

**MINUTES OF THE  
JOINT MEETING OF THE ASSEMBLY COMMITTEE ON LEGISLATIVE  
OPERATIONS AND ELECTIONS  
AND THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Sixth Session  
March 10, 2011**

The Joint Assembly Committee on Legislative Operations and Elections and the Senate Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 3:08 p.m. on Thursday, March 10, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was also videoconferenced to Great Basin College, Elko, Nevada; Loyola Law School, Los Angeles, California; and George Mason University, Fairfax, Virginia. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblyman Tick Segerblom, Chair  
Assemblywoman Lucy Flores, Vice Chair  
Assemblyman Marcus Conklin  
Assemblyman Richard (Skip) Daly  
Assemblyman Pete Goicoechea  
Assemblyman Tom Grady  
Assemblyman Cresent Hardy  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Richard McArthur  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblywoman Debbie Smith  
Assemblyman Lynn D. Stewart

**SENATE COMMITTEE MEMBERS PRESENT:**

Senator David R. Parks, Chair  
Senator Moises (Mo) Denis, Vice Chair  
Senator Steven A. Horsford  
Senator Barbara K. Cegavske  
Senator James A. Settelmeyer

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman John C. Ellison, Assembly District No. 33  
Assemblyman Joe M. Hogan, Clark County Assembly District No. 10  
Assemblyman Scott Hammond, Clark County Assembly District No. 13  
Assemblyman Ira Hansen, Assembly District No. 32

**STAFF MEMBERS PRESENT:**

Lorne Malkiewich, Director  
Donald O. Williams, Research Director  
Michael J. Stewart, Supervising Principal Research Analyst  
Kathy Steinle, GIS Manager, Information Technology Services  
Patrick Guinan, Assembly Committee Policy Analyst  
Carol Stonefield, Senate Committee Policy Analyst  
Eileen O'Grady, Senate Committee Counsel  
Adrian Viesca, Assembly Committee Manager  
Sonia Folsom, Senate Committee Manager  
Terry Horgan, Assembly Committee Secretary  
Mike Geissinger, Senate Committee Secretary  
Michelle Ené, Senate Committee Secretary  
Michael Smith, Assembly Committee Assistant  
Olivia Lloyd, Assembly Committee Assistant

**OTHERS PRESENT:**

Justin Levitt, Associate Professor of Law, Loyola Law School,  
Los Angeles, California  
Michael P. McDonald, Associate Professor, George Mason University,  
Fairfax, Virginia; Nonresident Senior Fellow, Brookings Institution,  
Washington, D.C.  
Matt McCarty, Chairman, Government Affairs Committee, Elko Area  
Chamber of Commerce  
Michael Ginsburg, Member, Southern Nevada Diversity Roundtable  
Forrest Darby, Private Citizen, Las Vegas, Nevada  
Ed Gobel, Private Citizen, Las Vegas, Nevada

**Chair Segerblom:**

[Roll was taken.] This is a joint meeting of the Assembly and Senate Committees on Legislative Operations and Elections and is the first of our four redistricting meetings. We have agreed with the Senate that the Assembly will be in charge of today's meeting as well as our meeting in Fallon. The Senate will be in charge of the joint meetings in Reno and Las Vegas.

We have two speakers testifying by video link, and we will hear from them before hearing a presentation from our excellent staff. The first presentation is from Justin Levitt, a professor at Loyola Law School. I am really excited to have him speak to us, because he wrote the book that you all have a copy of entitled *A Citizen's Guide to Redistricting*.

**Justin Levitt, Assistant Professor of Law, Loyola Law School, Los Angeles, California:**

A lot of the material in my book was put together while I was at the Brennan Center for Justice at New York University School of Law. Though I do not speak for them, I want to be certain to acknowledge their contribution in what I am going to present before you today.

Thank you very much for the invitation to testify today. As I understand, my mandate is to provide a very general, broad-brush overview of the redistricting task and particularly the laws and constraints around that task that you may face. I have tried to keep the general tenor of the basic pitch at a very high level to ensure that everyone starts on the same playing field. I do not know whether you have, or have access to, the presentation I sent forward.

**Chair Segerblom:**

Yes, we have it. It is on our Nevada Electronic Legislative Information System (NELIS) ([Exhibit C](#)).

**Justin Levitt:**

All right, I will guide you through it. The first slide simply talks redistricting in Nevada, which is both your task and, at least for today, mine. The next slide shows what I would like to cover in the next 20 minutes or so: why, when, who, where, and how redistricting is done—the basic structure of the task before you.

I start with "why" because it helps to have a grounding of why you are asked to embark on this task to begin with when you actually turn to redistricting. On the following slide is a crudely sketched map of Nevada and an even cruder sketch of the population that may be there. Then the population moves, and redistricting is called upon to happen. When population moves, and in America the population is exceedingly mobile—about 14 percent of the public nationwide moves every year, and it is somewhat higher in Nevada—districts become malapportioned and can change quite radically in terms of the number of people in each district. In the next slide, you will see that the U.S. Supreme Court stepped into that situation in a series of cases beginning with *Baker v. Carr*, 369 U.S. 186 (1962) and continuing until quite recently. The Supreme Court has laid down a principle that calls for approximately equal population in each district so that people are equally represented from district to district but, when redistricting happens, it is based largely on the census. The timeline begins with Census Day, because that is when we know where the population is. You are called upon to redistrict and put roughly the same number of people in one district that is in another.

You have already had a week or so to play with and view the data that the Census Bureau gave you. Last year on April 1 the Census was undertaken, and on February 24, 2011, they delivered that data to you in what is known as a Public Law (PL) 94-171 file—the base amount of information as to number of individuals, race or ethnicity, and age. Those are the basic building blocks of the redistricting equation.

