

Public Comments

Montana Districting and Apportionment Commission
Comments received by 5 p.m. on November 25, 2022

Distributed electronically November 25, 2022

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Friday, November 18, 2022 4:47 AM
To: Districting
Subject: MDAC Comment from: Rebecca Beard

From: Rebecca Beard beta01@blackfoot.net
Residence: Elliston

Message:

HD Proposal 3 would establish challenging boundaries for campaigning, specifically relating to transportation routes.

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Sunday, November 20, 2022 10:21 PM
To: Districting
Subject: MDAC Comment from: Janice Benham

From: Janice Benham janharry.benham@gmail.com
Residence: Bozeman, MT

Message:

Dear Chairman Smith and Members of the Commission:

I am a Montana Citizen who lives in Bozeman, and I attended one of the sessions on redistricting that you held in Bozeman earlier this year. I read a short statement that I had prepared, and then I listened to many of the statements presented by others.

I was struck by the variety of concerns that were presented, and by how very difficult your job is. Satisfying all of the legitimate concerns that were raised with one map which must ultimately be drawn seems an impossible task. I began to think of what is most important, aside from the givens that the districts should be compact and contiguous according to the Montana Constitution, and that minority rights to fair representation must be considered under the Voting Rights Act.

To me, the most important consideration after the givens listed above is that the political lean of the districts should fit the data from the 2016-2020 elections. This data shows that on average the vote count was 57 percent Republican and 43 percent Democrat. Any map that does not reflect this breakdown as closely as possible is a map that gives an unfair advantage to one party or the other. I asked myself if I would be willing to have my own district skewed a bit in such a way that its political lean was changed in order to meet the 57/43 percent breakdown statewide, and the answer was definitely "yes." The Legislature is where the laws are made, and its political makeup will ultimately affect me, and all Montanans, more than the makeup of our individual districts.

Thus, the most important consideration is that the citizens of Montana feel that redistricting was done as fairly as possible according to the voting data used. Otherwise, there will be people who feel that their voices are not being given a fair chance to be heard, which leads to frustration and often further political polarization. Political parties cannot then wait to come into power so that they can undo what the other party did when it held power. That is not the way that a society moves forward. It makes progress best when all voices can be heard, compromises are made, and legislation has the support of many different groups of people.

Please make overall fairness of your chosen map your ultimate goal, with a political breakdown of 57 percent Republican and 43 percent Democrat. That is the way to make the citizens of Montana feel justly treated, to put statesmanship ahead of partisan politics, and to make your final decision the most defensible in the face of any challenge.

Thank you so much for taking on the extremely difficult job of redistricting, for putting so many long and patient hours into it, and for soliciting public input such as this.

Sincerely,

Janice Benham
1421 Ash Dr.
Bozeman, MT

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Tuesday, November 22, 2022 12:15 PM
To: Districting
Subject: MDAC Comment from: Patrick Dougherty

From: Patrick Dougherty patrickkdougherty@yahoo.com
Residence: Helena, MT

Message:

Plans 1 and 4 are the only acceptable plans. 2 and 3 are unconstitutional and violate Montana State law 5-1-115(3).

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Sunday, November 20, 2022 3:03 PM
To: Districting
Subject: MDAC Comment from: Cameo D Flood

From: Cameo D Flood Cflood@bresnan.net
Residence: Missoula, MT

Message:

Missoula County Republicans have developed a map for redistricting in the county. It maximizes the house districts within the county boundary to be within 1% of the 10827 people even distribution. It is also based on community of interest and some districts are competitive as demonstrated by the partisan change depending on the data from various races.

Date for our map is available at <https://davesredistricting.org/join/1103fecc-dd9f-484a-865b-9c87caf5a27f>.

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: Kendall Cotton <kcotton@frontierinstitute.org>
Sent: Friday, November 18, 2022 3:57 AM
To: Districting
Subject: frontier institute comment
Attachments: FI-Montana-Redistricting-Analysis.pdf

Good morning, I'd like to submit the attached analysis from the Frontier Institute for the commission's consideration in selecting a state legislative map. I would be happy to provide a connection to our visiting fellow Sean Trende should the commission wish to ask him questions regarding his analysis.

Frontier Institute is a nonpartisan, nonprofit, free market think tank based in Helena.

Thank you,

- Kendall

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Kendall Cotton
CEO - Frontier Institute
Cell: (406)239-5093
frontierinstitute.org



INTRODUCTION

In light of the 2022 election results which appear to show Republicans have secured a supermajority of seats in the Montana state legislature, I have been asked to review the underlying partisanship of four maps submitted to the state’s independent redistricting commission and to determine if they comply with the guidelines proposed by the commission. In particular, I was asked to evaluate whether the maps may be classified as political gerrymanders, and/or whether they appear to be drawn primarily to benefit one party over the other. I was asked to use metrics used in court cases to date. This analysis will help inform Montanans about the possible makeup of future legislatures based on the proposed legislative redistricting maps and, by extension, the types of policy changes that Montanans might be able to expect from their government in the coming years.

Courts have generally used two approaches to determine whether a map is a partisan gerrymander. The first approach can broadly be thought of as a “partisan fairness” metric. These metrics compare electoral outcomes in districts to various theories of what a “fair” map might look at. I examine two commonly utilized “partisan fairness” metrics: The efficiency gap and the median-median score. The second approach instead uses computer simulations to explore what maps in the state that are drawn without reference to partisanship might look like. It then compares proposed or enacted maps to this simulation, to determine whether those maps are outliers. I conclude that maps 1 and 4 do not appear to be drawn primarily to benefit one party and are not political gerrymanders, regardless of the metric employed. Maps 2 and 3, however, do appear to heavily benefit the Democratic party.

THE EFFICIENCY GAP

The efficiency gap was proposed by Eric McGhee in a 2013 article in *Legislative Studies Quarterly*. It is motivated by the following intuition: When a party seeks to draw a gerrymander, it does so by attempting to “waste” as many of the other party’s votes as possible. It does that in two ways. First, the party tries to create as many districts that will narrowly elect its

candidates as it can. When this happens, the votes of electors who support the other party's candidates become distributed inefficiently: They are cast in districts where they do not convert those votes to seats. Second, in places where the redistricting party must create a district won by the other party, it does so by packing as many voters as possible into that district.

Thus, "wasted votes" are those votes that are either cast in a district where they don't lead to the party capturing a seat, or those votes cast for a party beyond that which is needed to win the seat. So if 100,001 votes are cast in a district, and a party wins 50,000 votes, it loses the district by a vote and wastes 50,000 votes. If it wins 50,001 votes, it wins the district, and doesn't waste any votes. If it wins 100,000 votes, it would have been better off if some of those votes were spread into other districts, making them competitive; it wastes 49,999 votes.

