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**SUPREME COURT OF THE STATE OF WASHINGTON**

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**In re 2012 WASHINGTON STATE REDISTRICTING PLAN**

**John Milem, Petitioner**

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**BRIEF OF PETITIONER ON INTERIM PLAN**

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John Milem, *pro se*  
1600 NE 125<sup>th</sup> Ave  
Vancouver, Washington 98684  
[milemjohn@comcast.net](mailto:milemjohn@comcast.net)  
360.909.7592

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## INTRODUCTION

Petitioner hereby responds to the request of the Court by letter of February 17, 2012, regarding the selection of an interim plan. Until the Court strikes down the 2012 Redistricting Plan, there is neither need nor a place for an interim plan. If the Court were to follow examples in 2012, on shorter time schedules, of the Supreme Courts of Kentucky, Missouri and Pennsylvania, this matter can be brought to prompt resolution without need for an interim plan. The 2012 Redistricting Plan is so pervasively violative of the state constitution and the redistricting act that it is singularly unsuitable to be an interim plan. In the absence of the process suggested by Petitioner (*See* Letter to Ronald R. Carpenter, February 15, 2012), Petitioner recommends the Court adopt the plan offered here as the interim plan.

## BACKGROUND

At its most fundamental, districting is about organizing people into groups for the purpose of each group electing a member or members of legislative bodies. This is necessary to encourage diversity within the legislative body. If all members are elected at large, it is more likely that

minority population groups will be substantially underrepresented in the legislative body and that majority population groups will have supermajorities in the legislative body.

Redistricting is the drawing of new boundaries which organize people into such groups. Redistricting is necessary because the rate of population change is not the same throughout the state. Some areas add population at a faster rate than others; some areas may even experience population decline. In the case of congressional districts ("CDs"), redistricting also may be appropriate as a result of a change in the number of seats assigned to a state.

The purpose of redistricting is to establish new boundaries to reflect changes in the distribution of the population throughout the state.

In practice, this has proven very difficult to do. In the first two decades of statehood, the legislature was able to pass legislative redistricting by increasing the numbers of legislative seats. When this was no longer sufficient, the legislature simply stopped redistricting, in spite of the constitutional provision calling for it. The legislature did not pass a legislative redistricting act after 1901 until 1965, except for one in 1957

which was stimulated by the passage of an initiative which redistricted the state. The 1957 redistricting by the legislature was not to accomplish redistricting but largely to reverse the redistricting done by the people's initiative. In 1965, the legislature acted under federal court order. *Thigpen v. Meyers*, No. 5597 (W.D. Wash. Oct. 26, 1964) (decree). In 1971, it was again unable to act and the state was redistricted by a master at the direction of a federal court. *Prince v. Kramer*, No. 9668, 1972 WL123242 (W.D. Wash. April 15, 1972). In 1981, the legislature did redistrict. In 1983, the state constitution was amended to create the Washington State Redistricting Commission, Constitution, Art. II, sec. 43, and the legislature passed enabling legislation, the Washington State Redistricting Act, RCW 44.05. The Commission was constituted in 1991, 2001 and 2011. Each time it produced a redistricting plan, none of which complied with governing law.

Although redistricting has regularly occurred over the last half century, it does not necessarily follow that its purpose, to reflect changes in the distribution of the population, has actually been fulfilled. Consistent with the resistance to change, a typical pattern has been to try to preserve the status quo by adding parts of growing areas to areas in relative decline. *See* Appendix 1. This undercuts the purpose of

redistricting, instead preserving the representation of overrepresented areas and denying proper representation to underrepresented, growing areas.

**AN INTERIM PLAN IS PREMATURE.**

The state presently has a redistricting plan, the 2012 Washington State Redistricting Plan adopted by the Redistricting Commission and amended by the Legislature. This became effective on February 8, 2012. Until such time as by court order this plan is declared null and void for failure to comply with governing law, there is neither need nor place for an interim plan.

