

2025 SENATE STATE AND LOCAL GOVERNMENT

SCR 4014

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

SCR 4014
2/21/2025

Directing the Legislative Management to consider studying election and political party activities in a legislative district containing tribal lands.

9:15 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Subdistricts
- Litigation and redistricting
- Advocating for Native voter rights
- Demographics and tribal differences
- Comprehensive view of election issues

9:15 a.m. Senator Walen, District 4, introduced the concurrent resolution and submitted testimony #38304.

9:19 a.m. Andrew Alexis Varvel, citizen Bismarck, testified in favor and submitted testimony #38280 and #38281.

9:28 a.m. Todd Hall, citizen Dunn, testified in favor and submitted testimony #38246.

9:32 a.m. Representative Collette Brown, District 9, testified in opposition.

9:39 a.m. Scott Davis, MHA Nation District 31, testified in opposition.

Additional written testimony:

Nicole Donaghy, Executive Director ND Native Vote, submitted testimony in opposition #38282.

Lonna Street, Tribal Chairwoman Spirit Lake Tribe, submitted testimony in opposition #38283.

Janet Alkire, Chair Standing Rock Sioux Tribe, submitted testimony in opposition #38289.

Mark Fox, Tribal Chairman Tribal Business Council of Mandan-Hidatsa-Arikara, submitted testimony in opposition #38305.

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9:47 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

North Dakota Senate Concurrent Resolution No. 4014
State and Local Government Committee
Testimony of Todd Hall
February 21, 2025

Good morning, Chairman Roers and members of the State and Local Government Committee. My name is Todd Hall, from Dunn and Burleigh counties. I am a private tax-paying citizen and a landowner. I own land in the State of North Dakota and within the boundaries of the Fort Berthold Indian Reservation. The federal Indian reservation is within the boundaries of North Dakota Legislative District 4. My ranch headquarters are located there, on the badlands south of Mandaree, ND just above the Little Missouri river near an old Hidatsa village known to my ancestors and me as "Night Walker".

I AM HERE IN SUPPORT OF SENATE CONCURRENT RESOLUTION NO. 4014.

This study is needed to ensure fairness and equal access to State government, especially in regards to participation and representation. Within Legislative district 4 alone there are vast differences in population demographics which are not only political or racial but also geographical. Lake Sakakawea cuts the district in two. History tells us that east river and west river North Dakota don't always see eye to eye on the issues. The same can be said to this very day.

There are various paradigms creating jurisdictional challenges not only between tribal, state, and federal entities; but it should be noted, that within the boundaries of the Fort Berthold Reservation there are 7 different counties located there. The creation of legislative sub-districts such as 4A and 4B only adds to the mess and creates more confusion. There is a dilution of representation as opposed to the rest of the State's legislative districts as a result.

I have one suggestion for an amendment to the resolution. Instead of any references to "tribal land", change the wording to "reservation land" when and wherever used in the resolution. Reservation gives a more accurate and all-encompassing description of the lands and legal terms actually used regarding land types, ownership, and involving the various jurisdictions within the boundaries of any federal Indian reservation located within North Dakota.

Although "Tribal land" much like the term "Trust land" is an actual legal term describing certain land ownership; it is also an ambiguous term when used loosely can create confusion, bad policy, and unconstitutional laws.

Words matter.

Senate State & Local Committee

Senate Concurrent Resolution 4014

Andrew Alexis Varvel

Written Testimony

February 21, 2025

**Madame Chairman Roers
& Members of the Committee:**

My name is Andrew Alexis Varvel. I live in Bismarck.

Please give a resounding yes to Senate Concurrent Resolution 4014.

As a non-attorney, it would appear that Judge Welte's decision of November 17, 2023, and his subsequent decision of January 8, 2024, make it abundantly clear that increasing minority participation in the North Dakota political system is an overarching goal, not merely a matter of dealing with Indian reservations.

So, given that this resolution makes reference to “recent litigation” – that is, Judge Welte's decisions – let's make this a starting point.

I had been prepared to make a major presentation to the Interim Redistricting Committee on January 9, 2024.

After Judge Welte's decision on January 8, 2024, that meeting was postponed indefinitely. And effectively canceled.

Bummer. All dressed up and nowhere to go.

We face two possibilities. We can either (1) draw serpentine and squiggly district boundaries to conform to race-conscious bean counting, or (2) reform our electoral system to allow for increasing diversity of all kinds at the legislature in a nonracial, colorblind way.

For the record, I personally prefer the latter over the former.

I went through exercises, using Dave's Redistricting, to amplify the voices of racial minorities. One technique is to amplify minority voices within cities. Another technique is to pair an Indian reservation with an air force base, as military bases and prisons (since their residents typically have a lower rate of voting) are well known ways to amplify the power of one constituency or another.

Please don't talk about gerrymandering anymore. They should now be called “varvelmanders” – after my glorious self, of course.

A varvelmander called “The Tadpole” attempts to pair the Turtle Mountain Indian Reservation with Minot Air Force Base.