The efficiency gap looks at the "net" wasted votes for each parties. If more Republican votes are wasted than are Democratic votes, a positively-signed efficiency gap is created, suggesting pro-Democratic bias. If more Democratic votes are wasted than Republican, a negatively-signed efficiency gap is created. The net wasted votes are then divided by the total number of votes cast, creating a metric that can be thought of as the percentage of votes cast in a state that are, on balance, wasted for one party or the other. The more one party's votes are wasted, the more the efficiency gap grows.

One of the upshots of the efficiency gap is that it awards a "winners' bonus" to the party that wins seats. That is to say, it does not proceed according to proportionality (nor do any of the metrics proposed in courts). This is in line with a voluminous body of political science work suggesting that single member districts do not naturally produce proportional representation. That is to say, on balance – though this is not always the case – maps drawn³ without respect to politics will tend to produce non-proportional outcomes. For the efficiency gap, it tends to award two percent of the seats for every percent of the popular vote a party wins beyond 50%. Notably, at 50% of the popular vote, the party would be entitled to 50% of the seats. As a theoretical matter, then, the efficiency gap always results in the party that wins a state's popular votes winning control of the chamber.

The efficiency gap has been subjected to a number of criticisms, including by myself, but there are three important leading criticisms. First, the efficiency

gap is unduly sensitive to the 50% mark. The example from the earlier paragraph illustrates this nicely. A party that wins 50,000 votes wastes 10s of thousands of votes, but a miniscule change in the political environment leads to the party not wasting any votes. A shift of this magnitude can have a significant impact on the overall efficiency gap score. You can imagine a world where a party gets 49% of the vote in one election, resulting in a large efficiency gap against it, while in the succeeding election it receives 51% of the vote, resulting in a large efficiency gap against the other side.

In the hypothetical world upon which the efficiency gap is based, this isn't a problem, since the gerrymandering party dictates where the votes go. But the frame for the efficiency gap assigns too much agency to the gerrymandering party. That party can't assign actual votes. It can take a guess as to how votes will go, but can't know for certain. In the absence of such information, a true gerrymander would try to build in a cushion in a district; the goal wouldn't be 50%+1 districts, but rather districts where the party wins 55 or 60% of the vote.

Additionally, the efficiency gap doesn't take into account a state's political geography. That is to say, some states will tend to naturally produce large efficiency gaps due to partisans being concentrated in one location.⁴ Indeed, the legal test for the efficiency gap suggested by McGhee in a subsequent article, co-authored with Nicholas Stephanopoulos, specifically empowers a government to rebut a claim that it created an unconstitutionally large efficiency gap by demonstrating that its efficiency gaps are due to compliance with legitimate redistricting considerations or the state's underlying political geography.⁵

Finally, the efficiency gap doesn't answer the question "how much gerrymandering is too much." Indeed, it is on these shoals that the federal challenge to the efficiency gap foundered in 2019.⁶ Although plaintiffs in cases have suggested various thresholds to answer the question "when does an efficiency gap become too large," including a proposed threshold of 0.07 for legislative maps, it is never entirely clear where those thresholds should be located.⁷

MEAN MEDIAN

Another partisan fairness metric is the “mean median” metric. The mean median metric simply looks at a party’s statewide vote share and subtracts the party’s median district vote share. It is motivated by the notion that things that happen at the extremes of a map do not matter much, particularly for legislative districts. Instead, what we are most concerned about is ensuring that the middle district is one that is in line with the state’s underlying partisanship. That is to say, in a 99-seat chamber, the partisanship of seat number 50 is far more important than the partisanship of the 99th most Republican seat, because seat number 50 determines who controls the chamber. By ensuring that a party’s performance in seat number 50 lines up with the party’s statewide performance, the mean median score limits a party’s ability to gerrymander control of the chamber to its benefit, even if it might gerrymander the size of its majorities. The mean median score, however, suffers from many of the critiques above.

EVALUATIONS OF THE PROPOSED MAPS UNDER PARTISAN FAIRNESS METRICS

Critiques aside, the mean-median and efficiency gap scores have been utilized by experts in the field and accepted by some courts. I’ve calculated the mean-median and efficiency gap scores for the proposed submitted plans. To calculate the scores, I have taken the races that the redistricting commission has identified as appropriate for measuring partisanship, and calculated vote totals in each district for each map. I then calculated the appropriate mean median and efficiency gap scores using the statistical programming package R.

As you can see, Plans 1 and 4 create small pro-Republican efficiency gaps, which are below the thresholds proposed by Courts for identifying a gerrymander. Plans 2 and 3, however, create significant pro-Democratic efficiency gaps. Indeed, they are as large as the efficiency gaps created by the state of Wisconsin’s plan which was at the center of the Gill litigation did in 2014.⁸

The mean-median scores are a bit of a mixed bag. Plans 1 and 4 create modest pro-Republican mean-median scores, while Plans 2 and 3 create modest pro-Democratic mean-median scores. It is worth observing, however, that the median-median score is problematic once a state’s partisanship exceeds 55% for one party or the other, as is the case here.⁹

Mean-Median and Efficiency Gap Scores, Proposed Montana Plans		
Plan	Efficiency Gap	Mean Median
Plan 1	-0.022	-0.027
Plan 2	0.099	0.029
Plan 3	0.100	0.014
Plan 4	-0.033	-0.038

