your proposal to put judges on the commission.

Rep. Mock: In conversations with legislative council we talked about whether or not this would be a conflict of interest. In their opinion, it would not. I can see the concern, but it is the opinion of legislative council that it would not be a conflict of interest.

Rep. Kretschmar: People in the judicial branch of government are generally not supposed to mess in other branches of government. And vice versa. We shouldn't be judging what the judges are supposed to be judging. That's kind of one of the basic concepts of our system is the separation of powers in our system of government. I think the possibility of conflict is there.

Rep. Mock: The concern with having district judges rule on a case that may get brought as a result of the commission was brought up, and that was the reason why the chief justice would not have any place on this commission. By removing the supreme court from that process, that way the supreme court can rule on any disparity as a result of the commission.

Chairman Koppelman: Regarding separation of powers, I have always felt when I see this happen in other states, I'm rather proud of North Dakota that our redistricting plans don't

typically end up in court. I talked with my friends in Minnesota, and they've essentially resigned themselves to a system where the legislature doesn't do redistricting. The courts do because that is where it ends up every time. I see that as a failure of the legislative process or the failure of the legislature to discharge it's duty rather than somehow something that's fair because another branch of government is doing it when it involves legislative elections. Do you have any thoughts on that?

Rep. Mock: The opinion you heard of Minnesota just giving it to the courts because it ends up there anyway, I can certainly see that. That's something that was presented when the design of this model was having district judges do this, draw the lines. It removes the potential bias of having those that directly benefit from the lines. It essentially creates an independent referee. This removes that obligation and the responsibility from the legislative body. With regard to is it a failure, drawing our own lines as legislatures certainly conveys that there may be potential bias. And that's where the concerns have always ended up. By removing that and leaving it to the judicial branch, and then continuing to the supreme court as the venue for disputes. It was a catchall and the way to solve all problems especially in a state where we don't have voter registration.

Chairman Koppelman: Is it your sense that we've suffered from extreme partisanship or unfairness in the redistricting process in North Dakota. It seems to have been a pretty even-handed process from what I've observed. Do you have other information?

Rep. Mock: It all stems from anecdotal evidence where members are concerned of partisan bias. The push for bipartisan commissions is really a nationwide movement. So whether or not it has specifically happened or been upheld in court in North Dakota isn't necessarily the case. The fact that it hasn't been a substantial problem in North Dakota, I don't think warrants the idea that we should be discrediting any independent commission. I think that's something

where because it could happen, it removes that responsibility, and it removes any doubt in the public's mind that the lines were drawn fairly and in the best interest of North Dakota as a whole.

Chairman Koppelman: When I first read this and saw the department of geography referenced, you've included a modifier in describing your professional life by saying political geography. It's a term I haven't heard before. When you said put someone from the department of geography on there I was picturing someone familiar with rivers and streams and hills and trees and lakes and whatever else. So that implies that someone who has been a student of this very type of thing, redistricting and drawing lines for political reasons rather than simply lines that carve up a similar population base. Would that not inject bias, and can we assume that if we take people who are not legislators or not people who hold elective office, that they're necessarily neutral or don't have a political bias?

Rep. Mock: I fully understand that, and I think I stand as one of the very few examples of a political geographer that has a bias in the political field. My involvement is as a legislator but also as a researcher and geographer. We know where the rocks are and that the streams don't move much, mountains haven't relocated any. That's not necessarily what geography is. Geography is the study of people, places, things. It's all encompassing. Political geography is the study of politics, composition of cities and towns, urban areas. It's a wide spectrum. Not necessarily that it is someone who is directly involved in legislative redistricting but someone who is familiar with the concepts of population densities and urban sprawl. It's someone who's worked within the community in that discipline that has the concepts that are important to geography or important to redistricting. That can truly include all the issues that are upheld by federal courts and state courts across the United States that we include communities of interest and that the districts are contiguous and they're compact. There's no racial bias. The

point I'm trying to make (inaudible) and to remove the benefit from their results is why we include (inaudible). They cannot run for two years or five years prior. They can't be directly involved in the results. More importantly they have to be approved by the commission so if there's a sense of bias, the eight members will bring it to the table. It's a majority vote. We figured that that's a way to dispel any of those concerns.

Chairman Koppelman: Further testimony in support of HCR 3053.

Linda Johnson Wurtz, associate state director for advocacy for AARP North Dakota offered testimony in support of HCR 3053. See Attachment #3.