You have a constitutional mandate to redraw state legislative lines no later than the end of the regular legislative session. That deadline is June 6, 2011. You have no constitutional federal or state deadline that I have seen for drawing congressional lines, but, as you know well from years past, it would be wise to

keep an eye on at least one date in the future—the filing deadline for primary elections. So at least by March 16, 2012, you want to be able to give those who will be running for Congress enough notice to be able to file their primary filing papers. That means backing up the calendar to be able to draw the districts with enough time to let people know where they might want to be running. And in between the time you draw the lines and the time the filing deadlines occur, sadly, it is a fact of life these days that you will have to account for the possibility of litigation.

The Nevada Legislature as a whole has primary control over drawing the lines, as in most states. Thirty-seven states ask their state legislatures to draw, or have primary control of drawing, state legislative districts. Thirty-eight states ask their state legislatures to assume primary control of drawing congressional districts.

In the next slide you will see a map of the 2000 election cycle indicating where there was some sort of action in the courts. Although Nevada was lucky enough to escape unscathed in the last cycle, you will note that litigation was prevalent throughout much of the country with respect to either state legislative or congressional lines, or both. In 33 states, with respect to state legislative lines, courts were called upon to intervene in some regard, and in 21 states congressional lines were challenged in some fashion. The court, state and federal, actually drew lines itself in cases involving state legislative districts in 11 states and congressional districts in 9 states. You already have a case pending in Nevada that was filed in Carson City on February 24, 2011, *Guy v. Miller* (First Judicial District Court, Case No. CV11-Oc-000421b). That case essentially asks the court to take jurisdiction, anticipating that the Legislature may not complete its task in time.

Moving on to where the lines should be drawn, and the criteria you will weigh, there is a baseline you are asked to consider, which is the federal law. This really starts with equal population. As was previously stated, the whole rationale behind redistricting is to ensure that districts have approximately the same amount of population. For Nevada to achieve that goal requires approximately 675,138 people per congressional district. The *Constitution* demands a good-faith attempt be made to achieve precise equality. For congressional districts, you really have to be aiming to get no deviation or have an exceptionally good reason for the deviations that do exist.

Congressional redistricting is driven by Article I of the *Constitution*, and state legislative redistricting is driven by the Equal Protection Clause. The Equal Protection Clause allows you a little more leeway in what you do and, generally

speaking, is a very rough guide. About a 10 percent deviation from largest district to smallest district has been permitted if there is a good reason behind it. If there is a consistent reason that normally does not have to do with mere partisan advantage, the courts have allowed latitude to draw state legislative lines with a bit of deviation. You will be aiming for about 64,300 for each State Assembly district and about 128,600 people for each State Senate district. As I mentioned, that would be 64,000-ish, because the courts do allow some latitude if there is a good reason for deviating from strict population equality in state legislative districts.

One slide further and we come to race and ethnicity in the Voting Rights Act—the other major federal constraint, or major federal law, governing how the districts will be drawn.

The next slide lays out the basic structure under the Voting Rights Act that Nevada is concerned with, and that is Section 2 of the act. It asks a series of three threshold questions—what are known as Gingles conditions after *Thornburg v. Gingles*, 478 U.S. 30 (1986) a federal case that set these out in 1986. The first question asks if half of the potential voters—that is, half of the citizen voting-age population (CVAP)—in a relatively concentrated area are minorities. If so, would they generally vote together? That does not just mean would they generally vote Republican or generally vote Democrat, but would that concentrated group of minority voters generally prefer a different set of candidates, even within the same political party, than the surrounding nonminority population. The third threshold question asks whether the rest of the voters in the area generally choose someone different—again, not based on party but sometimes based on intraparty dynamics. Is there a different candidate of choice for the minority population than there is for the surrounding nonminority population? If so, and if there is a large enough group in a relatively concentrated area that votes differently from the surrounding population, the Voting Rights Act then asks to turn to the totality of the circumstances. I will not go through all of what constitutes the "totality of the circumstances" listed on the slide, but essentially it asks for contextual factors—different elements that may be at play in local or state elections, or historical conditions that may cause some risk to minorities' opportunity to effectively elect candidates of choice.

On the next slide you will see, if the three threshold conditions are met and if, in the totality of circumstances, it does not appear that the minority is otherwise protected, the Voting Rights Act sets forth the condition. It asks you not to dilute the strength of the minority group when it comes to the redistricting process. That means that you should draw what is known as an "opportunity"

district, or a district where the minority population has a real, effective, pragmatic, on-the-ground opportunity to elect candidates of choice. It is not a guarantee that someone of the minority race or ethnicity will be elected, but it is a meaningful opportunity for that group if turnout is high, if they vote consistently as a block, and if there is a candidate they prefer to elect their candidate of choice.

That is an overview of the Voting Rights Act. That is not the only opportunity to consider race, but it is a federally mandated one. Beyond the Voting Rights Act, it is okay to consider race or ethnicity in the mix with all the other factors you may wish to consider. The *Constitution* prohibits race or ethnicity from predominating over all other reasons if you are not drawing lines in order to satisfy the Voting Rights Act, but it is perfectly okay to consider race or ethnicity in the mix with any of the other factors that you may wish to consider as you draw district lines. There are no further limitations in Nevada state law with respect to redistricting. Nevada law does not set up any further constraints for you. You are free to draw lines, subject to those constraints we have already discussed, more or less as you wish.

In other states, other criteria may be considered as mandated by their state constitutions or other state statutes or guidelines. A number of states consider other factors with respect to their state legislative districts or their congressional districts, for example, contiguity. Nevada is the only state that does not demand—in some sort of constitutional provision, statute, or guideline—that its state legislative districts be contiguous. All other states do. Contiguity means that all parts of the district are connected to each other.