SIMULATIONS

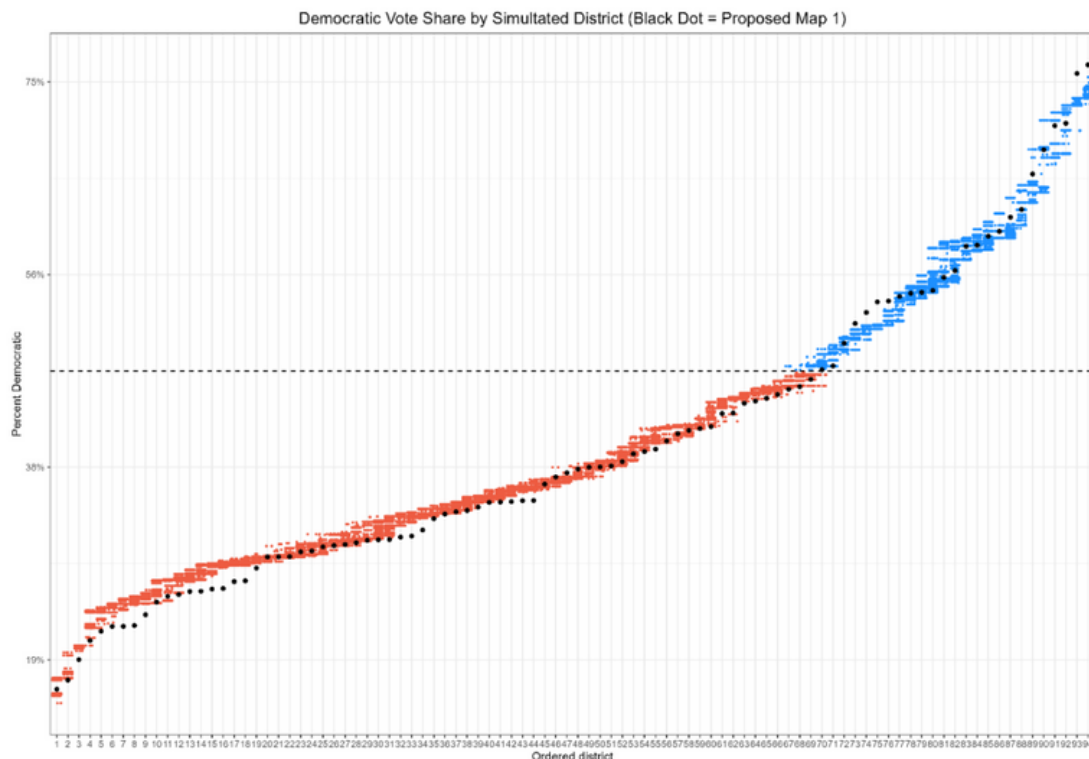
A competing approach is to use computer simulations to identify what maps drawn without respect to politics would look like, and then compare proposed or enacted maps to those simulations. This is a technique I’ve utilized in various courts, including New York and Maryland.¹⁰ While the details are quite complicated and beyond the scope of this paper, the idea is this: A computer draws maps with the same basic parameters as the map drawers, but it does not have access to partisan data.¹¹ In other words, it attempts to mimic the approach the map drawers would have taken if they were truly drawing maps without partisan information. If the proposed/enacted maps resemble the computer-drawn maps, we can conclude that the maps were, in fact, drawn without excessive reliance on partisan data. If, however, the produced maps do not resemble the computer-drawn maps, those maps were likely drawn with excessive reliance on partisan data.

Here, the computer was instructed to take the 43,717 Montana census blocks with some population (unpopulated blocks were merged with neighboring blocks for computational efficiency purposes) and to build 1,000 maps according to the following rules: Counties could not be split more than once, districts must be drawn to be compact, and the Voting Rights Act must be followed. There are a number of ways to facilitate the last parameter, but the most straightforward way is to “freeze” certain minority-majority districts in place. For purposes of this simulation, I instructed the maps to ignore the

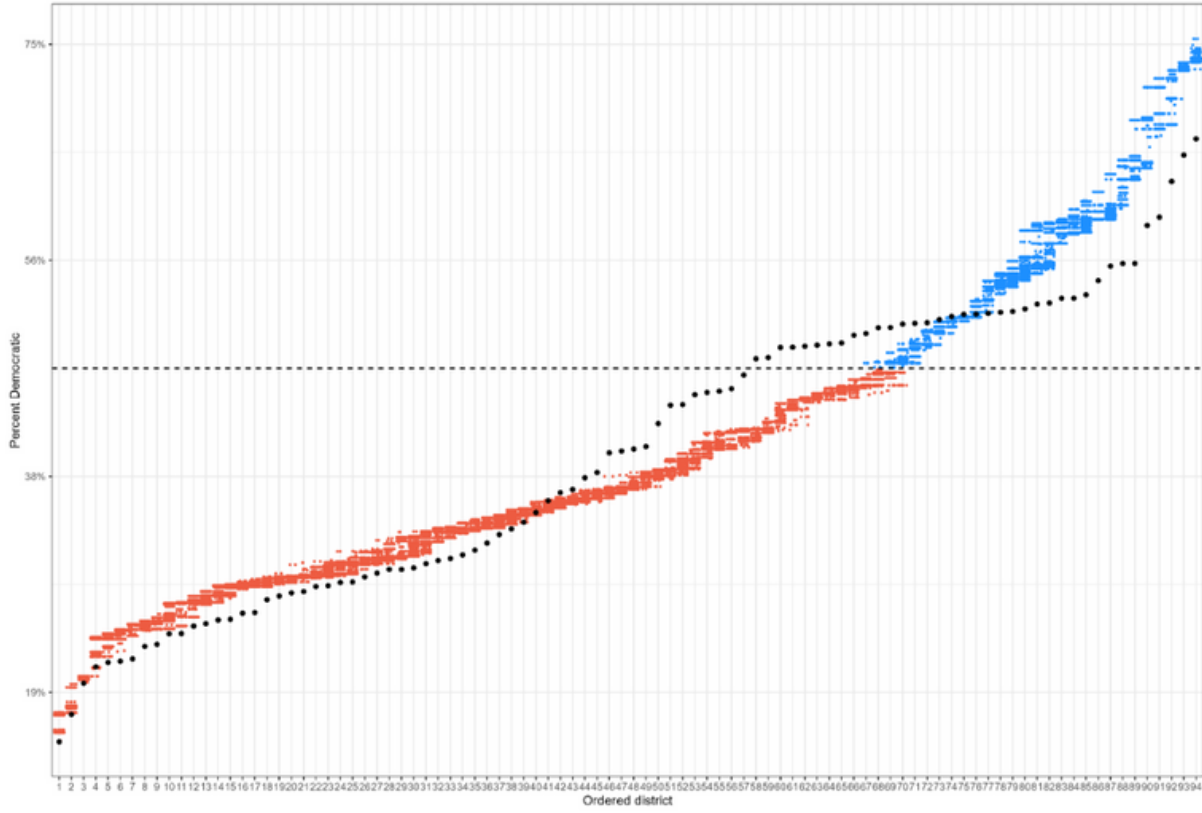
blocks in districts 15, 16, 31, 32, 41, and 42 of proposed Map 2. This ensures that every map in the ensemble has six majority-minority districts, which mirror the districts suggested in Map 2. This is a touch unfair to maps one and four, which have their own sets of slightly different “ability-to-elect” districts, but probably suffer only slightly in the comparison.

The results once again suggest that Maps 2 and 3 are partisan outliers, while Maps 1 and 4 more carefully follow the partisanship of the state. One way to display the data are with dot plots. The idea is as follows: The program takes the first map, looks for the most heavily Republican district, and finds the partisanship of that district. A dot is then placed on the map at that level of partisanship. It then does this for all 1,000 plans, so that the left-most column shows the partisanship of the most heavily Republican district in all 1,000 plans. It then does the same things for the second- third- and fourth most heavily partisan districts, and so forth.¹²