Chairman Koppelman: You reference the provision which bars anyone who has served in the legislature, I believe, is to two years, is to before or after?

Ms. Wurtz: Five years before and two years after.

Chairman Koppelman: Is there any concern that that might violate the constitutional rights of an individual who is otherwise qualified to run for public office?

Ms. Wurtz: I'm not a scholar of the North Dakota constitution, but I just wanted to offer that those are things that are happening in other states and getting a real good response to those things in other states.

Chairman Koppelman: Other questions. Further testimony in support of HCR 3053.

Rep. Boucher: I am Rep. Merle Boucher. A member of the North Dakota house from District 9. In response to the question of the chair asked of the last witness who testified here in terms of the five and the two year restriction that was included in this particular piece of legislation, I don't think this situation is without precedence. We have a statutory law that says a person who is a member of the legislature cannot be appointed to a position in the executive branch who has had anything to do previously, voting on a bill in terms of salaries and appropriations for that particular position. I don't think that what is included here in that regard is any

House Constitutional Revision Committee

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exception to what has happened around the country today. I have had the opportunity to witness and be a part of two redistricting efforts. I will say in both cases it made no difference whether it was split evenly between the chambers with one party being represented and the other party, and where we had both parties. It does get to be a very political process. I think the concept of a commission I certainly endorse. This does, I believe, have an effect on depoliticizing the process. I don't think you are going to completely accomplish that because what we are talking about is politics, and whenever we deal in that particular element of politics and partisanship, we'll always feel its presence. The legislature is the representation of the population of the state of North Dakota. This concept gives the voters of the state of North Dakota the opportunity to decide how they want this process of identifying the districts and how those districts will be set up and ultimately will determine who those legislatures would be that represent them. So I think in that effect, I feel it develops a more democratic and more equitable process not again promising it will eliminate politics and partisanship from the process entirely. I endorse this concept.

Rep. Conrad: Is the fact that this has the judges, does that make it less political or do you think it makes a difference.

Rep. Boucher: The appearance would be that it would make it less political, and I would hope that it would be. Would it eliminate it entirely by the fact there are judges on there? I think the honest answer is probably not. But I think it would significantly reduce it.

Rep. Conrad: We had a debate about how many districts we should have. This won't address that, will it.

Rep. Boucher: What you have before you does not address that. The legislature would still have that authority. The constitution will allow to make a determination of 40 as the minimum and 54 as a maximum. It would still be a legislative function.

Chairman Koppelman: Just to clarify my earlier question which you commented on. The examples you gave obviously deal with people who have been legislators being barred from doing various things. That wasn't what I was referring to so much because I understand that provision and wanting to avoid partisanship and why you would include that. My concern was more barring people who happen to served on the commission who maybe had no elective office in their past that might decide a year or two later to run for something, sort of being barred from doing that in the future where they would otherwise be qualified and entitled constitutionally.

Rep. Boucher: We already do have some limitations on this so this would be one of those factors that would be an addition.

Chairman Koppelman: Any other questions? Thank you for your testimony.

Rep. Mock: There is a correction to one thing that was mentioned. Section 2 states that the independent commission shall fix the number of districts.

Chairman Koppelman: Any further testimony in support of HCR 3053? Any testimony in opposition to HCR 3053? Neutral testimony on HCR 3053. We'll close the hearing on HCR 3053.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3053

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 03/04/09

Recorder Job Number: 10215

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3053.

Chairman Koppelman: This has to do with an independent legislative redistricting commission. It does something with the terms of office, right?

Rep. Griffin: I believe that's once the redistricting takes place.

Rep. Kretschmar: I've long felt that the duty of doing the reapportionment after each federal census is really the primary duty of the legislative assembly. I've opposed resolutions in this order in the past, and I am going to oppose this one too because I believe it should be done by the legislature. It was in '81, '91 and '01 when it got by the legislature and they were done properly. None of them were attacking the courts. And so the legislature is used to doing it, and I think they should continue to do it. I think in the '91 session, the senate was controlled by the democratic party and house was republican. So that is kind of a factor. In '01 it was all controlled by the republicans. That was a factor, but those things are going to turn around. The shoe will be on the other foot sometime. I firmly believe it is a legislative responsibility, and our legislature has carried out that responsibility the last three times. I hope it will continue to do that.