Political boundaries are the next most frequent limitation in state law that other states consider. Normally, the redistricting committee or group is asked to follow county, city, town, ward, or precinct lines; or at least to follow them where possible or where it does not otherwise take away from the federal constraints. One thing to note is that choosing one over another in rigid fashion may cause unexpected splits. It is important to keep in mind that your municipal boundaries, which may have developed for all kinds of annexation or local government reasons, may not necessarily coincide with county boundaries, and that you want to be sensitive to the differences where they exist.

Compactness is a guideline followed by a hefty plurality of states, but not all. Generally speaking, compactness often amounts to an "I know it when I see it" policy. There are some mathematical definitions in state law, but there are 30 different ways to measure whether a district is compact or not. Most of the time, this amounts to a rough feel for whether either voters or parts of the

district are more or less compressed together. Put differently, a district is less compact when it has tendrils that stick out all over the place in what appear to be strange ways.

The next criterion that many, though by no means all, states ask their state redistricting entities to consider is "communities of interest." Essentially, these are pockets of population that have something in common that is worthy of representation so that you, the legislators, know who it is you are representing and that they have certain interests in common. These can be and often are different in different parts of the state; different interests will be most salient in any particular area. Kansas' guideline is relatively representative. It talks about communities of interest as being either social, cultural, racial, ethnic, or economic interests that are common to the population of an area and are probable subjects of legislation—things that people might want to consider when representing them in the legislature or in the legislative delegation. Again, some of these communities may be more deserving of representation or more worthy of consideration in some parts of the state than in others.

The final constraint involves about a dozen states that in some way discuss partisanship or competition in instructing their redistricting bodies how to draw the lines. Of the states that discuss partisanship, most prohibit either undue partisan favoritism or targeting particular individuals, as in drawing the lines so that a particular incumbent or particular candidate is either drawn into or out of a particular district. When it shows up, that is how it shows up most frequently. There are two states I am aware of that go one step further and affirmatively ask the redistricting body to try to draw districts that are competitive, that have roughly similar numbers of Democrat voters and Republican voters where possible. Again, there are only two states that take that extra step.

**Chair Segerblom:**

To reiterate, the criteria you just elaborated on do not apply in Nevada from a legal perspective, right?

**Justin Levitt:**

Actually, you are right. Those are simply what other states have done, for some national context. In Nevada, the only criteria you are legally required to consider are the federal rules: equal population and the Voting Rights Act. Beyond that, from what I have seen, Nevada law is otherwise silent.

These are simply some suggestions about how to go about the redistricting process. I would encourage as much meaningful transparency as you can

possibly build into the process, and certainly, these hearings and the ones you have already scheduled are a very big part of that. The redistricting process should include multiple opportunities for meaningful public input. It should allow people to provide you with their sense of where their communities might be or what maps might look like, allow ample access to the data and the tools to be able to provide you with this input, and provide some explanation about the choices you make.

I commend you and thank you very much for inviting me to be part of this particular entrée into transparency, and I encourage you to maintain that as the redistricting cycle continues. The input you invite does not have to be particularly fancy. If you are interested in knowing where people "feel" their communities of interest reside, that can be as simple as a rough shape drawn on Google maps or even a less technologically sophisticated marker used on a highway map. Simply ask people where they "feel" their community is. That is the sort of input I would encourage you to accept and to take account of.

For more contact information, I have provided you with my name, my affiliation, my email, and some of the resources at the Brennan Center, including *A Citizen's Guide to Redistricting*, which I know you already have.

**Chair Segerblom:**

If you set out to create a minority district, that could actually violate the *Constitution*?

**Justin Levitt:**

If that is your predominant motive. If you said there is not enough population to be the majority of voters in a concentrated area, but you were going to draw a district specifically for the purpose of doing something to a minority population—either benefitting or harming—that can get you into constitutional trouble. I do want to be clear that the *Constitution* fully permits, and the Supreme Court has consistently said, that there is no problem with considering race or ethnicity even beyond what the Voting Rights Act requires, as long as it does not predominate and as long as it is a factor in the mix along with all of the others.

**Chair Segerblom:**

Does anyone have questions?

**Assemblyman Hickey:**

Mr. Levitt, since our guidelines are rather nonexistent, you suggested that meaningful transparency ought to be an important factor. Would you say that

giving meaningful public input would include allowing the public to see our draft maps? Will it be as effective as allowing them to just give input before? Would the latter be a little bit more for show? How important is scheduling public participation after we have actually come up with maps?

**Justin Levitt:**

The healthiest process involves a bit of both. You need to collect community input before you set pen to paper, before you come up with drafts, so that your decision is formed by what the public feels is appropriate. Then you should also invite reaction after draft maps are published. That process may not only reflect best practices in other states, but also may help you avoid litigation down the road.

**Senator Settlemeyer:**

What level of government does the Voting Rights Act apply to? Is it only for dealing with congressional districts or does it go down to the county commission level?

**Justin Levitt:**

Both federal laws—the equal population requirement and the Voting Rights Act—apply to most elected bodies with very few exceptions. So, yes, it applies not only to Congress but certainly to state legislative districts and even down to county commissioner districts or the choice to have an at-large system. The very same rules apply.

**Chair Segerblom:**

Are there any other questions? [There was no response.] Thank you very, very much for making yourself available to us. Everyone has read your book.

I would like to announce that Assemblymen Hogan, Ellison, Hammond, and Hansen are here in the audience as well as former Assemblyman Anderson from Sparks.