“Pac-Man” starts with the Mandan Hidatsa Arikara Nation, but rather than push its frontier northward and eastward, its boundaries encompass their treaty territory to the south.

The “Moai” attempts to connect the Spirit Lake Nation and Devils Lake with Grand Forks Air Force Base.

The “Fargo Griffin” creates a district where white and non-white demographics are approximately at parity.

The “Bismarck Violin Scroll” attempts to connect the Standing Rock Sioux Tribe with United Tribes Technical College, the North Dakota State Penitentiary, and other strongly Indian parts of Bismarck.

Then, the “Pregnant Snake” illustrates Transit Time Compactness.

“Compact” districts, as required by Article IV, Section 2 of the North Dakota Constitution, are historically determined by spatial sphericity. Yet, there is another form of measurement – transit time compactness – which measures compactness in terms of time.

Transit time compactness is affected by speed limits, road width, and road quality.

For example, the present dimensions of District 9 are connected internally by State Highway 30, which is a gravel road in Pierce County, would not score well in terms of transit time compactness.

(I also find it peculiar that, according to the map provided to me by Legislative Council last year, Churchs Ferry is within District 9.)

As an alternative to creating weird shapes with increasingly varied sizes, I would like to propose a set of constitutional reforms which would not only increase diversity of all kinds in the House, but also differentiate between selection methods for the Senate and House.

1. Permit a maximum 0.5% population deviation between districts. Using Dave's Redistricting, I have been able to bring the deviation down to 0.12%, so don't tell me that it can't be done!

2. Mandate subdistricts where a district comprises all or part of at least five counties. This way, the travel time for representatives to meet with constituents becomes reduced. Require rural districts to be divided into subdistricts if at least 5% of the electors request it.
3. Create superdistricts where a federal facility or city contains at least two-thirds of the population of a senatorial district for the purpose of electing representatives. During the 1980's, I lived in District 17-18 which included Grand Forks Air Force Base. It worked. Two senators and four representatives would be on the ballot.

Under this reform, each senator would come from a single district. Each representative would be elected from a larger group, but that would be counterbalanced with an extra vote for an elector's favorite candidate. This idea is inspired by (and a warmed down version of) Lani Guinier's book Tyranny of the Majority.

4. Change the length of a House term back to two years.

So yes, I support Senate Concurrent Resolution 4014 as written, as it gives me an opening to present ideas on how to redo redistricting.

And as the interim committee works on this, let's have fun doing it.

Please give a **DO PASS** to Senate Concurrent Resolution 4014.

Thank you. I am open for questions from the committee.

APPENDIX A

If you have time to look at these imaginative redistricting maps, they provide illustrations of ideas I have been working on.

The Amplified Minority Map includes imaginative flora and fauna such as the Tadpole, the Pac-Man, the Moai, the Pregnant Snake, and the Violin Scroll. And who could forget the Griffin?

Here is a map (dated from early 2024) which would illustrate districts partitioned according to the “Five County Rule”.

<https://www.davesredistricting.org/join/820e8055-7065-440f-abe6-e3f90a1bb626>

Here is a map (dated from early 2024) which illustrates implementing the “Five County Rule” in a manner which rigidly adheres to the principle of equal representation by population.

<https://www.davesredistricting.org/join/50fa6e9f-1ff6-42b6-800a-88fed652bf61>

Here is an Amplified Minority Map.

<https://www.davesredistricting.org/join/fd923456-e8ce-4aa1-a7b3-234ee878de1a>

Here is an Amplified Minority Map with 11 subdistricts.

<https://www.davesredistricting.org/join/48ce45e6-213c-4f6c-a8d4-239ef3713237>

APPENDIX B

POSSIBLE CONSTITUTIONAL AMENDMENT

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE CONCURRENT RESOLUTION NO.

Introduced by XXXX

A concurrent resolution to amend and reenact sections 2, 3 and 4 of article IV of the Constitution of North Dakota, relating to terms and districts for electing members of the House.

STATEMENT OF INTENT

This measure would promote equality among legislative districts, reform how subdistricts and superdistricts function for electing members of the House, and change the length of House terms.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to sections 2, 3, and 4 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2028, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. The legislative assembly shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The districts thus ascertained and determined after the 1990 federal decennial census shall continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

The legislative assembly shall guarantee, as nearly as is practicable within a 0.5 percent deviation from the mathematical mean average population per district, that every elector is equal to every other elector in the power to cast ballots for legislative candidates. A senator and at least two representatives must be apportioned to each senatorial district and be elected at large or from subdistricts from those districts which include all or part of five or more counties, or have a petition with signatures from least five percent of the electors in that district. The legislative assembly ~~may~~ shall combine two senatorial districts into a superdistrict

for the purpose of electing representatives only when a single member senatorial district includes a federal facility or, federal installation, or city, containing over two-thirds of the population of a single member senatorial district, and may shall provide for the election of senators at large and representatives at large or from subdistricts from those districts where an elector casts one vote for up to four representatives and casts one additional vote to select the elector's overall favorite candidate. The number of districts which are divided into subdistricts shall be equal to the number of superdistricts.