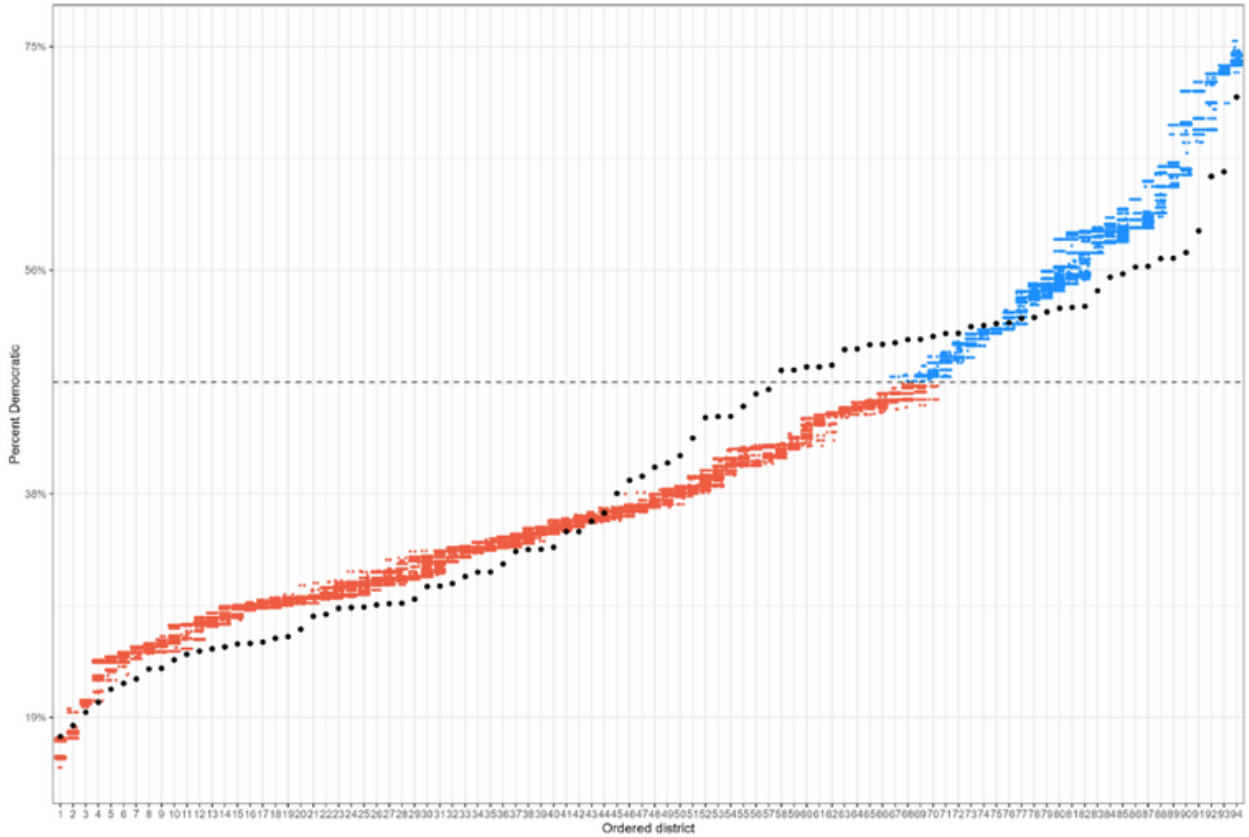
The following four charts compares the outcomes of the simulations to the four plans. For each proposed map, the partisanship of the most-Republican district, second-most-Republican district, and so forth, is reflected by a black dot. If a dot falls within the range created by the ensemble, the district roughly reflects what the ensemble produced. If it falls outside the range, it is an outlier, at least with respect to maps drawn without respect to politics.

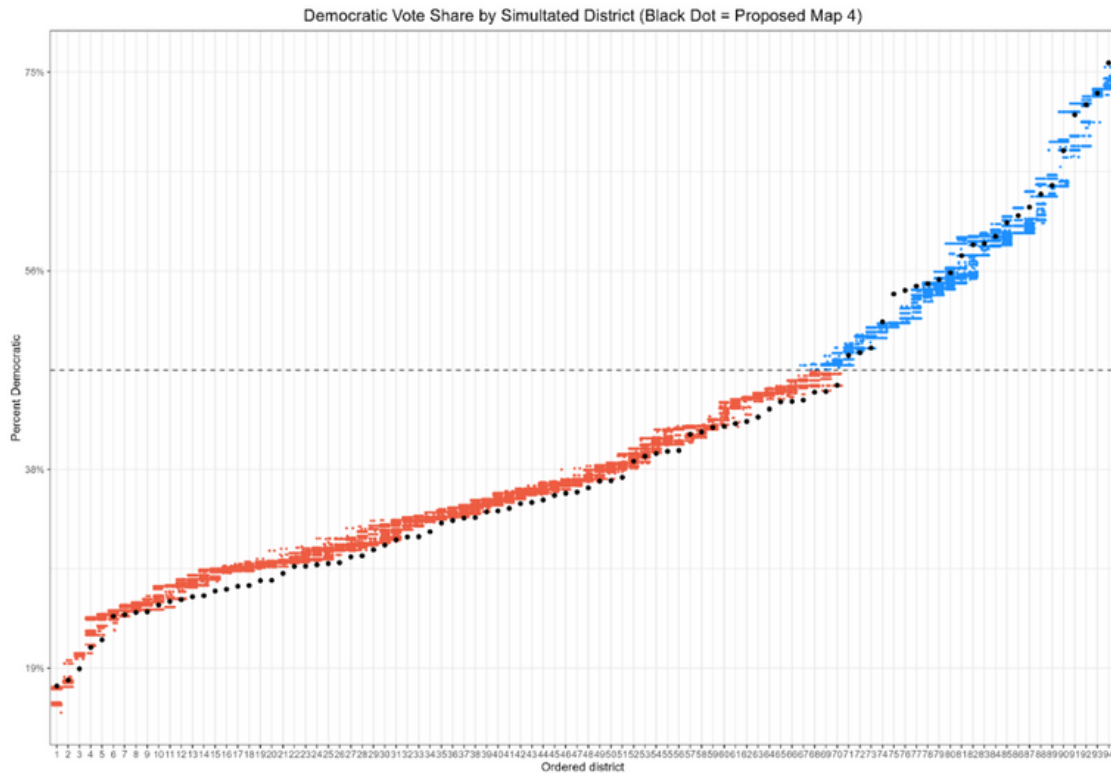


Democratic Vote Share by Simulated District (Black Dot = Proposed Map 2)



Democratic Vote Share by Simulated District (Black Dot = Proposed Map 3)





As we can see, maps 1 and 4 reasonably follow the distribution of districts produced by the politics-free maps. Two and three do not. Moreover, the latter two maps deviate in a very particular fashion. The maps roughly follow the distribution that we would expect in the reddest districts. Once we begin to approach more competitive ranges, however, a particular pattern emerges. Districts that we would expect to be strongly Republican are pushed more heavily toward equality, or even into the Democratic-leaning range, while naturally occurring Democratic districts are made much more Republican.

This pattern is the “DNA of a gerrymander.”¹³ Heavily Democratic areas are cracked – but not too much – so that Democratic partisans can be spread into otherwise-Republican areas of the state, creating more districts with a Democratic lean than we would expect from a neutrally drawn map with no intention to benefit a party. It is a small wonder, then, that these districts produce strong pro-Democratic efficiency gaps.