**AN INTERIM PLAN IS UNNECESSARY.**

In four cases filed in 2012 to challenge new legislative redistricting plans, the issue is the same: the division of political subdivisions in violation of provisions of governing law. In three of these four cases, the court issued an order striking down the plan in two weeks or less from the filing of the case.

In Missouri, action was completed on a state senate redistricting plan on December 9, 2011. A challenge was filed in the state Supreme Court on January 3, 2012. The court order striking down the plan was issued January 17, 2012. *Missouri ex rel. Teichman v. Carnahan*, No. SC92237, 2012 WL 135440 (Mo. Jan. 17, 2012). The candidate filing deadline is March 27, and the primary is July 7. From the date of final action on the plan to date of filing was 25 days. From the date of filing to the candidate filing deadline is 84 days.

In Pennsylvania, action was completed on a state redistricting plan on December 12, 2011. A challenge was filed in the state Supreme Court on January 11, 2012. The court order striking down the plan was issued January 25, 2012. *Holt v. 2011 Legislative Reapportionment Comm'n*, No. 7-MM-2012, 2012 WL 360584 (Pa. Jan. 25, 2012). The candidate filing deadline was February 16, and the primary is April 24. From the date of final action on the plan to date of filing was 30 days. From the date of filing to the candidate filing deadline was 36 days.

In Kentucky, action was completed on a state redistricting plan on January 20, 2012. A challenge was filed in Franklin Circuit Court on January 26, 2012. The court order granting an injunction against the plan

was issued February 7, 2012. *Fischer v. Grimes*, No.12-CI-00109 (Ky. Cir. Ct., Franklin Cnty. Feb. 7, 2012) (order granting preliminary injunction). On appeal transferred from the Court of Appeals, the Kentucky Supreme Court heard oral argument on February 24 and issued its order affirming the lower court on the very same day. *Legislative Research Comm'n v. Fischer*, No. 2012-SC-091-TG (Ky. Feb. 24, 2012) (order *aff'g* lower court). The candidate filing deadline had been January 31, but was delayed by court order to February 10. The primary is May 22. From the date of final action on the plan to date of filing was six days. From the date of filing to the original candidate filing deadline was five days.

Here in Washington, action was completed on the 2012 Washington State Redistricting Plan on February 7, 2012. The challenge to the plan was filed by Petitioner in this Court on February 8, 2012. The candidate filing deadline is May 18, and the primary is July 7. From the date of final action on the plan to date of filing was one day. From the date of filing to the candidate filing deadline is 100 days.

The state claims that this is complex, constitutional litigation and, inferentially, that the interests of candidates campaigning and of election

administrators preparing for the 2012 elections are of greater importance than the right of the voters to vote in elections in which districts are compliant with the requirements of the state constitution and the state redistricting act. The resolution of simple issues of constitutionality of an essential element of our election process, the very foundation of representative democracy, is to be casually swept aside out of concerns for the convenience of elections administrators (whose concerns Petitioner is also very concerned about) and to avoid inconvenience to candidates, many of them elected officeholders, whose campaigns might be affected by a change in the redistricting plan. A two-step process with an interim plan risks far greater inconvenience to candidates, elections administrators and voters experiencing a change in districts for the 2012 election and another change in districts for the 2014 election should this Court conclude that the 2012 Redistricting Plan is in violation of governing law.

In December 2004, this Court resolved an important election issue on an expedited basis. *McDonald v. Sec'y of State*, 153 Wash. 2d 201, 103 P.3d 722 (2004).

This case at its core is very simple, as indicated by the speed of the decisions in three other cases which raised the same issue in a similar,

though shorter, time frame.

In *Missouri ex rel. Teichman v. Carnahan*, the Court said:

The single function of this Court in this case is to determine whether the constitutional requirements and the limitations of power, as expressed in art. III, sec. 7, were followed by the nonpartisan senate reapportionment commission. *Teichman, 2012 WL 135440* at \*1.