SECTION 2. AMENDMENT. Section 3 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate and ~~one-half~~ all of the members of the house of representatives, as nearly as is practicable, are elected biennially.

SECTION 3. AMENDMENT. Section 4 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

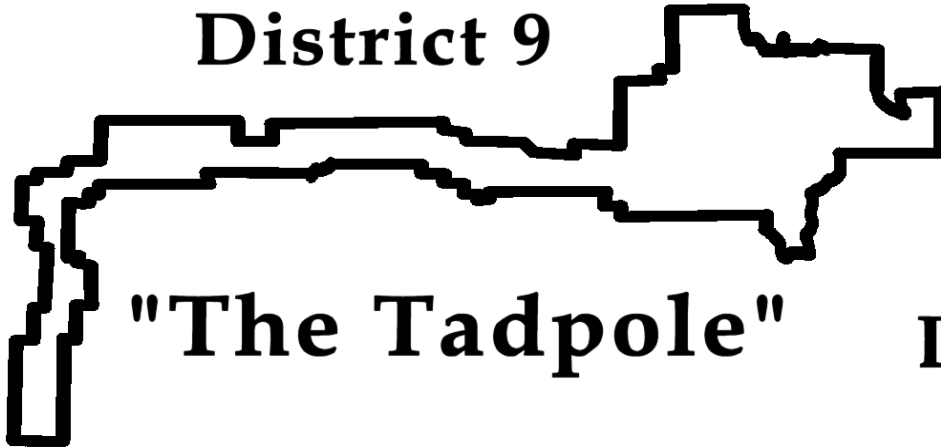
Section 4. Senators ~~and representatives~~ must be elected for terms of four years. Representatives must be elected for terms of two years.

The Varvelmanders

page 1

N ↑

District 9

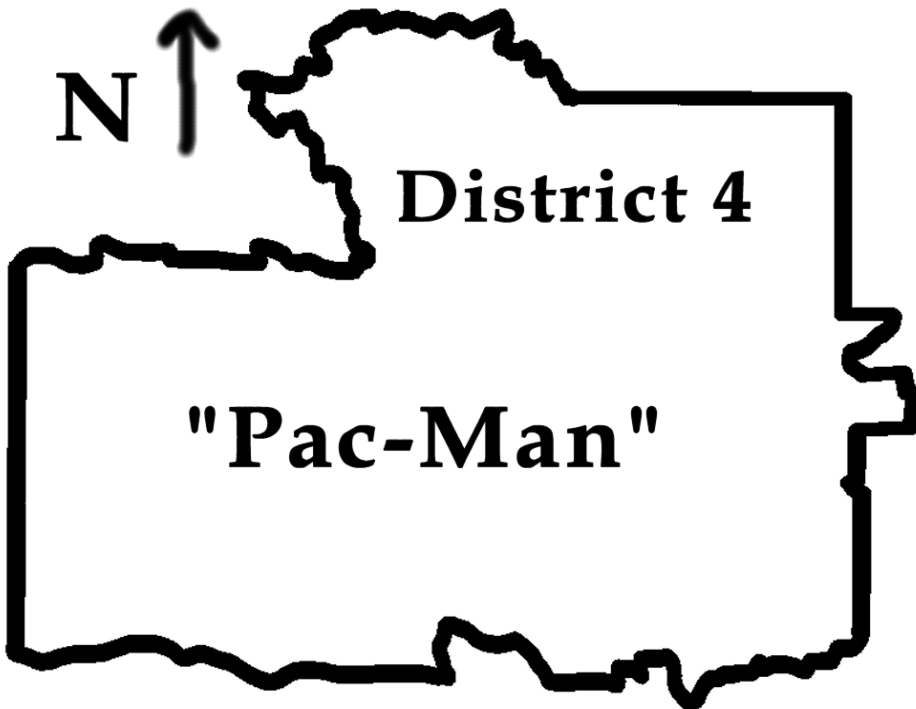


"The Tadpole"

District 15

N ↑

District 4



"Pac-Man"

N

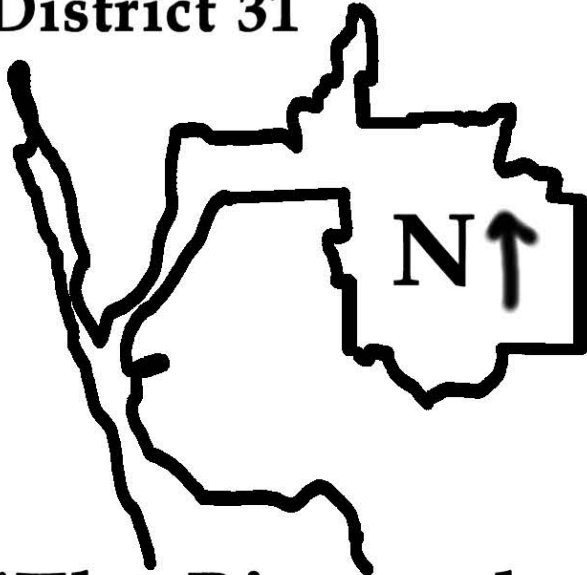


"The Moai"