Rep. Conrad: There's a lot we can do with technology. Now we can say in this lot there are six republicans and four democrats. We couldn't do that before but now we can.

Chairman Koppelman: Rep. Conrad, how can you do that when we don't have voter registration.

Rep. Conrad: We have our database. Don't you have your own database?

Chairman Koppelman: When you say democrats versus republicans, certainly there are a lot of people in North Dakota over the many decades that have voted for Byron Dorgan for senator and John Hoeven for governor in overwhelming numbers.

Rep. Conrad: Across the country these commissions are becoming a common thing.

Chairman Koppelman: Further discussion? I thought in terms of the process, it was actually pretty fair.

Rep. Conrad: I'm saying that's why a commission makes sense.

Rep. Schatz: Rep. Ketschmar, you said last time you looked up in the law book that the district judges were not qualified to be on this sort of commission when strictly their premise is to work on the law.

Rep. Kretschmar: This is true. There would be a conflict if this resolution became law, because judicial judges of the Supreme Court, district court, are just supposed to do judicial things. I think there would be a possible conflict if this commission was in effect. The plan the commission devised was challenged in the courts. Because then the judges have to put on a different hat.

Rep. Schatz: That would also lead to a political situation amongst judges. Personally I want to point out that 30 out of 50 states do it. This is the way we are doing it right now so we're basically in the majority.

Chairman Koppelman: With regard to this being in the constitution, is this something that we could do legislatively, or is there something in the constitution that would bar that.

Rep. Kretschmar: No. It could be done by the legislature. I'll move a do not pass.

Rep. Schatz: Second.

Chairman Koppelman: We have a motion for a do not pass by Rep. Kretschmar. Second by Rep. Schatz on HCR 3053. Is there further discussion? Seeing none I'll ask the clerk to read the roll on a do not pass recommendation on HCR 3053

The roll was read by the clerk.

6 yes, 3 no, 0 absent and not voting. Rep. Kretschmar was assigned to carry the resolution.

REPORT OF STANDING COMMITTEE (410)
March 5, 2009 9:58 a.m.

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Module No: HR-39-4086
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3053: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO NOT PASS** (6 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HCR 3053 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HCR 3053



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES:
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Testimony in SUPPORT of HCR 3053

February 26, 2009

Greetings Chairman Koppelman and members of the House Constitutional Revisions Committee. For the record, my name is Corey Mock, representative from District 42 in north Grand Forks. I stand before you today in support of HCR 3053, not only as a legislator, but as a citizen of North Dakota and a geographer conducting research on behalf of the University of North Dakota.

HCR 3053 is the constitutional change regarding a topic that is important to all, but interesting to no one. As you are all well aware, our state constitutionally reapportions legislative seats at the conclusion of the decennial US census. Current redistricting is done by the Legislative Assembly, as mandated by Section 2 of Article IV of the North Dakota Constitution. While redistricting has been completed as directed each decade, the question of fairness always seems to be discussed by the public.

The system can be described as such: in each year ending in one (1), elected members of the House and Senate form an interim committee to choose their electorate. The majority party is favored, as they receive more members on the committee.

Without getting too far into partisan politics, the fact that a member of the minority party is carrying this constitutional revision to committee is far from surprising. However, the pendulum swings both ways, and as a political geographer, research has shown that both parties benefit from removing redistricting authority from those that directly benefit from the results.

Attachment #1

Currently, there are three proposals before the House and Senate that would change how North Dakota reapportions legislative districts. Here is a brief rundown on the three:

HCR 3053: Independent Redistricting Commission composed of 7 district judges, one from each district court, chosen by lot by the Chief Justice. An 8th member is a nonpartisan professional selected by the state university's department of Geography and approved by a majority of the 7 judges. The professional serves as the chair, and the vice chair is chosen by the commission. Funds are appropriated by the Legislative Assembly.

SCR 4031: Bipartisan Redistricting Committee composed of 8 legislators, 2 from each party in each chamber. A 9th member is a nonpartisan professional selected by the state university's department of Geography and approved by a majority of the 8 legislators. The professional serves as the chair, and the vice chair is chosen by the commission. Funds are appropriated by the Legislative Assembly.

SCR 4029: Independent Redistricting Commission composed of 8 members, all appointed by the presiding judge in each district court and the Chief Justice of the Supreme Court. The appointee of the Chief Justice is the chair, and the vice chair is selected by the commission. Funds are appropriated by the Legislative Assembly.

