

# **Exhibit D**

# Montana State Senate



*The Treasure State*

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MAJORITY LEADER**

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I submit this rebuttal to the Plaintiff's expert to issue my opinion on Plaintiffs three proposed maps and Secretary Jacobsen's proposed map.

All maps were created with free online redistricting software available at [davesredistricting.org](http://davesredistricting.org). Both parties have used [davesredistricting.org](http://davesredistricting.org) in this litigation. (Doc. 8 at 52–53); (Doc. 23-4).

In order to presumptively comply with the one-person, one-vote rule, the maximum deviation between districts must be less than 10%. *Evenwel v. Abbott*, 578 U.S. 54, 60 (2016).

As stated in my original expert report, communities of interest guide redistricting. That means keeping communities with shared geography, socioeconomic status, and economic activity together. The principle is that the people should be able to choose a representative who fairly represents their interests and their concerns. In 2003, my assessment was to update districts to be as equal in population as possible, making sure we kept communities and counties together and that districts were contiguous and visually compact.

## **I. Complete statement of all opinions and the basis and reasons for them.**

Montana's population is 1,084,225 according to the 2020 Census. Therefore, the ideal population for each of the five Public Service Commission ("Commission") districts based on the 2020 Census is 216,845. Document 23-1 contains a map listing the population of each Montana county following the 2020 Census.

### **A. Current Commission Districts**

Document 23-1 contains a map of current Commission district boundaries. These boundaries, defined in MCA § 69-1-104, follow county lines. The population

and population deviation from ideal district size are accurately represented according to the 2020 Census by the map at Doc. 23-1 on page 14. Redistricting Commission districts is entirely a legislative task. Because the Commission itself is created by the Montana Legislature, the legislature alone sets the qualifications, composition, and districts for commissioners.

I sponsored Senate Bill 220 in 2003 which created the present district lines. (SOS0006). The criteria used included rough population equity, keeping county boundaries intact, and meeting an eye test for compactness. (SOS0006 and SOS0010). These criteria overlap, in part, with the criteria for legislative seats. For example, legislative seats also need roughly equal population and since 1980 have required a level of compactness. (History of State Legislative Districting Criteria in Montana, 1974–2010). But outside of federal law and constitutional limitations, the criteria for legislative seats does not control what the legislature may use for commission districts. This is most apparent in that the Commission has always followed county lines and it was my intention in 2003 to continue that historically practice. (SOS0010).

## **B. Review of Proposed Maps**

### **1. Secretary Jacobsen**

The map submitted by Secretary Jacobsen for my review makes three changes relative to the current districts. First, Glacier County moves from District 5 to District 1. Second, Musselshell County moves from District 3 to District 1. Third, Deer Lodge County moves from District 3 to District 4. These changes are necessary to raise District 1's population and reduce District 3's population to create overall maximum deviation less than 10%.

This results in the following district population totals and deviations from the ideal district size:

District 1: 205,124 (-11,721) (-5.41%)  
District 2: 216,532 (-313) (-0.14%)  
District 3: 225,597 (8,752) (4.04%)  
District 4: 218,384 (1,539) (0.71%)  
District 5: 218,588 (1,743) (0.80%)

The maximum population deviation is 9.44%. This complies with the one-person, one-vote rule. By continuing to draw along county lines, the proposed map also complies with the requirement that those boundaries be respected.

Because Secretary Jacobsen's map largely follows existing district lines it follows the same communities of interest as the current districts. This minimal redistricting also has the benefit of keeping most voters in their current districts. One way to look at this is the percentage of current population of a district that is kept in that district. 100% of persons currently in Districts 1, 2, and 4 remain in Districts 1, 2, and 4. This means that no persons in those districts currently were moved out of the district. Even though the proposed map moves 9,421 people from Deer Lodge County and 4,730 people in Musselshell County out of District 3, District 3 retains 94.10% of its original population. In District 5, by moving Glacier County out, the district retains 94.08% of its original population.

Regarding Glacier County, by moving that county from District 5 to District 1, eligible voters will still be able to cast a ballot in 2022 as Districts 1 and 5 are the two commission seats up for election this year. In other words, no one loses their ability to vote in 2022 under the Secretary's proposed map.

Finally, the Secretary's proposed map has a compactness score of 35 according to davesredistricting.org. (higher is better).

## **2. Plaintiffs' Proposed Map 1**

Document 23-4 at page 6 contains Plaintiffs' Proposed Map 1 and its accompanying district populations and population deviations. The proposed map separates the Evaro precinct in Missoula County from the rest of Missoula County. This precinct contains 1,183 people. It also separates the Dixon and Hot Springs precincts in Sanders County from the rest of that county. These precincts contain 514 and 1,461 people respectively. Splitting these counties violates the state criteria for commission districts that county boundaries remain intact.

Proposed Map 1 also shifts Glacier and Pondera Counties from District 5 to District 1; Broadwater and Meagher Counties from District 3 to District 1; Deer Lodge County from District 3 to District 4; Golden Valley and Musselshell Counties from District 3 to District 2; and Prairie and Fallon Counties from District 2 to District 1. In total, Proposed Map 1 moves all of 9 counties and parts of two others. The effects of this, using the population retention described above, mean that 100% of District 1 is retained, 98.09% of District 2, 94.06% of District 3, 98.49% of District 4, and 91.53% of District 5. These changes exceed what is present in Secretary Jacobsen's proposed map.