The Varvelmanders

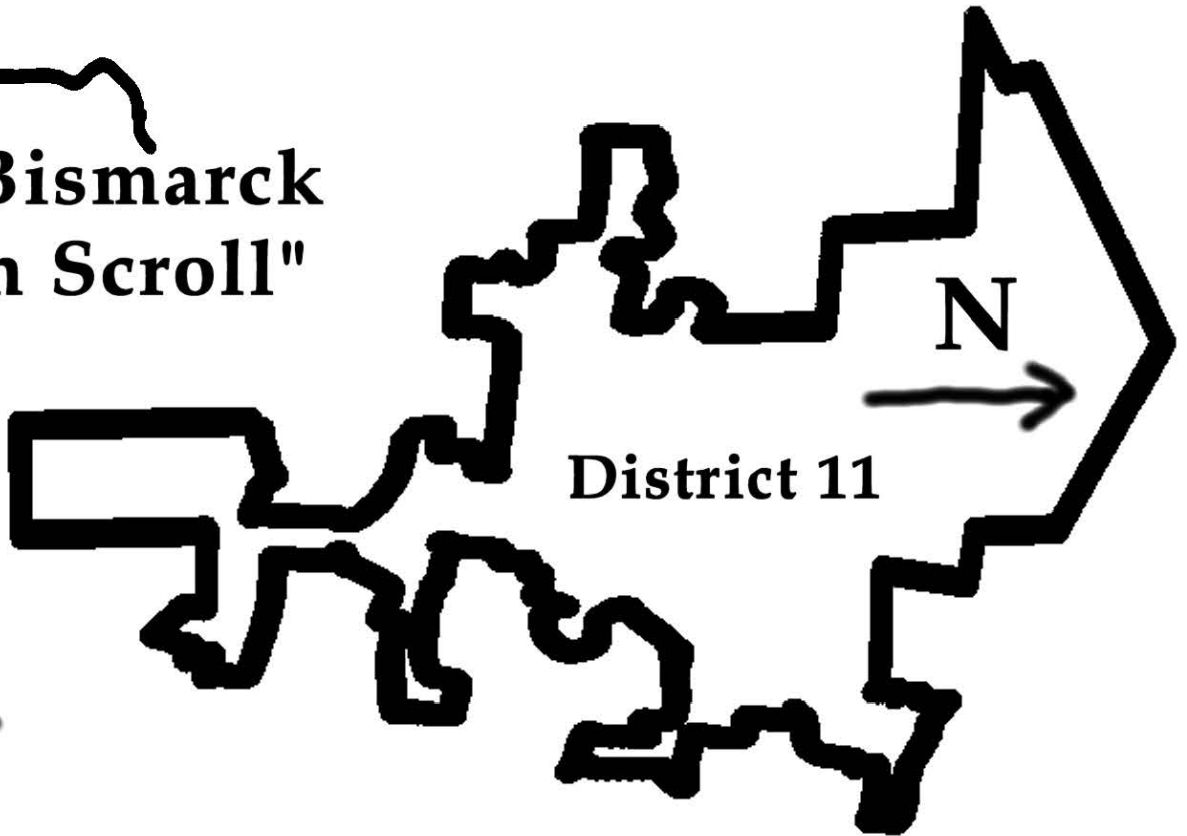
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District 31



"The Fargo
Griffin"

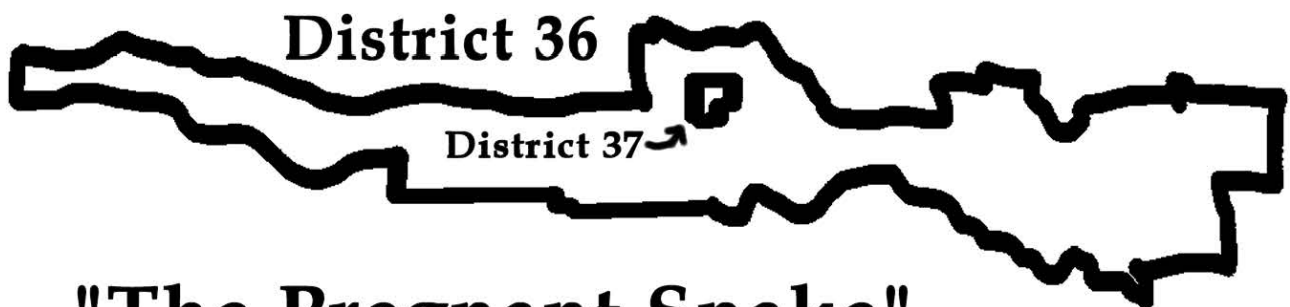
"The Bismarck
Violin Scroll"



District 11



District 36



District 37

"The Pregnant Snake"



North Dakota Native Vote
919 S 7th Street
Suite 603
Bismarck, ND 58504

Testimony of Nicole Donaghy
North Dakota Native Vote
In opposition to Senate Concurrent Resolution 4014

Chairwoman Roers and members of the Senate State and Local Government Committee, my name is Nicole Donaghy and I'm the Executive Director of North Dakota Native Vote. While the resolution is framed as an attempt to improve electoral fairness, it carries significant risks of undermining vital protections that ensure Native American communities can elect representatives of their choice and maintain a meaningful voice in the legislative process.