There are compelling reasons for this Court to promptly hear and rule on cases having effect on elections in view of the short timetables involved. *Id.* at \*1.

This case is actually more compelling for finding facial unconstitutionality than the cases in Missouri and Kentucky. (The Pennsylvania case is significantly more complex because it involved a very large number of political subdivisions which are protected under the state constitution. Because of a long history of upholding challenged redistricting plans, the Pennsylvania court also had to distinguish its prior decisions. Nonetheless, it was able to reach a final judgment on the

constitutionality of the plan in 14 days.)

In Missouri, the allegation of constitutional defect related to only three counties of 114 (and one independent city) and affected at most six of thirty-four districts. The opinion of the Court only dealt with two counties and, thus, no more than four districts. But this was sufficient for the Court to conclude that the Commission had not complied with standards in the constitution:

The nonpartisan reapportionment commission's plan violated this constitutional provision by improperly dividing the boundaries in the multi-district areas of Jackson and Greene Counties. *Id.* at 4.

In Kentucky, the plan was struck down for dividing five counties (of 120) in drawing senate districts when it was shown that only four needed to be divided and for dividing 28 counties in drawing house districts when it was shown that only 24 needed to be divided. *Fischer v. Grimes*, findings of fact 3 and 4, page 5 of 18. (There was an additional ground, population variation, which apparently related to only one or two districts.) The county integrity violations appear to have affected six of 38 senatorial districts and ten of 100 house districts.

Here, in this case, the violations are far more widespread than in the Missouri and Kentucky cases. Using only two standards of governing law, to minimize the numbers of divided counties and municipalities (RCW 44.05.090(2)(a)), 44 of 59 districts drawn by the Commission violate the law. This number does not include the compactness violations evident with respect to, for example, legislative districts (“LDs”) 11, 18 and 37, or any of the violations of various other standards intended to “govern the work of the Commission.” Petitioner is not asking the Court to consider those violations for reasons expressed in earlier pleadings. Petitioner wishes only to call attention to the widespread nature of the violations and that courts in other states have had no hesitation to quickly strike down plans with far less pervasive violations than shown in the 2012 Washington State Redistricting Plan before this Court.

The State has raised concerns about the ability of the counties to adjust precinct boundaries in time for the election. The 2012 Redistricting Plan requires that 20 of the 39 counties in the State be divided among either CDs or LDs or both, thus requiring county officials in these 20 counties to adjust precinct boundaries in compliance with the Plan. Nine of these counties, nearly half, would be undivided under a plan compliant

with governing law. Of the remaining eleven counties, three counties divided between CDs and LDs would not be divided between CDs under a plan compliant with governing law. Therefore, all workload in drawing new precincts arising out of congressional and legislative redistricting would be removed from nine counties and the workload would be reduced in three others. Because a plan compliant with governing law follows municipal and school district boundaries to a greater extent than does the 2012 Redistricting Plan, it is likely that, in most of the eleven counties affected by a governing-law-compliant redistricting plan, the changes to accommodate such a plan would be modest.

This case can be resolved quickly, in time for election administrators to adjust precinct lines to the minor extent necessary to accommodate a new plan and for campaigners to adjust to different and governing-law-compliant boundaries.

### **THE ROLE OF THE SUPREME COURT UNDER THE CONSTITUTION AND THE ACT**

The State has made comments about the nature of the role of the Court in this matter:

The Petitioner is mistaken regarding the nature of the Court's role in this dispute. As noted above, at this juncture the Court is authorized only to review the Commission's plan for legal validity. (Letter of the Attorney General to Ronald R Carpenter, February 15, 2012, p. 4).

Petitioner is in full agreement with the State regarding this. "The Court is authorized only to review the Commission's plan for legal validity." In spite of these words, the State is actually asking the Court to do something else first, order an interim plan, and delay doing the only thing it is authorized to do at this point under the law. And it is asking the Court to ignore the statutory language about giving petitions such as this precedence and is instead asking the Court to hear the merits in due course.