We will now turn to Mr. McDonald in Virginia.

**Michael P. McDonald, Associate Professor, George Mason University, Fairfax, Virginia; Nonresident Senior Fellow, Brookings Institution, Washington, D.C.:**

Thank you for inviting me to speak to you today. I have been involved in redistricting in a number of states over the last 20 years or so, and I was asked to give you a presentation on census data that is going to be available this time around and how that data is going to be different than it was ten years ago.

It has some very important consequences for some of the things Mr. Levitt was telling you with regards to citizenship in particular and the Voting Rights Act. It is important for you to understand what these data are and how they may shape the voting rights decisions that you may need to make within your state.

The change we are going to see in this year's redistricting is the availability of the American Community Survey (ACS), which is a survey that replaces the census long form. The past year, when the Census sent its forms out, no long forms were sent because they have been conducting monthly surveys which they aggregate up into yearly surveys called the American Community Survey. They have been doing that for the last decade. The survey is a replacement for the census long form which has information you may use for citizenship. Also, there is more demographic information, such as income, education levels, and things that might be useful if you were interested in establishing some sort of baseline for communities of interest, if that was one of the criteria you were interested in implementing in your state. Ten years ago, this data was counted on the census long form, and the Census Bureau did not compile it until after redistricting was already well under way in many states or had already been completed in others.

The data the Census Bureau makes available to you immediately is something that is called the PL 94-171 file. It is named after the public law that authorizes the Census Bureau to release it, and it has very limited information. It contains only total population, total population by race and ethnicity, voting age population, and voting age population by race and ethnicity at the census block level. A census block is very similar in nature to a regular city block within an urban area. In rural areas, they can be a little bit larger. So we have this data, and this information on citizenship, that was not available ten years ago during redistricting.

The Census Bureau is releasing three main ACS products. One is the one-year estimate, which is an aggregate of all the monthly surveys reported in one-year increments. Those are reported at high levels of geography. Understand, this is a very comprehensive survey and it includes about a million people a month in its sample frame, which allows them to report at a fairly low level of geography. This is not like an election survey or something similar, which would be statewide. The Census Bureau can actually report results at a lower level of aggregation down to areas of 65,000 people or fewer with the one-year ACS. Those are the most current. Last December, the 2009 American Community Survey data was released. Because of the way statistics and survey methodology works, it also happens to be the least reliable, because we do not

have very large samples as we would if we aggregated all of the data together in three-year or five-year increments.

So the Census Bureau releases these additional products containing three-year and five-year census data. The five-year is the one that will be used for redistricting purposes because there is a lot of data and a lot of respondents. It is possible to release what the Census Bureau views as fairly reliable data at the block group level, which are the conglomerations of census blocks I spoke of earlier.

Each block group contains roughly 603,000 people, and that is good because we are doing redistricting at the census block level, and here we have data at the block group level. The data is as fine-grained as we are going to get using the American Community Survey. However, we are talking about five years of estimates, so those data are really aggregates of 2005 to 2009 data. The Census Bureau recommends that July 1, 2007, be considered the date of currency for the American Community Survey. The good thing about this data is that it is reported at a very low level of aggregation and is considered most reliable because it has the most number of respondents to it. Unfortunately, it is not as current as the 2009 one-year estimate, and it is definitely not the 2010 Census. If you go to the Census Bureau website, you will see disclaimers all over that website warning you not to consider that the ACS data is actually the Census that was conducted in April 2010.

As Mr. Levitt discussed with you, some believe, although I am not among them, that the 2009 decision *Bartlett v. Strickland*, 556 U.S. 1 (2009) requires that voting rights districts have greater than 50 percent minority citizen voting-age population. As I mentioned earlier, the data we had ten years ago to use in previous redistricting reported only the voting-age population. We did not have the citizenship information. The American Community Survey being available has enabled the Department of Justice to request a special tabulation of the citizen voting-age population (CVAP) by race and ethnicity from the five-year American Community Survey. That data has been released and is available on the Census Bureau's website and can be downloaded by your staff and others.

This data is available now, and people have interpreted the 2009 decision to say that you must have a greater than 50 percent minority voting-age population in order to have a district that would be required by the Voting Rights Act. I also stress that this is just one of several factors. Mr. Levitt discussed other factors involving racial block voting, whether the minority community votes in different patterns than the majority population within the area, and if the totalities of the circumstances are such that you are required to draw that district. So there are

other considerations, but the very first one and the easiest one to look at—because it is a threshold and we have very firm data on this—is whether you can get that district's population above 50 percent voting-age population or citizen voting-age population.

Here is why I have some questions and concerns about the American Community Survey as it is going to be used in consideration of voting rights over the next couple of years. I have already laid out some of the limitations of the American Community Survey. It is not the Census; it is a survey that the Census Bureau says is valid for July 1, 2007. If populations have moved or changed since 2007, as has occurred in Nevada, which has undergone very severe stresses in terms of its population over the last couple of years, maybe the ACS data is not going to be the most reliable for determining citizenship.

As I said, it is a survey; it is not an enumeration like the Census, and it has a statistical sampling error. In fact, you can actually look at the sampling error. The Census Bureau released the sampling error estimates as part of the data they have made available. Think of this much like the margin of error for a survey where you hear that there is 45 percent support for President Obama plus or minus 4 percentage points. What we are really saying is that our best guess is that 45 percent of the population of the United States approves of the job President Obama is doing. But according to the Census Bureau, 90 percent of the time the true value could be within that plus or minus 4 percent range. So there is a lot of uncertainty with the statistical sampling issues. These sampling issues tend to narrow as you move to larger districts. If you are looking at a congressional district, the sampling error is going to be much smaller than when you are looking at a Nevada State Assembly District, which has an ideal population size of roughly 64,000, given the last census.