Since 2018, North Dakota Native Vote has been committed to advocating for the rights of Native voters and ensuring that tribal communities are included in decision making processes that impact our communities. Our work has included active participation in the 2021 legislative redistricting process, where we focused on protecting the voting rights of Native communities in the reapportionment of legislative districts, and ensuring that tribal nations were notified and included in the process. We have supported the implementation of subdistricts as an essential tool for guaranteeing that Native American voters—especially those in rural tribal communities—can elect candidates who represent their interests. The use of subdistricts has been instrumental in preserving communities of interest and ensuring that Native voters are not diluted or fragmented across districts where their collective influence would be minimized. Any attempt to weaken or eliminate subdistricts would undermine these protections and harm the political representation of Native communities, limiting their ability to engage in the legislature in a fair manner.

Subdistricts serve as a vital mechanism that respects the unique political, cultural, and geographical characteristics of Native communities. The creation of subdistricts ensures that communities of interest—which include Native American communities with shared political, cultural, and social concerns—are kept intact and can elect candidates who truly represent their collective needs. Without this safeguard, there is a risk that Native communities could be left with representatives who do not reflect their interests, thereby diminishing their political power and representation.

SCR 4014 presents a potential threat to the protections that have been affirmed through recent legal rulings. These rulings have specifically upheld the use of subdistricts to protect tribal representation, and any attempt to reconsider or alter the current structure risks weakening these protections. The Voting Rights Act of 1965, particularly its provisions concerning the protection of minority voting rights, guarantees that every citizen has the right to participate in the electoral process and elect candidates of their choice. The use of subdistricts has been a critical tool in ensuring that Native voters are not disenfranchised and that their voting rights, as guaranteed by the Voting Rights Act, are fully protected.

Additionally, SCR 4014 raises fundamental concerns related to the principle of one person, one vote—the constitutional guarantee that every voter's vote should carry the same weight. Any



North Dakota Native Vote
919 S 7th Street
Suite 603
Bismarck, ND 58504

modifications to the electoral system that result in Native communities being fragmented or their votes diluted would violate this fundamental principle. If Native voters are divided into districts that fail to preserve their political strength, their ability to elect candidates of their choice would be diminished, effectively undermining the fairness and accessibility of elections. A fair electoral system must ensure that all voters, regardless of race, ethnicity, or geographic location, can participate in free, fair, and accessible elections. Any effort to alter the current districting structure in a way that harms the political influence of Native communities would directly threaten these core democratic values.

There are several risks associated with the proposed study that must be carefully considered. First, there is the potential for gerrymandering, where district boundaries could be manipulated to reduce the concentration of Native voters in a given area, thus diluting their voting power. This could result in the fragmentation of Native communities, undermining their ability to elect representatives who are fully attuned to their needs. Second, the study could pave the way for voter suppression policies that unintentionally create barriers to voting, such as reducing access to polling places or making it more difficult for Native voters to participate in elections. Any such policies would disproportionately impact tribal communities and further disenfranchise Native voters. Third, the resolution could be seen as an attempt to diminish tribal sovereignty, especially if electoral modifications are made without adequate consultation with tribal governments. Tribal nations are sovereign entities with the right to self-determination, and any changes to electoral practices that impact their communities should respect and uphold that sovereignty. Finally, modifying the system of subdistricts could lead to the fragmentation of Native voters, dispersing their collective voting power across multiple districts, thereby weakening their overall political influence.

For these reasons, we strongly urge the rejection of SCR 4014.

North Dakota Native Vote asks for a do not pass recommendation and urge the Legislature to reject this resolution and continue to uphold the protections that ensure Native American communities can exercise their right to vote and participate in the democratic process.

Thank you for your time and attention.



SPIRIT LAKE TRIBE

P.O. BOX 359 • FORT TOTTEN, ND 58335 • PHONE 701-766-4221 • FAX 701-766-4126

Before the North Dakota Legislative Assembly
Regarding SCR 4014
Thursday, February 20, 2025

Chair and Members of the Committee,

My name is Lonna Street, and I serve as the Chairwoman of the Spirit Lake Tribe. I am submitting this testimony in opposition to SCR 4014.

The Spirit Lake Tribe, alongside another tribal nations, legally challenged North Dakota's redistricting process for District 9 and we won. Our lawsuit demonstrated that the state failed to properly consider Native voting rights and fair representation when drawing legislative boundaries. Instead of acknowledging this decision and working collaboratively with tribes moving forward, this resolution appears to be yet another attempt to research and find new ways to change the system without full tribal consultation.

We strongly oppose this study because it does not guarantee tribal voices a meaningful role in the process. The state has a legal and moral obligation to engage in full consultation with tribal nations before making any changes that affect our voting power. Any attempt to modify election processes in districts containing tribal lands must be transparent and done with the full participation of the impacted communities.