We can consolidate these into a single view by employing the “gerrymandering index,” proposed by Bangia et al (2017) and endorsed by McCartan & Imai in their paper setting forth the algorithm used to generate the districts in this report. To calculate the gerrymandering index, we take the ranked partisanship data from above for the maps, then create an average partisanship score for each one of the ranks. In other words, we look

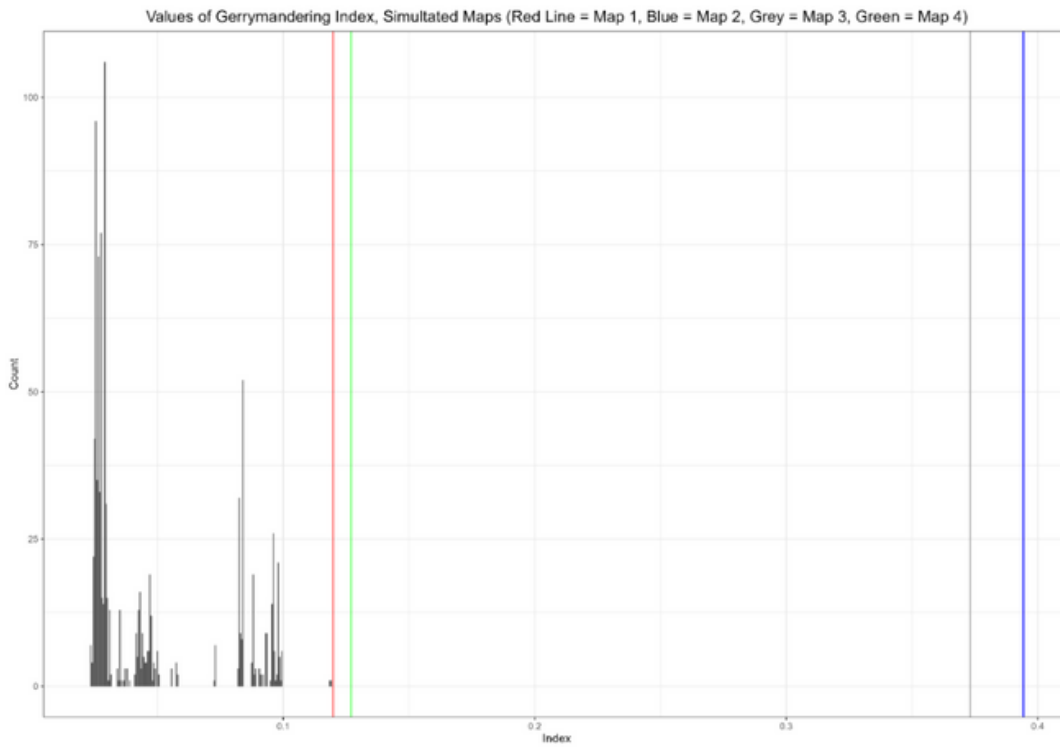
to see what, on average, the most heavily Republican district looks like in a map drawn without respect to politics, what the second-most heavily Republican district looks like, and so forth. We then see, for each proposed map, how far its ranks deviate from the respective averages. So, for example, if the 3rd most Republican district in the map ensemble is, on average, 25% Republican, and a proposed map has a 3rd most Republican district that is 26% Republican, the deviation is one percent. On the other hand if the 50th most Republican district in the random ensemble has a partisanship of 48% Republican, and it is drawn to have a partisanship of 60% Democratic, the deviation is 12%. To emphasize large deviations (and to make them all positively signed) these values are squared and added together to give us a sense of how far maps drawn without respect to political data will tend to vary naturally from expectations. The square root is then taken, which puts us back on the percentage scale.

Overall, this gives us a sense of how far the maps, taken as a whole, deviate from what we would expect a map drawn without respect to politics would be. The larger a plan's gerrymandering index is compared to the gerrymandering indices produced by the politics-free ensembles, the less credible the argument is that the map was not drawn to bolster one party's prospects.

The results here are striking. Maps 1 and 4 are on the fringes of the distribution of the neutrally-drawn maps. It is notable, however, from the plots above that the deviations produced by those maps occur in safely Republican territory; Map 1 in particular shows almost the exact same distribution in competitive districts as does the neutral ensemble. This may be an outgrowth of Maps 1 and 4 using slightly different configurations of minority-majority districts.

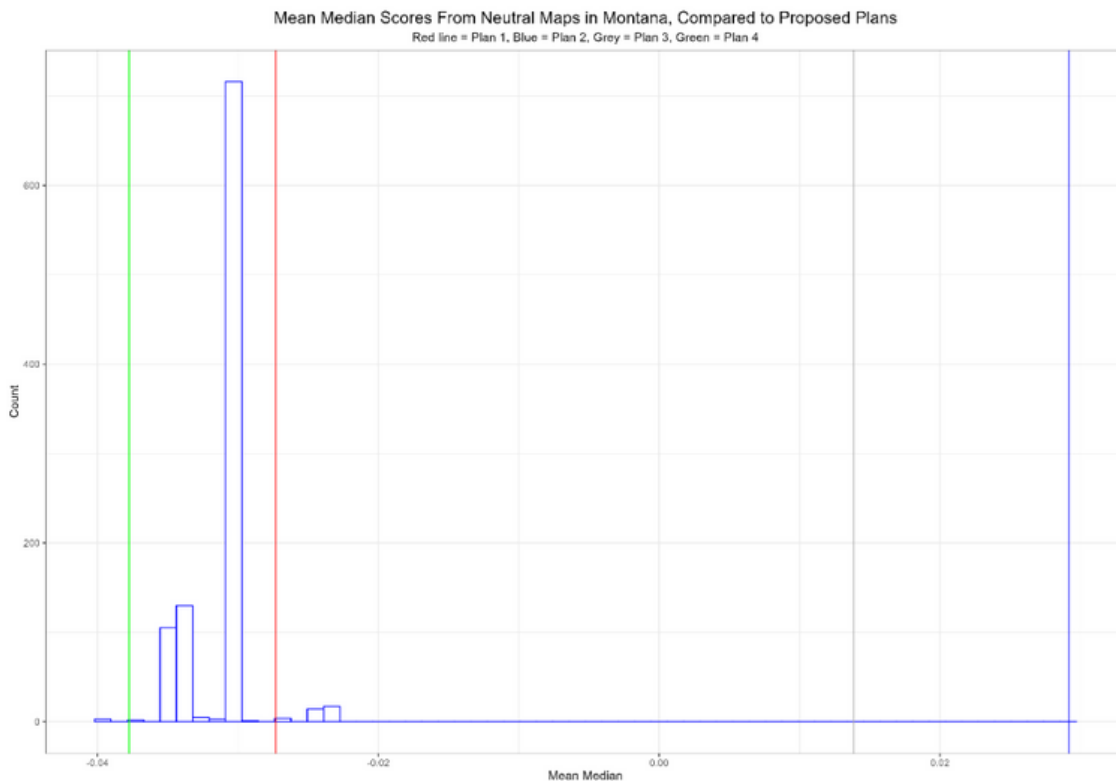
Republican territory; Map 1 in particular shows almost the exact same distribution in competitive districts as does the neutral ensemble. This may be an outgrowth of Maps 1 and 4 using slightly different configurations of minority-majority districts.