The margin of error on these estimates that we are going to get through the American Community Survey could actually be quite significant—in the range of the plus or minus 4 percentage points I was just talking about—when looking at an Assembly District in Nevada. If we drill deeper down into smaller local redistricting units, these estimates are going to become even more unreliable and have a larger margin of error.

The ACS is weighted to the 2000 Census and not to the 2010 Census, so if there are any deviations when looking at the 2007 data versus the 2010 data, some of the changes might affect the way in which the survey is weighted. That could have some very subtle biases that we actually cannot measure in terms of those margins of error I was talking about earlier.

The ACS is reported in 2000 Census geography, so what we have is 2000 Census block groups and 2010 Census block groups. Both are similar but not exactly the same, so we have to create a correspondence between the 2000 Census and the 2010 Census geography in order to get that data into the sort of format you can use to do redistricting at the census block level, which is the last point. This is data that is released at the block group level and not at the block level, so you actually have to disaggregate this data down to the block level and then reaggregate it out to whatever districts you are looking at as you are doing your redistricting. Again, there is unknown error involved both with the sort of correspondence from the 2000 to 2010 geography and also with making that correspondence work at the census block level.

So what does this all mean? It may sound like a lot of technical gibberish, but I think it has some very important consequences for subsequent litigation. If we are going to believe this *Bartlett* standard that you should have a CVAP of 50 percent or more to draw a viable minority district, how do you factor in this margin of error that we know we can measure in terms of a statistical sampling error?

If we have a 46 percent CVAP district, but its margin of error is plus or minus 5 percent, would that be a minority district? We cannot really project with a reasonable degree of certainty that the true population value would actually be above 50 percent. So if you want these districts, you could look at it from the perspective that you do not know whether or not we have this population. There is some probability that this is a district that does have sufficient citizen voting-age population, so therefore the minority voting rights protections do apply to that district. That would be one way to interpret it.

Another way to interpret it would be to flip it around. I cannot reject that the district is below 50 percent. If I want to make a legal argument against this and not mark these districts, I would argue that I cannot reject the notion that we are actually under 50 percent; or would you just use the 45, 46, or 54 percent and dispense with the uncertainty altogether. We did not have this uncertainty ten years ago, so the fact we have it now is adding a complication. This is a legal question that has not been addressed by any court at this point. I do expect that there is going to be litigation around this issue, and we are going to have to see where that leads.

All along, I have said that I am not one of those people who put a lot into the CVAP estimates. I have performed racial block-voting analyses for voting rights litigation. Racial block-voting analyses take into account turnout and racial polarization within a jurisdiction. We are looking to see whether or not litigation

involving the Voting Rights Act is going to be required. Putting these two pieces of information together, we can devise a number that we think is going to be an effective population for a minority to elect a candidate of their choice. Remember, I mentioned turnout and racial block/polarization patterns. In turnout, there is the implicit assumption that these people are citizens, because noncitizens cannot vote in the United States. If we apply the traditional way racial block-voting analyses have been done in the past to the way in which we would be drawing these districts moving forward, it seems to me that a safe approach is to draw districts that are majority voting-age population, but they are going to be more than that. There are going to be turnout differentials between the minority community and the nonminority community. Usually, when you look at turnout differentials, you come to the conclusion that the district is not going to be 50 percent-plus-one voting-age population; it is going to be something much more than 50 percent-plus-one. Depending on the jurisdiction, it could be somewhere around 55 to 60 percent or even higher.

I suspect that even if you could draw a 50 percent-plus-one CVAP district, it is not going to be sufficient because you are still going to need to know what the turnout rates are. There are still going to be differential turnout rates among citizens, so even there you are not going to be drawing a 50 percent citizen voting-age population district. You are likely going to be drawing something more than a 50 percent CVAP district.

That is my presentation with regard to the issues with the new American Community Survey data that is going to be available to you in redistricting. I did want to point you to where there are more resources available. I am leading the public mapping project. I have put out reports of the current state legislative districts using the 2010 Census data, the minority voting-age population, and total population and target populations of your districts. On that website you can find my contact information as well as much more concerning the software tools we are making available so the public can draw redistricting plans through an Internet connection. That will allow the public to be able to provide you with input about what their communities are and how they may want to draw the districts within their communities.

**Chair Segerblom:**

To summarize, if we just looked at minority population data from the 2010 Census, that would not be a good indicator about whether you had a majority or a minority district, is that correct?

**Michael McDonald:**

Yes. You cannot just use total population; you have to use something more. In the past we used voting-age population, and after the *Bartlett* decision, that percentage had to be above 50 percent. Some in the legal community also believe that a district has to contain more than 50 percent CVAP.

**Chair Segerblom:**

Are there any questions for Mr. McDonald?

**Assemblyman Hickey:**

Today, the *Las Vegas Review-Journal* reported it would be possible to draw a majority Hispanic district in this state. Can you comment on that?

**Michael McDonald:**

I assume you are talking about a congressional district.

**Assemblyman Hickey:**

Yes, a congressional district.

**Michael McDonald:**

I have not looked at the numbers to know whether that is feasible. I think Justin Levitt gave you a good overview of the issues you are going to have to wrestle with in this redistricting. One is whether or not this district is going to be required under the Voting Rights Act. The Supreme Court has said that if you are anticipating that some outside entity may bring Section 2 litigation against you to force you to draw a majority district, you can, in terms of your mapping, anticipate that litigation and draw your own district in response to it. So if you are going to go down that path, you would want to retain some consultants to look at whether or not it is feasible to draw the district first. Look at the patterns of racial voting and turnout within that area. Even if you get it above 50 percent, the question still remains whether or not that is going to be an effective minority district. If it is not going to be an effective minority district, you are not going to be required. If litigation is brought against you, the burden would be upon those bringing that litigation that the totality of the circumstances also applies. They would look at past histories of discrimination within your state, look at other elections, and consider what attempts have been made to increase political participation by minorities. Those are the sorts of things that would come into play when you also look at the totality of the circumstances as well.