Respectfully, we suggest rather than conducting studies that could open the door to future changes, we urge the Legislature to focus on upholding the rights we fought for and won in court. We expect direct consultation on any election-related proposals affecting tribal citizens.

For these reasons, I respectfully urge you to oppose SCR 4014. Thank you for your time and consideration.

A handwritten signature in black ink that reads "Lonna Street". The signature is fluid and cursive.

Lonna Street
Chairwoman, Spirit Lake Tribe

February 21, 2025

Madam Chair Roers and Members of the State and Local Government Committee,

I am writing to express my strong opposition to Senate Concurrent Resolution No. 4014, which proposes a study on election and political party activities in legislative districts containing tribal lands and whether modifications to electoral practices are necessary to ensure every qualified elector can freely participate in voting in North Dakota.

A concurrent resolution directing the Legislative Management to consider studying election and political party activities in a legislative district containing tribal lands may appear neutral in its intent, but it is unnecessary and could serve to undermine the progress made toward fair representation for Native American voters in North Dakota.

North Dakota has a long and complex history regarding Native American voting rights, with Native voters facing barriers to full participation in the electoral process. Until 1922, most Native people were not allowed to vote in North Dakota. Even after gaining the right to vote, Native voters encountered challenges due to state laws and practices that made it more difficult to cast their ballots. For example, voter ID laws passed in 2013 and 2017 disproportionately impacted Native communities, particularly those living on reservations, by imposing requirements that created obstacles to voting access.

This history is also reflected in the makeup of the state legislature, where unfair voting maps have limited Native representation. Based on relative population size, Native Americans should hold three state senate seats and six state house seats. However, under the 2021 redistricting plan, for the first time since 1990, there were no Native American state senators, and only two Native American representatives served in the state house.

Over the past five years, Native law organizations have fought to ensure fair representation for Native voters in North Dakota. In *Turtle Mountain Chippewa et al v. Howe* and *Walen v. Burgum*, these organizations, along with other legal counsel, successfully challenged unfair redistricting that diluted Native voting power.

In *Turtle Mountain*, a federal court found that North Dakota's 2021 redistricting plan discriminated against Native voters by employing "cracking" and "packing" strategies that diluted Native electoral influence. The Eighth Circuit Court of Appeals denied the state's request to pause the injunction pending appeal, ensuring that a fair map will be in effect for the 2024 election.

Similarly, in *Walen v. Burgum*, non-Native voters attempted to challenge the creation of a state house subdistrict that provided Native voters on the Fort Berthold Reservation a fair opportunity to elect representatives. With legal advocacy from Native Rights groups, the challenge was defeated, preserving equitable representation for Native voters.

These cases resulted in historic victories for Native voters, securing fair maps and ensuring Native communities have a fair chance to elect their preferred candidates. The proposed study under SCR 4014 seeks to reopen and undermine this progress, serving no legitimate purpose other than to call into question the rights that have already been upheld by the courts. The courts have already ruled in favor of equitable maps, and revisiting this settled issue is both unnecessary and counterproductive.

Rather than using state resources on a study that revisits a matter already decided, efforts should focus on ensuring that all North Dakotans have fair and equal access to the ballot box. This study risks creating division rather than advancing democratic participation.

For these reasons, I respectfully urge this Committee to vote no on SCR 4014.

Thank you for your time and consideration.

Janet Alkire
Chairwoman
Standing Rock Sioux Tribe

Testimony on Senate Concurrent Resolution

Februaury 21, 2025

Sponsor Chuck Walen, Senator D4

cwalen@ndlegis.gov

701-421-2262

Chairman Roers and members of the committee

For the record my name is Chuck Walen Senator for District 4

I am here to sponsor and introduce SCR 4014

Senate Concurrent Resolution 4016 is a study based on the redistricting of 4A , 4B, 9A and B.

When the committee on redistricting split our 2 districts into 2 parts, it did not study what the Supreme Court said was the reasons they were allowed to split the Districts. The Gingles test was not applied and resulted in the lawsuit against the state of ND. In the Gingles case it required 4 parts to be in agreement to pass a split of a district. One part of the test was whether a group could elect the representation of their choice. When looking at past history within the voting district. In the case of 4 and 9 both districts had history of a group being able to choose their candidate and elected to office in recent years. Had it not been able to, it would provide some justification for splitting a district.

The lawsuit asserted that we lost equal representation by only having 1 representative instead of 2 as in all other districts in the state. The district court said in District 9 should not have been split while in District 4 said it should be split. Opposite points of view in the same lawsuit.

Part of this study would look at dividing all districts in the state so equal representation is maintained or the possibility of putting 4A & 4B back together

This issue will continue to cause problems and lawsuits will continue. A study will look into all aspects of the law and if any changes should be made in future redistricting plans to help prevent future lawsuits.

I request I do pass on a study of this issue with SCR 4014

Chairman Roers and members of the committee this concludes my testimony.