If the Court were to act in its review capacity under RCW 44.05.130 and decide to strike down the plan, what happens next? The State seeks a lengthy process to get to the merits. As Petitioner has already shown, courts in three other states dealing with petitions filed this year and with shorter timelines than Washington's have been able to get to

the merits immediately and render orders in less time than this process has already taken here, due to the State's effort to drag this matter out, in violation of the plain meaning of the statute that it is to be given precedence over other matters and that the Court order a plan by March 1.

The State appears to believe that the Court has no role in ordering a plan into effect unless the Commission failed to meet a deadline. This elevates procedure and process over substance. If the Commission, as Petitioner claims, did not prepare a plan within the meaning of the state constitution and the redistricting act, how can it matter that they did something else but did it in the time in which they were supposed to do what they did not do?

The State further appears to claim that Petitioner interprets RCW 44.05.130 as superfluous (Attorney General Letter, p. 5). This seems a little odd since Petitioner filed his petition pursuant to .130. If .130 is superfluous, is there a remedy in state court for this violation of the state constitution?

The important point about .130 is that it gives the Court no direction as to what to do after it receives such a petition except that it

may consolidate multiple petitions and that it should give such petitions precedence over all other matters. It appears to be the position of the State that it is up to the Court to fill in the blanks left by the draftsman and legislate a procedure for dealing with the petition. This is entirely contrary to the spirit of the law, instructing that precedence be given to the matter and clearly directing that, under certain circumstances, the Supreme Court is to order a plan on a short time schedule. This part of the dispute between the State and Petitioner relates to whether the granting of the remedy sought by a petition filed in these circumstances can trigger the remedy of .100.

This matter is to be handled as a matter of priority and one is to look elsewhere in the statute for instruction as to what happens next. If the draftsman had not expected .100 to control what happens next, it is reasonable to believe that .130 would contain language indicating what the next step is in the process.

RCW 44.05.100 and .130 are fully consistent with each other. The Commission process and the legislative amendment period must be allowed to run if the Commission claims to have fulfilled its mandate. A challenge can then be filed. The Court is to give the matter precedence

over all other matters. This certainly suggests that this matter is expected to be resolved as promptly as it can be. As shown above, courts in other states have shown that that can be done. Since there are no instructions regarding next steps in .130 and since there is no need for next steps unless a plan is found invalid, it is a perverse elevation of procedure and process over substance to say that .100 does not guide the Court in handling the matter. Once the invalidity of the plan has been ordered by the Court, the next step is to order a plan into effect by March 1.

Instead of adherence to this statutory scheme for addressing this matter, the position of the State does not provide any certainty regarding how the Court is to proceed with the matter. It appears that in place of the legislative solution to this issue, the Court is to make it up as it goes along. This hardly shows respect for the draftsman of the statute. The State appears to invite the Court to legislate rather than to act in accordance with a constitutional provision approved by the people of the State.

The draftsman very plainly intended that the Court act promptly and order a plan. The State suggests that that is unreasonable because the Commission was allowed a year. The situations are entirely different because the Commission process is essentially a negotiation between

political parties. In the case of the Court drawing a plan, there is no such adversary circumstance. In 1972, the master was given 30 days from appointment to prepare and deliver a plan and was able to do so. *Prince*, 1972 WL 123242 at \*2. In this case, plans are already available and have been for months.

The State comments on the inappropriateness of courts doing redistricting and then cites federal cases in support of its contention. This appears to show disregard of the fact that Washington state law contains an express provision calling upon the Court to do exactly that.

Make no mistake, it is not Petitioner who is proposing that the Court order a plan. Petitioner is simply reading the statute in a sensible way which honors its provisions rather than, as the State is, attempting to gut the statute of a remedy clearly intended.