As you can see, there are slight differences to each plan. The idea is simple: constitutional mandate currently says that each district shall guarantee, as nearly as is practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates. In other words, districts must be of similar population. In courts across the United States, judges have determined that districts must be compact, contiguous and consistent in size. They must include communities of interest, follow geographic boundaries when appropriate and cannot be drawn with knowledge of the residence of any person or groups of persons. These judicial rulings are the reason why independent commissions are popular in many other states.

The information I have provided will give you, as committee members, the ability to compare legislative commissions that exist in the 20 other states. Instead of presenting a dissertation regarding political geography, I will instead stand for your compliments and showers of praise in lieu of questions.

Thank you, Chairman Koppelman and members of the committee.

The Question of Fairness

In 1991, the Minnesota Twins were on track to win their second World Series championship in franchise history. They were successful, but only after taking the series in the last of 7 games. Forgive the sports analogy, but consider the possibility:

Both teams (Twins and Atlanta Braves) were victorious in their home games. The Twins had home field advantage, which gave them home games in the first and last two games. The Braves had the middle three.

After 5 games, the Atlanta Braves were ahead 3-2. Since they were in control, imagine the fate of the Twins if the Braves decided to change the World Series to a 5 game series instead of a 7 game series. The Championship would have been over, and the Atlanta Braves would have claimed victory.

As the leading team, perhaps the Braves would have sat down with the Twins to determine which team should get home field advantage for the last two games. Undoubtedly, Atlanta would have prevailed and perhaps the results would have been different for the team of the North.

Allowing legislators to make the rules is the equivalent of giving the winning sports team a chance to redefine the game, potentially to their advantage.

Our country demands fairness. Fairness in our referees in sports, a balance of power in our branches of government, independent audits of agencies and businesses, even transparency with our electoral system. Why would we allow elected officials to determine their own boundaries and set their own criteria?

Independent Redistricting Commissions restore confidence of the legislative branch of our government with the people of North Dakota.

APPENDIX C

REDISTRICTING COMMISSIONS: LEGISLATIVE PLANS

Commissions with Primary Responsibility for Drawing a Plan

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Alaska ALASKA CONST. art. 6	5	Governor appoints two; then president of the Senate appoints one; then speaker of the House appoints one; then chief justice of the Supreme Court appoints one. At least one member must be a resident of each judicial district. No member may be a public employee or official.	By September 1, 2010	30 days after census officially reported	90 days after census officially reported

Currently:

20 out of 50 states have legislative Redistricting Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Arizona ARIZ. CONST. art. 4, pt. 2, § 1	5	The commission on appellate court appointees creates a pool of 25 nominees, 10 from each of the two largest parties and five not from either of the two largest parties. The highest ranking officer of the house appoints one from the pool, then the minority leader of the house appoints one, then the highest ranking officer of the senate appoints one, then the minority leader of the senate appoints one. These four appoint a fifth from the pool, not a member of any party already represented on the commission, as chair. If the four deadlock, the commission on appellate court appointments appoints the chair.	By February 28, 2011	None	None
Arkansas ARK. CONST. 1874, art. 8	3	Commission consists of the governor, secretary of state, and the attorney general	None	By February 1, 2011	Plan becomes official 30 days after it is filed

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
California CALIF. CONST. art. XXI, § 2 Cal. Gov. Code §§ 8251-8253.6	14	Five registered with largest political party, five registered with second largest political party, and four not registered with either of the two largest political parties. Must have voted in two of the last three statewide general elections and not changed registration within the last five years. Must not have been politically active for last 10 years. Chosen at random from three pools, starting with 20 candidates each selected by a board of three state auditors, then reduced by up to eight strikes by legislative leaders. Prohibited from holding appointive public office or working as legislative staff or lobbyist for five years after appointment.	By December 31, 2010		September 15, 2011
Colorado COLO. CONST. art. V, § 48	11	Legislature selects four: (speaker of the House; House minority leader; Senate majority and minority leaders; or their delegates). Governor selects three. Judiciary selects four. Maximum of four from the legislature. Each congressional district must have at least one person, but no more than four people representing it on the commission. At least one member must live west of the Continental Divide.	By August 1, 2011	90 days after the availability of the census data, or after the formation of the committee, whichever is later	March 15, 2012