I stand for any questions you may have

FUNDAMENTALLY WRONG

Protecting North Dakotans' Right to Equal Representation

SUMMARY

In November 2021, the North Dakota Legislature passed a redistricting plan that has become the focal point of significant legal challenges. The redistricting map, particularly related to Districts 4 and 9, has been criticized for violating the Equal Protection Clause of the 14th Amendment, and raising concerns about the implications for voter rights both within North Dakota and across the United States. Districts 4 and 9 were divided into subdistricts where residents could only vote for one Representative, unlike other districts where residents could vote for two Representatives. This reduction in voting power is a significant issue, as it raises concerns about whether the residents of these districts are being afforded the same opportunities to participate in the political process as residents in other parts of the state.

As stakeholders in one of the court cases and defenders of voting rights in our districts, we are now asking for help in reinstalling our voting rights and equal representation.

WHAT IS AT STAKE

If left to stand, this court decision would:

- ✓ Reduce voting power in Districts 4 and 9 because they can only have ONE representative while all other districts have two.
- ✓ Set a dangerous precedent where laws set by Congress could force states to violate the Equal Protection of the 14th Amendment.
- ✓ Lead to more focused districts that reflect the demographics of specific populations, potentially reducing the influence of broader, more diverse voter groups.

BACKGROUND

After the 2021 special legislative session, two lawsuits emerged in response to North Dakota's new redistricting plan. Both lawsuits argue that the redistricting map was drawn in a manner that either diminishes or unjustly enhances the voting power of specific racial groups and unfairly reduces the voting rights of residents in Districts 4 and 9.

Case 1: Turtle Mountain Band of Chippewa Indians, et al. v. Michael Howe (Case No. 3:22-cv-22)

Filed in December 2021, this case was brought by the Turtle Mountain Band of Chippewa Indians, the Spirit Lake Tribe, and other plaintiffs against North Dakota. They argued that the redistricting map violated Section 2 of the Voting Rights Act (VRA) by diluting Native American voting power. The plaintiffs claimed that the map either "packed" Native Americans into a single district or "cracked" them across multiple districts to minimize their influence.

In November 2023, a federal judge ruled in favor of the plaintiffs, finding that the map was discriminatory and ordering North Dakota to redraw it. When the state failed to produce a new map by the court-ordered deadline, the court adopted the plaintiffs' proposed map. The state

has since appealed the decision, to the 8th Circuit Court of Appeals. The appeal is pending. (We are not involved in this lawsuit, but it has implications for North Dakota voters).

Case 2: Charles Walen v. Doug Burgum, Governor of North Dakota, et al. (Case No. 1:22-cv-00031)

This lawsuit was filed against North Dakota in February 2022 by Charles Walen and Paul Henderson, residents of the districts, who argued that the sub-districts in Districts 4 and 9 constituted an unconstitutional racial gerrymander under the Equal Protection Clause of the Fourteenth Amendment. A three-judge panel granted North Dakota's motion for summary judgment, finding that the Legislature had good reasons and strong evidence to believe the subdistricts were required by the VRA and were narrowly tailored to the State's compelling interest in complying with the VRA, and sufficient to withstand Equal Protection Clause analysis.

The plaintiffs have appealed the decision directly to the U.S. Supreme Court (SCOTUS). Our appeal was supported by the attorneys general of 14 other states with an amicus brief.. In an unprecedented move, the State of North Dakota has since submitted a memorandum suggesting that the Supreme Court should reverse the decision the district court had made

in its favor and reexamine its approach to VRA compliance. In another unusual twist, the Supreme Court has invited the U.S. Solicitor General to submit a brief on the matter. We are waiting for the USGS response to SCOTUS. The case is likely to take 1 of 2 directions: a. SCOTUS agrees with ND and reverses the lower court and sends the case back to ND for further proceedings, or b. SCOTUS calls the case for full briefing and argument before the full court—into spring 2025.

CONTROVERSIES AND IMPLICATIONS

The division of Districts 4 and 9 into sub-districts has led to significant controversy, particularly regarding the role of race in redistricting:

1. **Reduction in Voting Power:** The creation of subdistricts reduced the voting power of residents in Districts 4 and 9, allowing a resident to vote for only one representative instead of two as in the rest of the state.
2. **Racial Gerrymandering Allegations:** The district court found that race was a major factor in creating the sub-districts but believed that the state was compelled to do so under the VRA. The Plaintiffs in Case 2 argue that the state and the district court failed to consider thorough analysis of past election results, district statistics before subdistricting, racially polarized voting, the effect of partisanship, and other factors typically considered in racial gerrymandering cases. These are points later reiterated by the State in their request to the Supreme Court to vacate the district court's decision.

Furthermore, the VRA establishes a two-pronged test to determine whether members of a minority group have less opportunity than other voters to elect representatives of their choice and participate in the political process. Both elements must be proven to establish liability under Section 2 of the VRA. The first element focuses on whether minority voters can elect their preferred candidates, while the second addresses their ability to participate meaningfully in the political process (for instance, access to polls). The group must prove both elements, which they did not.