Proposed Map 1 has a compactness score of 29.

## **3. Plaintiffs Proposed Map 2**

Document 23-4 at page 7 contains Plaintiffs' Proposed Map 2 and its accompanying district populations and population deviations. The proposed map separates Precinct 24 in Flathead County from the rest of the county, and the Heart Butte and Valier precincts from the remainder of Pondera County. Precinct 24 in Flathead County contains 1,419 people, Heart Butte in Pondera County contains 775 people, and Valier in Pondera County contains a combined 1,279 people. These county splits violate existing state policy.

Proposed Map 2 also shifts Lincoln and Powell County from District 4 to District 5; Lake County from District 5 to District 4; Teton County from District 5 to District 1; Meagher and Wheatland Counties from District 3 to District 1; Custer, Fallon, and Prairie Counties from District 2 to District 1; and Golden Valley, Musselshell, Stillwater, and Sweetgrass Counties from District 3 to District 2. In total Proposed Map 2 moves all of 13 counties and parts of 2 others. The effects of this, using the population retention described above, mean that 100% of District 1 is retained, 92.61% of District 2, 90.74% of District 3, 87.26% of District 4, and 82.66% of District 5.

Further, by moving Precinct 24 in Flathead County and all of Lake County from District 5 to District 4, this districts 32,533 people out of potentially being able to cast a ballot for commissioner in 2022.

Proposed Map 2 as a compactness score of 41.

#### **4. Plaintiffs Proposed Map 3**

Document 23-4 at page 7 contains Plaintiffs' Proposed Map 3 and its accompanying district populations and population deviations. The proposed map, like Proposed Map 2, separates Precinct 24 in Flathead County from the rest of the County. This county split violates existing state policy.

Proposed Map 3 shifts Lincoln and Powell Counties from District 4 to District 5; Lake County from District 5 to District 4; Glacier, Pondera, and Teton Counties from District 5 to District 1; Jefferson and Broadwater Counties from District 3 to District 5; Meagher County from District 3 to District 1; Musselshell County from District 3 to District 2; and Prairie County from District 2 to District 1. All told Proposed Map 3 shifts all of 11 counties and part of Flathead County. The effects of this, using the population retention described above, mean that 100% of District 1 is retained, 99.50% of District 2, 89.36% of District 3, 87.26% of District 4, and 74.84% of District 5.

Further, by moving Precinct 24 in Flathead County and all of Lake County from District 5 to District 4, this districts 32,533 people out of potentially being able to cast a ballot for commissioner in 2022.

Proposed Map 3 has a compactness score of 32.

## **II. Facts or data considered in forming opinions**

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1. Decennial 2020 data
2. Documents filed in this case:
  - a. Doc. 1
  - b. Doc. 6
  - c. Doc. 8
  - d. Doc. 9
  - e. Doc. 22
  - f. Doc. 23 (including exhibits)
  - g. Doc. 25
3. Legislative history concerning:
  - a. Senate Bill 220 (2003)
  - b. Senate Bill 153 (2013)
  - c. Senate Bill 210 (2017)
  - d. Senate Bill 246 (2019)
  - e. Senate Bill 309 (2019)
4. Montana Districting and Apportionment Commission rules, procedures, legal memorandum, and history.
5. Knowledge, training, and experience as a Montana Legislator, House of Representatives from 1984–1992 and Montana Senate from 1996–2004 and 2012–2020 including serving as Senate Majority Leader from 2000–2004 and 2016–2020.
6. Knowledge and experience sponsoring the successful 2003 Public Service Commission reapportionment legislations and sponsoring the attempt at reapportionment in 2013.

## **III. Exhibits to summarize and support opinions**

1. Secretary Jacobsen's Proposed Map
2. Plaintiffs' Exhibits filed as Doc. 23 are incorporated by reference
3. Montana Districting and Apportionment Commission documents
  - a. 2010 Criteria for State Legislative Districts
  - b. 2020 Criteria for State Legislative Districts
  - c. History of State Legislative Districting Criteria in Montana, 1974–2010
  - d. Lisa Mecklenberg Jackson, *Where to Draw the Line: Criteria for Redistricting in Montana*, Montana Districting and Apportionment Commission (April 2010).



- e. K. Virginia Aldrich, Litigation Background and Districting and Apportionment Criteria, Districting and Apportionment Commission (May 31, 2020) (Revised June 12, 2020).

4. Curriculum Vitae of Fred Thomas

**IV. Witness qualifications and publications authored in previous 10 years.**

Curriculum Vitae is attached as an exhibit. I sponsored the successful 2003 Public Service Commission reapportionment legislation and the attempt at reapportionment in 2013. I have not published any works beyond the legislation I sponsored in 2003 and 2013.


**V. Other cases in which witness has testified as an expert in past 4 years.**

None.

**VI. Statement of compensation for study and testimony**

I am not receiving compensation for my study and testimony.

Respectfully this 22nd day of February, 2022.

  
Mr. Fred Thomas