#### **THE STATE'S PROPOSAL FOR AN INTERIM PLAN**

The state proposes that the 2012 Redistricting Plan be the interim plan. For the plan under challenge in this case to be put into effect on an interim basis is improper for several reasons.

It is already the plan in effect. Until there is court action to strike down the plan, there is no need for an order to put it into effect.

Whether by order of the Court or by simply allowing a process already underway to be completed, the implementation of the 2012 Redistricting Plan would inflict an irreparable harm on the voters of the state. It would set the stage for a whole new round of resistance to changes to bring redistricting in Washington into compliance with governing law. As indicated previously, redistricting plans have effects lasting decades after the reasons which might once have justified them have ended.

If the 2012 Redistricting Plan is allowed to be implemented for the 2012 election, it will become part of that history to be dragged into the long future. This would be most unfortunate because the Plan violates governing law.

The examples below are not given to expand the scope of the case beyond the violations with regard to divisions of counties and municipalities but to indicate a basic unfairness to certain populations in

the state. This unfairness will reduce the values of their votes for some time into the future for how long no one can now confidently say. History says that, given the longevity of past redistricting decisions, it might be a long time.

In particular, the 2012 Redistricting Plan reduces the CDs with a majority of their population outside Metropolitan Puget Sound (King, Pierce, Snohomish, Thurston and Kitsap Counties) from four of nine to three of ten, in spite of the fact that the area to experience the reduced representation has 41% of the population of the State and grew at a faster rate during the last decade (15%) than did Metropolitan Puget Sound (13%). *See Appendix 2; see also Appendix 8 to Petition.*

The Plan reduces the number of LDs entirely within the City of Seattle from three to two and increases the number of LDs located partly in Seattle from three to five. This increase in legislative representation is granted even though Seattle grew more slowly (8%) than the state (14%) during the preceding decade.

An additional issue relates to rural representation in the state legislature. The 2012 Redistricting Plan includes only six LDs in which a

majority of the population does not live within an urban growth boundary or, in the cases of counties without urban growth boundaries, within an incorporated municipality. However, eight such districts can be drawn. This effort to homogenize representation in favor of majority populations and to minimize diversity within the state legislature is an analogue to the decision of the Commission to reduce the number of congressional districts having a a majority of their population outside Metropolitan Puget Sound.

Yet another issue relates to legislative representation of ethnic and racial minorities in Yakima County. While proclaiming the creation of a Hispanic majority district in Yakima County, the Commission has actually reduced the likelihood that Hispanic-preferred candidates could win in LD 15 by making it more Republican than it has been, thus further entrenching the incumbents. The Court ought not to be complicit in inflicting this hindrance to the ability of Hispanic voters to have a reasonable opportunity to vote for candidates of their choice who actually have a real opportunity to win. *See* Appendix 3.

Viewed solely from the perspective of the numbers of divided counties and municipalities, which governing law indicates shall be “as

small as possible” (RCW 44.05.090(2)(a)), not one of the ten CDs in the 2012 Redistricting Plan is free from violation of governing law. *See* Appendix 4. The same is true of 34 of 49 LDs. *See* Appendix 5. Among the remaining 14 LDs which do not participate in violations of the county integrity and municipal integrity provisions of governing law, there are various other characteristics which make them suspect of being in violation of governing law. At least four among the 14 have characteristics which appear to offend the electoral competition standard and at least four more raise compactness questions.

There is no reason for the Supreme Court to select this pervasively flawed and damaging plan as an interim plan for the 2012 election.

The State has cited the order of the California Supreme Court granting the relief the State seeks here, approval of the statutorily-adopted plan as the interim plan. *Vandermost v. Bowen*, 53 Cal. 4th 421 (Cal. 2012). However, what the State has failed to acknowledge is that the California Supreme Court had already heard the case on the merits on an expedited basis and denied plaintiff's request for an order that the plan was unconstitutional under the California Constitution.