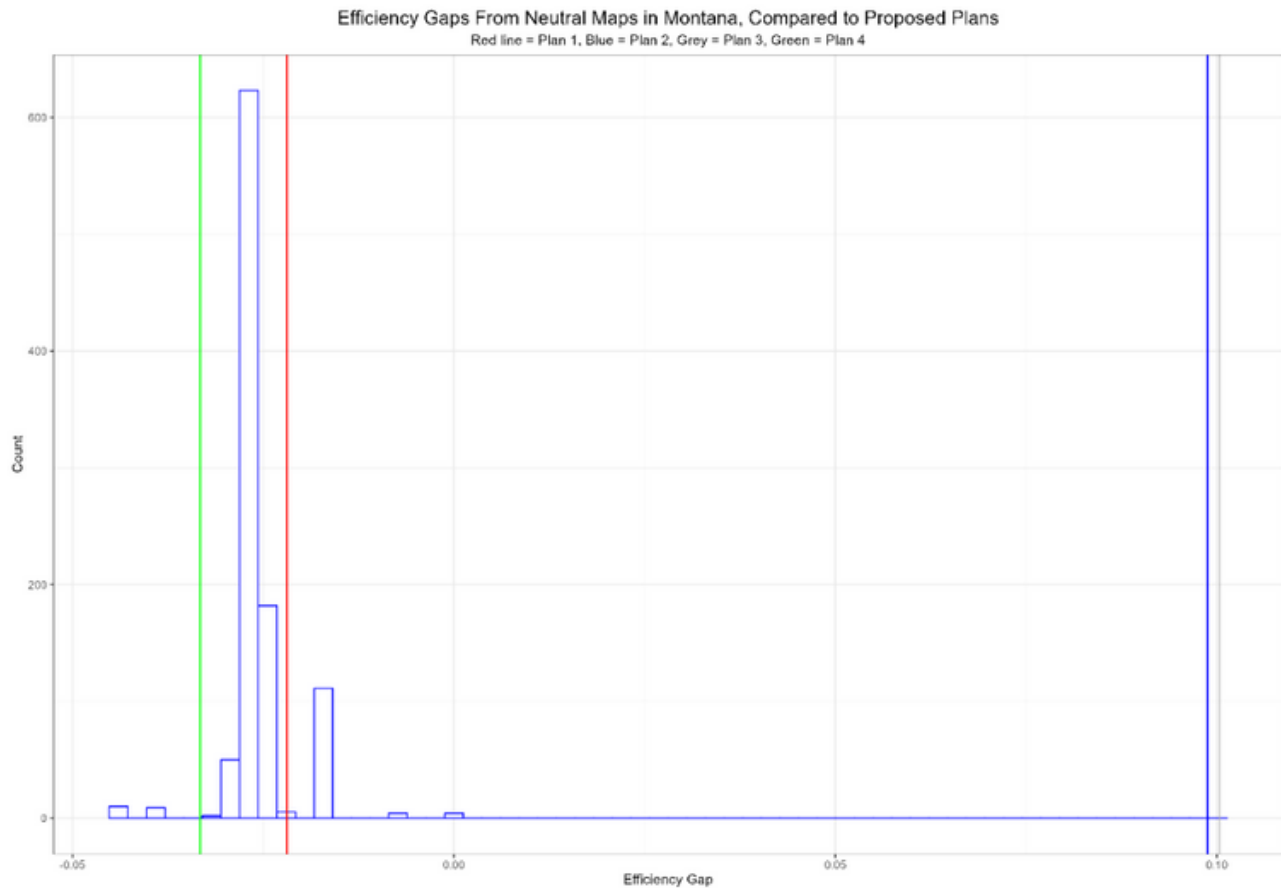
Maps 2 and 3, however, are extreme outliers. Their gerrymandering indices look nothing like those produced by politics-neutral maps. The inference drawn here is that they are not politics-neutral maps; they are drawn to help Democrats.



PUTTING IT ALL TOGETHER

Finally, we can remedy at least one of the drawbacks of the partisan fairness metrics by looking at the efficiency gaps and mean-median scores produced by the neutral ensemble, and comparing it to those produced by the proposed maps; this allows us to view the range of efficiency gaps against the backdrop of the state’s political geography:





As you can see, the slight Republican bias from the mean-median scores and efficiency gap scores is replicated in the ensemble maps, which tend to produce slight Republican advantages. This is because Democratic partisans in Montana are increasingly concentrated in a handful of counties. As an example: half of Joe Biden’s vote total from 2020 was cast in just 9 counties; those same counties accounted for less than a third of Donald Trump’s vote totals. In a system of elections based on single member districts, this will inevitably work against Democrats, particularly as the state becomes more Republican overall.

In other words, the proposed maps may have similar mean-median scores in absolute terms, but the scores in maps 2 and 3 are not reflective of the underlying partisanship of the state. The scores for maps 1 and 4 are not.

CONCLUSION

No matter how one looks at it, the same conclusion flows from the data. Maps 1 and 4 produce small efficiency gaps, resemble the partisanship of maps drawn without heavy reliance on partisan data, and produce efficiency gaps similar to those produced by maps drawn without heavy reliance on partisan data. The same cannot be said about maps 2 and 3, which consistently present as outliers. It appears, based upon the data, that they were drawn primarily to benefit the Democratic Party. Depending on which proposed legislative redistricting map is eventually adopted by the commission, Montanans might expect significant differences in the partisan makeup of future legislatures.

ABOUT THE AUTHOR



Sean Trende is a visiting fellow for Frontier Institute. He is also the senior elections analyst for RealClearPolitics and a non-resident fellow for the American Enterprise Institute. He is the author of "The Lost Majority: Why the Future of Government Is Up for Grabs and Who Will Take It," and co-authored the Almanac of American Politics 2014. Before becoming a full-time political analyst, Sean practiced law for eight years at Kirkland & Ellis

LLP, and Hunton & Williams LLP, where he represented clients in a variety of contexts, from state trial courts to the Supreme Court of the United States. Sean earned a juris doctorate from Duke University, a master's degree in political science from Duke University and bachelor's degree from Yale University.