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Hawaii HAW. CONST. art. IV	9	President of the Senate selects two. Speaker of the House selects two. Minority senate party selects two. These eight select the ninth member, who is the chair. No commission member may run for the legislature in the two elections following redistricting.	By March 1, 2011	80 days after the commission forms	150 days after commission formation
Idaho IDAHO CONST. art. III, § 2	6	Leaders of two largest political parties in each house of the legislature each designate one member; chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. No member may be an elected or appointed official in the state at the time of designation.	Within 15 days after the secretary of state orders creation of a commission	None	90 days after the commission is organized, or after census data is receive, whichever is later
Missouri MO. CONST. art. III, § 2	House: 18 Senate: 10	There are two separate redistricting committees. Governor picks one person from each list of two submitted by the two main political parties in each congressional district to form the house committee. Governor picks five people from two lists of 10 submitted by the two major political parties in the state to form the senate committee. No commission member may hold office in the legislature for four years after redistricting.	Within 60 days of the census data becoming available	Five months after the commission forms	Six months after formation

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Montana MONT. CONST. art. V, § 14	5	Majority and minority leaders of both houses of the Legislature each select one member. Those four select a fifth, who is the chair. Members cannot be public officials. Members cannot run for public office in the two years after the completion of redistricting.	The legislative session before the census data is available	The commission must give the plan to the Legislature at the first regular session after its appointment	30 days after the plan is returned by the Legislature
New Jersey N.J. CONST. art. IV, § 3	10	The chairs of the two major parties each select five members. If these 10 members cannot develop a plan in the allotted time, the chief justice of the state Supreme Court will appoint an 11th member.	December 1, 2010	February 1, 2011, or one month after the census data becomes available, whichever is later	The initial deadline, or one month after the 11th member is picked
Ohio OHIO CONST. art. XI	5	Board consists of the governor, auditor, secretary of state, and two people selected by the legislative leaders of each major political party.	Between August 1 and October 1, 2011	None	October 5, 2011
Pennsylvania PA. CONST. art. II, § 17	5	Majority and minority leaders of the legislative houses each select one member. These four select a fifth to chair. If they fail to do so within 45 days, a majority of the state Supreme Court will select the fifth member. The chair cannot be a public official.	None listed	90 days after the availability of the census data or after commission formation, whichever is later	30 days after the last public exception that is filed against the initial plan
Washington WASH. CONST. art. II, § 43	5	Majority and minority leaders of the House and Senate each select one. These four select a non-voting fifth to chair the commission. If they fail to do so by January 1, 2001, the state Supreme Court will select the fifth by February 5, 2001. No commission member may be a public official.	January 31, 2011	None	January 1, 2012

Advisory Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Maine ME. CONST. art. IV, pt. 3, § 1-A	15	Speaker of the House appoints three. House minority leader appoints three. President of the Senate appoints two. Senate minority leader appoints two. Chairs of two major political parties, or their designees. The members from the two parties represented on the commission each appoint a public member, and the two public members choose a third public member.	Within three calendar days of convening the Legislature in 2013	The commission must submit its plan to the Legislature within 120 days after the Legislature convenes in 2013. The Legislature must enact the plan, or another plan, by a 2/3 vote of both houses within 30 days after it receives the commission's plan.	Within 60 days after the Legislature fails to meet its deadline, the supreme judicial court must adopt a plan
Vermont Vt. Stat. Ann. tit. 34A	5	Chief justice appoints the chair; governor appoints one member from each political party that received 25 percent of the vote in the last gubernatorial election; those parties each select one. Secretary of state is secretary of the board but does not vote. No commissioner may be a member or employee of the legislature.	By July 1, 2010	April 1, 2011	May 15, 2011. Legislature must adopt the plan or a substitute at that biennial session.

Backup Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Connecticut CONN. CONST. art. III, § 6	9	President pro tem of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two; these eight must select the ninth within 30 days.	After legislature fails to meet deadline (September 15, 2011)	None	November 30, 2011
Illinois ILL. CONST. art. IV, § 3	8	President of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two, one of whom is a legislator and the other is not. No more than four from the same party. If the commission fails to develop a plan by August 10, 2001, the state Supreme Court selects two persons not of the same political party, one of whom is chosen by lot to be the ninth member.	July 10, 2011 (if legislature fails to meet its deadline of June 30)	None	October 5, 2011
Mississippi MISS. CONST. art. 13, § 254	5	Chief justice of Supreme Court is chair; attorney general, secretary of state, speaker of the House, president pro tem of the Senate	After legislature fails to meet deadline (60 days after end of second regular session following decennial census)	None	180 days after special apportionment session adjourns
Oklahoma OKLA. CONST. § V-11A	3	Attorney general, superintendent of public instruction, and state treasurer	After legislature fails to meet deadline (90 days after convening first regular session following decennial census)	None	None