**Chair Segerblom:**

Thank you again. Now we will have a presentation by our staff.

**Michael J. Stewart, Supervising Principal Research Analyst, Research Division:**

We are handing you a stack of tables on reapportionment and redistricting ([Exhibit D](#)). Dr. McDonald's testimony was a perfect segue to this, because what I will be discussing today directly relates to the Census 2010 data.

The first table shows the percentage of growth by county in Nevada. As you know, on December 21, 2010, the Census Bureau submitted to President Obama the final actual population counts for Census 2010 for the state. The final resident total population for Nevada, as of Census Day, April 1, 2010, was 2,700,551. This represented a 35.1 percent increase in Nevada's population over the ten-year period from 2000. This was the smallest percentage increase the state has experienced since 1940; nonetheless, Nevada remained the fastest-growing state in the United States, ahead of Arizona, Utah, and Idaho.

On February 24, 2011, the Census Bureau released our detailed 2010 Census data with demographic characteristics for Nevada. This data provides complete population counts for small areas, race, such as Hispanic origin and other races, and voting-age and housing-unit data.

Clark County remains the largest county. It has a population of 1,951,269—an increase of almost 42 percent since 2000. As you can see, Clark County is 72.3 percent of the state's population. Washoe County, with a population of 421,407, is 15.6 percent of the state's population. Over the years, Clark County has increased in total percentage of the state population while the other counties have decreased.

The second table shows the State of Nevada 2000 and 2010 populations by ethnic groups and the percent change. An important thing to note here is that for 2010, residents were allowed to indicate more than one race, so the percent changes may seem large because of this different way to indicate ethnic status. As you can see, the largest increase is in the Hispanic/Latino category.

The third table shows ideal population for the various offices the Legislature is required to redistrict. As you know, Nevada has been authorized to receive a fourth congressional seat. This table shows the ideal population not only for the congressional seats to be drawn but also for the State Senate and Assembly seats. To clarify, the ideal population is a simple mathematical calculation of the state population divided by the total number of districts. You can see that the ideal population for each of the four congressional districts in Nevada is 675,138. The ideal population for the State Senate districts is 128,598, and the ideal population for the Assembly districts is 64,299. These figures assume

the Nevada Legislature's size remains status quo, which is a decision you will be making as well this session.

**Senator Horsford:**

The population for each Senate district is 128,598 for 21 Senators. I was reading an article the other day whereby four states are actually reducing the sizes of their legislatures. The decision to address the size can be to either reduce or expand.

**Michael Stewart:**

Yes, that is correct. The Legislature can choose its size, and you can certainly choose to reduce or increase it if you like. These ideal populations would then be adjusted according the size using a basic mathematical calculation.

The next table covers four House of Representatives districts. It shows 2000 and 2010 ideal populations. The table also shows the percent change in the population in these districts over the past decade. As you can see, all these districts grew significantly, with Congressional District 3 growing the most. The section at the bottom shows how the actual populations of the three districts deviate from the ideal population for four districts. What that basically means is almost 370,000 people would need to be pulled from Congressional District 3 to make it equal to the ideal population. Another 160,000 would need to be pulled from Congressional District 2 and 145,000 from Congressional District 1 to match the ideal population.

The next couple of tables and maps show population and percent deviations in both 2000 and 2010. Population deviation is the degree by which a single district's population differs from the ideal population. It can be expressed by an actual number, which will be actual deviation, or as a percentage, the relative deviation. Another consideration is the overall range of population deviation between the smallest and the largest districts. For example, if the ideal population of a particular district is 100,000 and the largest district is 102,000, that would be a plus-2 percent deviation. If the smallest district is 99,000, it would have a minus-1 percent deviation, and the overall range of deviation would be 3 percent. You will hear a lot about population deviation as we move along.

As I said, these tables show deviations by district, and I would point out some of the notable items. Based on 2010, if you look at the Senate chart, the largest positive deviation is 175 percent in Clark District 9. The second-largest positive deviation is 65.4 percent in Clark District 12. Populations in these districts would need to be pulled into other districts to achieve ideal population.

The largest negative deviations are -28 percent in Washoe County District 1 and -25.3 percent in Clark County District 10. Population would need to be added into these districts from other districts to achieve the ideal population.

In the Assembly, the largest positive deviation is nearly 300 percent in Clark Assembly District 13. In Clark Assembly District 22 it is 247 percent. The largest negative deviation is -31 percent in Clark Assembly District 28 and -30.1 percent in Clark Assembly District 6.

Now the question is, how do we draw these districts to make the population in each district fall within the legal standards of equal population. We have a tremendous geographic information system (GIS) team who can help you with this. Kathy Steinle is here to conduct a live demonstration using our GIS capabilities available here at the Legislature.

**Chair Segerblom:**

For purposes of Kathy's demonstration, I have asked her to take my district, Assembly District 9, and show us what the district is now and then show us one scenario by which it could be increased to the size it needs to be and how that has an impact on the surrounding districts. She will be demonstrating how this computer system works. For the public, a computer is available in this building as well as at the Grant Sawyer State Office Building in Las Vegas. Anyone can play around with the software, create their own districts, and store that information. It is incredibly exciting.