END NOTES

- 1 <https://dailymontanan.com/2022/11/09/montana-legislature-will-have-a-republican-supermajority-and-psc-will-remain-all-gop/>
- 2 "Measuring Partisan Bias in Single-Member District Electoral Systems," *Legislative Studies Quarterly*, v39, n1, February 2014.
- 3 E.g., Kendall, M.G. and A. Stuart, "The Law of the Cubic Proportion in Election Results," *The British Journal of Sociology*, v1, n3, September 1950.
- 4 Chen, Jowei & Jonathan Rodden, "Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures," *Quarterly Journal of Political Science*, v8 (2013).
- 5 Stephanopoulos, N. & Eric M. McGhee, "Partisan Gerrymandering and the Efficiency Gap," *The University of Chicago Law Review*, v.8, n.2 (2015).
- 6 *Rucho v. Common Cause*, 588 U.S. __, 139 S.Ct. 2484 (2019).
- 7 This was the threshold suggested by Plaintiffs' expert, Simon Jackman, at the district court level in the Gill v. Whitford case. He did so because such an efficiency gap would typically translate to a gerrymander of one seat.
- 8 See the Court's slip opinion at 18, available at https://www.brennancenter.org/sites/default/files/legal-work/Whitford_OpinionandOrder_11.21.2016.pdf.
- 9 E.g., <https://planscore.org/plan.html?20210927T160804.264296605Z> ("The mean-median difference is shown only where the parties' statewide vote shares fall between 45% and 55%. Outside this range the metric's assumptions are not plausible.")
- 10 *Harkenrider v. Hochul*, available at https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/Decision_and_Order_6.2.22.pdf; *Szeliga v. Lamone*, available at https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/Memorandum_Opinion_and_Order_3.25.22.pdf
- 11 McCartan, Cory & Kosuki Imai, "Sequential Monte Carlo for Sampling Balanced and Compact Redistricting Plans," available at <https://arxiv.org/abs/2008.06131>.
- 12 See McCartan & Imai, *supra*.
- 13 See Gregory Herschlag et al., "Quantifying Gerrymandering in North Carolina" 7 *Statistics & Pub. Pol'y* 2 (2018) (referring to this pattern as the "signature of gerrymandering").



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Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Sunday, November 20, 2022 3:37 PM
To: Districting
Subject: MDAC Comment from: Vivian V Hammill

From: Vivian V Hammill vivianhammill@gmail.com
Residence: CLANCY, MT

Message:

Dear Commission Members: I reside at 9 Panoramic Place, Clancy, MT in the South Hills just above St. Peter's hospital. My home is in Jefferson County by several hundred yards. This area has experienced incredible growth over the last 15 years. All the events, shopping, dog parks and library that my family and I utilize are in Helena. Even the wonderful hiking trails in the South Hills lead to Helena and are used by many, many folks from Lewis and Clark County. It is time to create a state House seat, like the proposal on HDP3 does with HD89. This part of northern Jefferson County and Lewis and Clark are inextricably intertwined and having a legislator who will have to contend with the overlapping issues will be critical for the next decade. Please include a district like HD89 on HDP3 in your final map. Thank you, Vivian V. Hammill

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Friday, November 18, 2022 1:00 PM
To: Districting
Subject: MDAC Comment from: Nancy Leifer

From: Nancy Leifer nancleifer@gmail.com
Residence: Missoula

Message:
Public Comment from Nancy Leifer,
On behalf of the League of Women Voters of Montana Submitted November 18, 2022

Dear Chairman Smith and Members of the Commission:

Montana created one of the first independent redistricting Commissions in the nation with our 1972 Constitution. Measures used to define political fairness indicate all of the legislative district maps Commissions adopted since 1972 had no significant political bias compared to party proportion of voters, based on election outcomes in the first election in which the maps were used. Maps drawn in 2000 and after resulted in the election of Native Americans proportional to the Native share of the state's population.

Redistricting is necessary every ten years to ensure that our elected institutions continue to be representative of our population. To comply with the Voting Rights Act, there must be enough majority-minority districts to allow for minority populations to elect representatives in proportion to their population. Since the 2000 census, Montana Commissions created sufficient majority-minority districts for Native American proportional representation.

Redistricting also corrects the imbalance between the number of voters who vote Republican or Democrat, and the number of seats each party holds in the Montana Legislature. Data from 2016-2020 indicate that 55-57% of Montana voters vote Republican, but in the 2021 Legislature, the Republican share of seats in the Montana House of Representatives was 67% and of the Senate was 62%. This over-representation of Republicans indicates that old district boundaries are disenfranchising voter representation at the state level. The current Commission adopted a goal to not unduly favor one political party. New district boundaries need to accurately reflect the political distribution of Montana voters.

Some public testimony to the Commission claimed that odd-shaped proposed districts in their communities are "gerrymandered". Gerrymandering has nothing to do with district shape. The Encyclopedia Britannica defines gerrymandering as "the practice of drawing the boundaries of electoral districts in a way that gives one political party an unfair advantage over its rivals." It is the impact of proposed districts that determines whether they are gerrymandered. The question is at what level the impact is being assessed. The Commission is charged with drawing a map that represents the entire state, therefore unfair political advantage should also be assessed at the level of the entire state, not at the level of one community or several counties.

There are other goals that the Commission set for itself: honoring the boundaries of communities of interest and creating districts that are "politically competitive" (i.e., districts where either party's candidate has a fair chance to win an election). Competitive districts strengthen democracy; they encourage voter turn-out and demand that candidates pay attention to a broad range of constituent concerns.

The League of Women Voters is a non-partisan organization. When the US Supreme Court made its 2019 ruling on gerrymandering, the League filed briefs on behalf of Republicans in the Maryland case and on behalf of Democrats in the North Carolina case. Our commitment is to the quality of our democracy and governance.

Elections are based on the one-person/one-vote concept. This is strengthened when districts are competitive. This is violated when district boundaries allow one party to dominate the legislature beyond its proportional share of the electorate and disenfranchise minorities and minority party voters. The structure put in place by the Commission's district boundaries will determine how well the 2024 legislature represents the diversity of Montana. The League urges the Commission to draw districts that support accurate representation of Montana voters.

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Wednesday, November 16, 2022 1:40 PM
To: Districting
Subject: MDAC Comment from: Anna Nugent

From: Anna Nugent annamn2@yahoo.com
Residence: Butte, Montana

Message:

The legislative districts in Montana currently favor one party significantly more than the advantage that party has earned at the ballot box. This is a violation of the rights of Montanans and needs to be corrected.

Article V, Section 14 of Montana's Constitution does not state that when drawing up the state legislative districts, the redistricting commission and legislature may disregard the rest of the Constitution and the rights it guarantees. The Constitution directs the legislature to ensure the purity of elections and guard against abuses of the electoral process. The citizens of Montana cannot trust that process when the legislative districts give one party 70% of the legislative control even though they average just 57% of the vote. In this situation, some votes count more than others. It's rigged. How can that be justified? Rigged districts are a clear abuse of the electoral process. They ignore the stated intent of the writers of the Constitution to improve equality of opportunity. And they undermine the rights of Montanans, including the rights to self-government and popular sovereignty.