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Texas TEX. CONST. art. 3, § 28	5	Lieutenant governor, speaker of the House, attorney general, comptroller of public accounts, and commissioner of the general land office	Within 90 days after legislature fails to meet deadline (adjournment of the first regular session following decennial census)	None	60 days after formation



February 26, 2009

HCR 3053

House Constitutional Revision Committee

Chairman Koppelman and members of the House Constitutional Revision Committee. My name is Linda Johnson Wurtz, I am associate state director for advocacy for AARP North Dakota and today I represent our more than 88,000 members in North Dakota.

Our compliments to the sponsors of HCR 3053. One of this nation's fundamental principles is that citizens are able to select leaders who will represent their interests in the state legislature, and so the composition and configuration of legislative districts matter a great deal and is of great importance to our citizens.

AARP policy recommends a nonpartisan redistricting commission that has diverse membership, is independent, and represents the state geographically and demographically. The process should be transparent and provide a meaningful opportunity for interested parties and the public to participate effectively.

Having a commission made up of judges would meet the criteria for geographic and independent criteria. However, it may be a challenge to match the demographics of the state. We would suggest taking a look at states that have commissions made up of citizens. For example, in Arizona citizens are selected to serve with the concurrence of majority and minority party legislative leaders. Independent members are appointed by the Commission on Appellate Court Appointments. In California, citizen members are appointed through an applicant review panel and process established by the State Auditor.

We appreciate the provision to prevent individuals who have sought or held a legislative or statewide elective office during the 5 years preceding or two years following service on the commission. However, the House Constitutional Revision Committee may want to also consider the same prohibition for registered paid lobbyists, party officers, or campaign officials.

Regarding the criteria for legislative districts, there is no specific mention of the U.S. Voting Rights Act in the bill. Section 4 approaches this area, and the U.S. Voting Rights Act could easily be worked into this section, should you choose to do so.

The 30 day comment period and public hearings meet the transparency test. In addition, the commission should be meeting the requirements of North Dakota's open meeting laws. It may help to require internet access to the plan and commission documents during this period, although that may be accomplished during implementation.

In summary, HCR 3053 has merit and I appreciate this opportunity to contribute to the discussion.

Attachment #3



North Dakota Legislative Council

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February 26, 2009

Honorable Corey Mock
State Representative
House Chamber
State Capitol
Bismarck, ND 58505

Dear Representative Mock:

This is in response to your inquiry regarding House Concurrent Resolution No. 3053 and the appointment of district judges to serve on an independent legislative redistricting commission.

Section 4 of House Concurrent Resolution No. 3053 provides that the independent legislative redistricting commission consists of one district judge from each judicial district selected by the Chief Justice of the Supreme Court by lot and one member appointed by the individual chairing the Department of Geography at the University of North Dakota, who must be approved by a majority vote of the district judges selected to serve on the commission. Article VI, Section 10, of the Constitution of North Dakota provides that a justice of the Supreme Court or judge of a district court may not hold any public office, elective or appointed, not judicial in nature.

Although the Supreme Court of North Dakota has held that a statute may not impose nonjudicial duties upon the district courts, see *Carrington v. Foster County*, 166 N.W.2d 377 (1969), that decision would not apply to the establishment of the independent legislative redistricting commission consisting of district judges because the commission would be a part of the constitution rather than a statute. Therefore, the later adopted constitutional provision would supersede or implicitly amend Section 10 of Article VI to the extent of judicial service on the independent legislative redistricting commission.

With respect to your question regarding whether service by district judges on the independent legislative redistricting commission would constitute a conflict of interest for a district judge, it is important to note that subsection 7 of Section 4 of the proposed constitutional amendment would require the Supreme Court to exercise original jurisdiction over any challenge to a legislative redistricting plan adopted by the commission. Therefore, district judges would not be involved in a challenge to a plan adopted by the commission.

We hope this answers your questions. If you have additional questions, please feel free to contact this office.

Sincerely,

John Bjornson
Counsel

JB/AC