3. **Prioritizing Statute Over the Constitution:** In ruling in other cases involving the VRA and 14th Amendment, SCOTUS has consistently backed the Constitution noting

that "Congress does not have the power to authorize the individual States to violate the Equal Protection Clause." 403 U.S. 365, 380, 382 (1971) with Justice Clarence Thomas later stating, "The Constitution is supreme over statutes, not vice versa. Therefore, if complying with a federal statute would require a State to engage in unconstitutional racial discrimination, the proper conclusion is not that the statute excuses the States discrimination, but that the statute is invalid."

NATIONWIDE IMPLICATIONS

If the SCOTUS allows the decisions in these cases to stand, the implications could extend beyond North Dakota, influencing voter rights and redistricting practices nationwide:

1. **Precedent for Racially Based Districting:** The case could set a legal precedent that allows or even encourages the creation of legislative districts based on racial or ethnic considerations.
2. **Changes in Political Strategy:** If racial considerations become more prominent in districting, political strategies may shift toward more racially focused campaigns, increasing polarization. To quote Justice Clarence Thomas, redistricting based predominately on racial goals is "radically inconsistent with the [Reconstruction] Amendments' command that government treat citizens as individuals and their goal of a political system in which race no longer matters."
3. **Legal Challenges Across the Country:** The outcomes could inspire similar legal challenges in other states, potentially leading to new national standards for redistricting.

CONCLUSION

The redistricting cases in North Dakota highlight the complex interplay between race, representation, and voter rights. The decisions made by the courts, particularly by the U.S. Supreme Court, will have far-reaching consequences, not only for the residents of North Dakota but also for voters across the nation. The legal battles underscore the importance of ensuring that redistricting practices are conducted in a manner that upholds the principles of equal protection and fair representation, as enshrined in the U.S. Constitution.



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
307 5th Avenue New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

69th Legislative Assembly Senate State and Local Government Committee February 19, 2025

Testimony of Chairman Mark Fox

Madam Chair Roers and members of the State and Local Government Committee, I am Mark Fox, Chairman of the Tribal Business Council of the Mandan, Hidatsa, and Arikara Nation. The MHA Nation opposes Senate Concurrent Resolution No. 4014, which would “consider studying election and political party activities in a legislative district containing tribal lands and whether modification of electoral practices are necessary to ensure every qualified elector is able to freely participate in voting in an election in this state.”

As you are aware, *Walen v Burgum* was recently decided in favor of redrawing legislative district boundaries to allow for proper representation for all citizens of North Dakota, including Native Americans.¹ The case was appealed, but the Supreme Court dismissed the appeal believing that the matter had already been properly decided in the U.S. District Court for the District of North Dakota which held that the redistricting was done for good reason and supported by strong evidence.²

The State legislature has already passed the redistricting measures. The proposed study is entirely unnecessary and a waste of state resources that could be spent on matters which the Legislature has not already addressed.

¹ *Walen v. Burgum*, 700 F. Supp. 3d 759 (D.N.D. 2023).

² *Id* at 4.

The proposal of this study in and of itself feels both discriminatory and retaliatory against those voters that stood for their right to fair and equal representation. It makes me wonder about the actual motives of CR 4014's sponsors. One of the sponsors, Senator Walen, was the lead plaintiff in the *Walen* case, where he was unsuccessful in his attempt to undo the redistricting legislation this body adopted just two years ago. Senator Walen represents our District. Yet he has not even talked to the MHA Nation about CR 4014 or offered any justification for the study.

Historical progress was made through the recent redistricting efforts. It ensured the right of qualified voters to "freely participate in voting in an election in this state."³ The proposed study wishes to evaluate this very question which has already been conclusively decided. It is my belief that the aim of this study is not to answer a legitimate question but to divide North Dakotans and attempt to stir up resentment unnecessarily. This study would serve absolutely no legitimate purpose and as such I respectfully ask that the Committee vote no on CR 4014.

Respectfully submitted,

Mark N. Fox, Tribal Chairman

³ Directing the Legislative Management to Consider Studying Election and Political Party Activities in a Legislative District Containing Tribal Lands, S. Con. Res. 4014, 69th Leg., (ND 2025).

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SCR 4014
2/21/2025

Directing the Legislative Management to consider studying election and political party activities in a legislative district containing tribal lands.

10:24 a.m. Vice Chairman Castaneda called the hearing to order.

Members Present: Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Members Absent: Chair Roers

Discussion Topics:

- Committee action

10:24 a.m. Senator Lee moved Do Pass.

10:24 a.m. Senator Walen seconded the motion.

Senators	Vote
Senator Kristin Roers	AB
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	N
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 4-1-1

Senator Walen will carry the bill.

10:26 a.m. Vice Chairman Castaneda closed the hearing.

Susan Helbling, Committee Clerk

REPORT OF STANDING COMMITTEE
SCR 4014 ([25.3077.01000](#))

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO PASS** (4 YEAS, 1 NAY, 1 ABSENT OR EXCUSED AND NOT VOTING). SCR 4014 was placed on the Eleventh order on the calendar. This resolution does not affect workforce development.