Several comments made by commissioners while defending their proposed district maps are very concerning. These comments make clear that the intent of these commissioners is to use the redistricting guidelines as a gimmick to achieve a level of partisan advantage that Montana voters have not given to any party. These comments include emphasizing that the words "fair" and "proportional representation" aren't in the Constitution. If redistricting isn't a fair process that results in proportional representation, there cannot be equality of opportunity for each Montana citizen to influence their own government. The comments of these commissioners demonstrate their disdain for the Constitution and their proposed district maps indicate that their approach to redistricting includes disregarding the rights of Montanans.

Additional comments made by some commissioners and members of the public range from alarming to absurd. A very large portion of Montanans live in communities that are divided by legislative districts. The best travel routes to parts of many districts don't stay in the district lines. Clearly, such concerns are routinely set aside. Why should some communities get special treatment? Dividing Glendive or Mineral County with district lines does no harm. It's arguably an advantage, they would have two voices advocating for their communities rather than one. Gerrymandering refers to political manipulation to CREATE an unfair advantage. I could not locate a definition of gerrymandering that refers to correcting a partisan advantage. I have seen references to Harvard's resources on gerrymandering to justify furthering one party's unfair advantage. If these resources are being relied upon, I request that the commission consult directly with Harvard's redistricting experts to ensure that their guidance is not being misapplied. The most ridiculous comment was an assertion that Native Americans are over-represented. This is patently false. Reducing the number of majority minority districts violates the law and will do real harm to Montana in more ways than we can even anticipate.

The Montana Constitution does not mention travel routes or define "compact" or "contiguous." There is no mention of shape, nor is there an indication that "compact" means drawing voters with similar voting patterns into as few districts as possible in order to minimize the influence of their votes. The population density map of Montana looks like a spiderweb, it is not logical to strive for a checkerboard district map. What is logical is that the intent of the Constitution's writers and the rights of Montanans should be assured before prioritizing lesser concerns.

The 2022 election results provided further evidence that Montana's current legislative districts and some of the proposed district maps are unconstitutionally rigged for one party. Even in the Eastern Congressional District, Representative Rosendale received less than 57% of the vote. Representative Zinke didn't even get 50%. In the statewide races, voters made choices that went against the wishes of the party currently in power. Yet, our legislative districts allowed that party to gain 70% of the legislative control. It would be an unconstitutional violation of the rights of Montanans to choose new legislative districts that continue this pattern.

These districts are important. One party in Montana has signaled an intent to take rights away from Montanans. Threatened rights include privacy, a clean and healthy environment, stream access, and land access. One party has proposed changes that will fundamentally alter the state and further limit opportunities for those who are not wealthy to build a life here. One party is actively defying court orders as well as pursuing a US Supreme Court case that aims to allow the party in control of the legislature to disregard the voters and choose the winners of elections themselves.

There is so much at risk. Please consider the clearly stated intent of the writers of Montana's Constitution. Please choose a map that allows each Montana voter an equal opportunity to influence their own government, regardless of where they live.

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: Weiss, Rachel
Sent: Monday, November 21, 2022 10:22 AM
To: Districting
Subject: FW: Comments on bill drafts

From: Regina Plettenberg <rplettenberg@rc.mt.gov>
Sent: Monday, November 21, 2022 10:18 AM
To: 'Weiss, Rachel' <RWeiss@mt.gov>
Cc: Shantil Siaperas <shantil@mtcounties.org>
Subject: Comments on bill drafts

Rachel,

Below are our comments on the proposed bill drafts from the Districting and Apportionment Committee. When I initially spoke with Kendra Miller, they were proposing a maximum of 3000 for a precinct (on LC1069) which I ran by our Association and no one had an issue with, including Yellowstone or Cascade. However, 2000 does create concern (see below) so I am not sure if the Committee would consider changing it back to the proposed 3000? I am being lazy sending this to you but I was hoping you might forward it? Thank you!!!

[LC1069](#)

Yellowstone County currently has 105, 825 registered voters and 44 precincts. Under the current bill draft, we would need an additional nine precincts, including the additional costs that would impose (polling place, polling place judges, printing costs for additional ballot styles, administrative time in sorting additional precincts, etc.). If the allowable number were changed to 3,000, we could retain the cores of our current precinct districts as is the general practice in Yellowstone County.

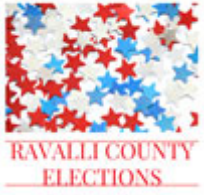
[LC1068](#)

For LC1068, I am concerned that the language in New Section 5 may be broader than intended, "A local government shall use the data to form local government districts that are based on population." "Local government districts" is repeated again in that subsection (3) but is undefined in the bill draft. I think under this language you would have to use the data in special districts, utility districts, etc., which may have voting populations but which are not formed on equalized population bases and therefore there really wouldn't be much reason to use the adjusted data. Therefore, it may not be the intention of the bill to capture those other types of districts and may cause administrative confusion about the use of the data. It would be helpful to clarify, either by inserting a definition for "local government district" or by specifying in the text that the data is only for forming districts based on population that are maintained primarily for election purposes which must be substantially equal under the 14th Amendment of the United States' Constitution. That may be too in the weeds, but the problem is that "local government district" is not defined and is not necessarily limited to population-based election districts such as precincts, wards, etc.

Regina Plettenberg

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Sherley, Laura

From: MDAC <contact@mtredistricting.gov>
Sent: Wednesday, November 23, 2022 10:09 AM
To: Districting
Subject: MDAC Comment from: Paul Tuss

From: Paul Tuss paultuss@yahoo.com
Residence: Havre

Message:

Given the work of the Commission and the population trends we have seen in rural northern Montana, I understand that the House District (HD 28) in and around Havre must get larger to get to the appropriate number of residents per district.

I believe a reasonable approach to accomplishing this goal is to consider incorporating the area known as North Havre into this House District. North Havre is just across the Milk River from the City of Havre and is largely a residential area without distinction from the city limits of Havre itself.

Should additional areas be needed to pick up population for this House District, I would suggest looking to unincorporated areas just west of Havre along US Highway 2, toward Kremlin.

Thank you for considering these comments.

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This e-mail was sent from a contact form on MDAC (<https://mtredistricting.gov>)

Sherley, Laura

From: j w <jwright68@hotmail.com>
Sent: Monday, November 21, 2022 4:57 PM
To: districting@mt.gov
Subject: [EXTERNAL] Idea for the legislative map

11-21-2022

Dear Commissioners and Chairperson,

I would recommend using Miller's map 3 as a template for the eastern rural districts and majority Indian districts, use Lamson's Map 2 as a template for the central and western rural districts, and use Essmann's map 1 as a template for the urban districts since his city districts are squarer and more compact. Combine the three maps in this way to create a compromise map. This would help to create a final map based on bipartisanship.

Thank you,

John Wright

Lincoln County, MT

Sent from [Mail \[go.microsoft.com\]](mailto:go.microsoft.com) for Windows