**Kathy Steinle, GIS Manager, Information Technology Services:**

Today I want to give you a quick overview of our redistricting software and how it works. The Legislature selected autoBound Redistricting Software, which is written by a company called Citygate GIS. Their redistricting tools sit on top of Esri's ArcView 9/10 GIS software.

The layout includes a map in the center of the screen. On the left of the screen are our redistricting tools, and on the bottom of the screen is our table, which is where we will see the numbers change. This table is a live one, so as we move district boundaries, those numbers will change at the same time.

It has been pointed out that the goal is to create districts with equal population within a reasonable deviation. For a 42-district Assembly plan, we take the total state population of 2,700,551 and divide it by 42, which gives us the 64,299 population figure. In our table, that is the target number for all the Assembly districts.

Starting with the current Assembly districts is sometimes the easiest way to proceed. As Michael Stewart pointed out, Districts 13 and 22 have grown tremendously. As a result, a large percentage of the other districts need to add population to reach that ideal, and you can see that in the table, which shows how many people need to be added.

As Chair Segerblom said, we are going to use his district as an example. The blue stars indicate where incumbents live and are labeled with the incumbents' names. As you zoom in, you can see much more detailed geographic information. A number of the districts that need population added to them are in the center of Las Vegas, so it is a really good place to start when you increase the size of the districts.

**Chair Segerblom:**

Kathy, can you show us the current makeup of my district population-wise and include the ethnic breakdown?

**Kathy Steinle:**

Yes, I certainly can. Before we look at the table and your district's numbers in detail, I want to set up the premise of the software. You need to select the district you are going to add population to. The other thing you need to do is say what level of geography you are going to use. This was mentioned a bit in the previous presentations. We have three choices—the county level, the precinct level, and the census-block level. I am going to start at the precinct level and move down to the census-block level.

You can see there are 46,326 people in Chair Segerblom's district, so he needs to add almost 18,000 people to make his district close to the target number. There is a lot of data available about his district. The district is 41 percent Hispanic, almost 55 percent white, 13 percent black, 1 percent American Indian, almost 7 percent Asian, and 0.6 percent native Hawaiian or Pacific Islander. We have a lot of information in our database, and we tried to make it easy to find by using tabs at the bottom of our screen. We have 2010 voter registration data. For District 9, the registration data tells us his district contains 55.5 percent Democrats, 21.2 percent Republicans. Looking at the 2010 elections tab, we can see that in the Reid-Angle Senate race, Reid received 65.5 percent of the votes in this district and Angle got almost 30 percent of the votes. We also have information about the State Treasurer's race. On a couple more tabs are the 2008 and 2006 voter registration data. For 2008, we have the presidential election results, and for 2006 we have the results of the Governor's race.

I am going to start taking precincts from this adjoining district, Assembly No. 3, Ms. Pierce's district. We are going to start moving to the west with Assembly District 9. It would be helpful to know how many people live in these precincts, so I am going to label them with total population figures. I can see right away what the population in the precincts is, so I will start grabbing areas to add to the Chair's district. As I grab the areas, the population numbers change. I now need only 370 people, but the precincts have more people than that, so I am going to go down to a block level. If I grab this block, I am really close. I am only 64 people over, so I am going to call that good.

Looking again at the numbers, we have 38 percent Hispanic, 56.5 percent white; our black population is 12.2 percent, American Indian is 1 percent; Asian numbers went down a little bit to 7.5 percent and the Hawaiian/Pacific Island population is about the same at 0.6 percent. Registration data includes 52.5 percent Democrats and 25 percent Republicans for 2010. In the elections, the enlarged district's Reid percent is 61 percent and the Angle percent is 34.7. Again, the 2006 and 2008 elections data is there as well.

The makeup of the district did not change too much, but notice what happened to District 3. If you will recall, District 3 needed 17,000 people, but now it needs almost 29,000 people because we grabbed parts of District 3. It is a domino effect. If you take from a district that needed population, it will need more. We took a lot of population from District 3, so we are going to have to grab population from District 2. Again, you can look at the voter registration for District 3. Ms. Pierce's district currently has 44 percent Democrat and 34 percent Republican registration. In the Reid/Angle race, 52.8 percent voted for Reid and 43.2 percent voted for Angle. What we did this time was take a little from District 13. Looking at your table, you can see we needed to remove 192,000 people from District 13, and now we need to remove only 189,000. You can see the domino effect. When we start in the center and move out, we will end up with really large districts. You are going to be moving pieces of those districts into the smaller districts so you can build evenly populated districts.

The same idea will apply for the State Senate and congressional districts, and the system will accommodate any number of districts you want. I would like to touch on the public workstation piece of this system. We have a public workstation here in the building and one in our offices in Las Vegas. Staff will assist any members of the public who are interested. We will sit down with them and train them how to do it if they want to do it themselves, but we will also help and sit with them. They can tell us where they want to move the boundaries, and we will assist them with that.

The public workstations have the exact same database, the exact same software, and a printer. It is a little bit better than what we are seeing here, and because the screen is much bigger, you do not need to scroll as much while using the tools.

**Chair Segerblom:**

Could you also explain how people can save the plans they make?

**Kathy Steinle:**

As they work on plans, we can export those plans so they can be saved on flash drives and taken home. We can save the plans for them or as a backup. If the plans are very sensitive and they do not want anyone to see them, we can delete them from the system and put them back on when the individual returns to work on them.

**Chair Segerblom:**

Are there any questions for Ms. Steinle? [There was no response.]  
Mr. Stewart, do you want to introduce the staff?

**Michael Stewart:**

A number of you wanted to look at the website. It is right off the Legislature's homepage. If you click on the Reapportionment/Redistricting icon on the left side, you will see a very nice page we have been working on and continuously updating, and there are a series of tabs. The first on this home screen shows our public hearing schedule as well as a small note about what the Legislature must do with regards to reapportionment and redistricting. Also, there is a note about the public workstations in Las Vegas and Carson City that Kathy mentioned, along with contact information. The Information Technology (IT) Division does offer some training, and appointments are encouraged.

The second tab is our map section. The first area, the photo maps of districts, shows maps you all probably have in your offices with legislators' pictures on them. Below that are the deviation maps. Recently, IT updated the census data for Hispanic, racial, and other ethnicity concentration maps as broken out by Senate and Assembly districts. The next tab includes statistical information. There is an interactive state map that allows you to hover over any county and see the data in real time. Below that are statistical tables for 2010.

The next tab is for fact sheets and publications. The Research Division will be compiling numerous fact sheets in the coming weeks. They are going to be reflective of the various census data that is available.

We also have newsletters, and additional newsletters will be forthcoming as we move through this process. Other publications include the final bulletin of the redistricting and reapportionment interim study, which should be at the printer next week, as well as your session laws. If you need to direct someone to that site, we have included them here: United States Constitutional requirements, Nevada requirements, our Joint Standing Rules for the Senate and Assembly, which are Rule numbers 13.0 through 13.6, and finally, a memo concerning the reapportionment and redistricting information assistance that the Legislative Counsel Bureau can provide. We will also be posting in this section the news releases for these public hearings and other news releases as needed.

The next tab covers current district information and actually takes you to a separate website from the Research Division. From there, you can access all sorts of information on our current districts that were drawn ten years ago.

The last tab is for historical data. This has much of the same information as the current district information, but there are direct links here to all this, along with Legislative Counsel Bureau bulletins from previous interims on reapportionment and redistricting.

The last piece I would like to show you is on the left side of the screen. We have legislator contact information, for the public to reach you, as well as links to census information. There also are pertinent documents relating to reapportionment and redistricting, including the report that we heard about earlier from the Brennan Center for Justice.

Probably one of the most important things on the website for the public is an icon to sign up for information.

I will close by introducing the LCB staff. We are here to help you at any time. Director Lorne Malkiewich has general coordination and supervision of the entire process. From the Research Division there are several people who can help you. They include Donald O. Williams, our Research Director. I am here to help, as are Patrick Guinan, staffer for the Assembly Legislative Operations and Elections Committee, and Carol Stonefield, staffer for the Senate Legislative Operations and Elections Committee. Bob Erickson is in southern Nevada at the Las Vegas office and has tremendous history with this process. Helping us out in the Research Division is Jeanne Peyton. Kathy Steinle has a tremendous IT team that includes Sean Chambers, James Mitchell, Robert Puterski, and Paula Santerior. They are helping out the caucuses individually and providing technical assistance to the caucuses. Eileen O'Grady and Kristen Roberts are from our Legal Division. In Las Vegas we have Brian Davie, who has been

through this process several times, and Melisa Aguon as support staff. We also have listed the members of both committees and your support staff in the information packet ([Exhibit D](#)).

With that, we will be happy to answer any questions.

**Chair Segerblom:**

Now we will move to public comment. Does anyone here in the north want to speak?

**Matt McCarty, Chairman, Government Affairs Committee, Elko Area Chamber of Commerce:**

We appreciate the opportunity the Committees have given us to address you, and we encourage additional opportunities as the process continues. We hope the rural communities will be considered as communities of interest as districts are redrawn. Currently, Senator Rhoads' district encompasses 75 communities, as outlined in the legislative districts. There are 255 communities outlined in that document, with Senator Rhoads covering nearly one-third of them. We believe it is extremely important to maintain those districts' representation as we move forward, and respectfully request the same consideration in the Assembly with its rural districts.

Obviously, with changes in the demographics and the population in Las Vegas, that will be difficult to do, but we think it is important that, as communities of interest, the rurals maintain a voice in the legislative arena. We appreciate your time and thank you for giving us this opportunity.

**Chair Segerblom:**

Let us go now to Las Vegas.

**Michael Ginsburg, Member, Southern Nevada Diversity Roundtable:**

[Mr. Ginsburg read a letter from Julie Hereford, Co-Chair of the Southern Nevada Diversity Roundtable ([Exhibit E](#)).]

**Forrest Darby, Private Citizen, Las Vegas, Nevada:**

[Read from prepared text ([Exhibit F](#)).]

**Ed Gobel, Private Citizen, Las Vegas, Nevada:**

I want to thank you for this opportunity. I hope that you consider not increasing the number of legislators we have. I know we can go from 63 legislators to 75, but we would appreciate keeping the same representation because it makes things simpler and more able to facilitate change.

I also want to thank you for providing Nevada citizens with information so they can have greater input. At so many of these hearings, people appear before you without all the information and it becomes a waste of time. I thank you for your time and the great start toward transparency.

**Chair Segerblom:**

I do not see anyone else signed up to speak either in southern Nevada or here in Carson City. Does anyone else want to speak at this public hearing? [There was no response.] Does any member of the Committee want to say any final words? [There was no response.] With that, the hearing is adjourned [at 4:52 p.m.].

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblyman Tick Segerblom, Chair

DATE: \_\_\_\_\_

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Senator David R. Parks, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name: Assembly Committee on Legislative Operations and Elections/Senate Committee on Legislative Operations and Elections**

**Date: March 10, 2011**

**Time of Meeting: 3:08 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance roster
	C	Justin Levitt	PowerPoint
	D	Michael Stewart	Handout
	E	Michael Ginsburg	Letter from Julie Hereford
	F	Forrest Darby	Handout