After preliminary briefing . . . and thorough consideration of all the issues raised by Petitioners, we determined that the petitions lacked merit and denied the requested writs on October 26, 2011. *Id.* at 439.

That fact fully distinguishes *Vandermost* from the case before this Court. The issue in the order cited by the State relates to whether a plan found constitutional by the state Supreme Court should be used as the interim plan when there is a possibility that sufficient signatures will be obtained to subject it to a referendum. These facts are so different from the ones in the case before this Court that the only consideration the Court should give to the cited order is to note that the California Supreme Court chose as an interim plan a plan it had previously determined was constitutional.

It should also be noted that, contrary to the position of the State, the California Supreme Court rendered an order on October 26, 2011, on a petition filed on September 16, 2011. This is another example in which a State Supreme Court acted quickly to resolve the issue of the constitutionality of a challenged redistricting plan.

## **A PROPOSED PLAN**

In his letter dated February 13, 2012, Petitioner recommended a process for dealing with the legally insufficient 2012 Redistricting Plan and for replacing it with another plan to be selected from among the various public plans available on the website of the Redistricting Commission.

However, because the Court has indicated that it wishes to receive recommendations at this time for an interim plan, Petitioner will propose a plan which is far more compliant with the constitutional and statutory standards than the 2012 Plan. Petitioner's proposed plan includes a plan for ten CDs nearly identical to the plan on the Redistricting Commission Website identified as Milem Preferred Congressional Map (Appendix 4 to Petition) and a plan for 49 LDs very similar to the plan there identified as Milem Preferred Legislative Map (Appendix 6 to Petition). The two plans on the website have been available for review by the Commission and the public for over six months.

The congressional plan offered here varies from the Preferred

Congressional Map on the Commission website only with respect to 4,187 persons in King, Pierce and Snohomish Counties. The changes are made to equalize populations, follow city and school district boundaries more, and increase compactness.

The legislative plan offered here, with the exception of Yakima County, varies from the Preferred Legislative Map on the Commission website with respect to 45,433 persons in Whatcom, Pierce, Kitsap, Clark and Benton Counties. The overwhelming majority of these people are in Kitsap County, where the changes united the City of Bremerton and the Fort Madison Indian Reservation within a single LD, and in Clark County, where the La Center School District was united within a single LD.

The changes were more significant in Yakima County. However, for this county, the offered plan is based on the plan identified as Milem Exact Legislative Map (Appendix 7 to Petition). The distribution of the population of Yakima County among LDs varies from the Exact plan by 51,173 persons. These changes in Yakima County, as well as the shift of Klickitat County to a different district, are intended to make the districts more compact and to increase electoral competition in the LD composed of Klickitat County and southern Yakima County, to the possible benefit of

the Hispanic majority living within the LD.

The large number of options available in redistricting becomes remarkably restricted when standards relating to population equality, compactness, electoral competition, and divisions of counties and municipalities are imposed. RCW 44.05.090.

For CDs in Washington, using 2010 census data, three counties, King, Pierce and Snohomish, must be divided because their populations are too large to form single CDs. It is unnecessary to divide any other county in the state in forming CDs. The 2012 Redistricting Plan divides nine counties in forming CDs. The plan offered here by Petitioner divides only three counties.

It is unnecessary to divide any municipality in forming CDs. The 2012 Redistricting Plan divides four municipalities among CDs. The plan offered here by Petitioner does not divide any.

For population data on the proposed CDs, *see* Appendix 6.

For LDs in Washington, using 2010 census data, ten counties, King,

Pierce, Snohomish, Spokane, Clark, Thurston, Kitsap, Yakima, Whatcom and Benton, must be divided because their populations are too large to form single LDs. In addition to this, Skagit County must be divided because of the population and location of Whatcom County. It is unnecessary for any other county in the state to be divided in the formation of LDs. The 2012 Redistricting Plan divides 17 counties in forming LDs. The plan offered here by Petitioner divides only the ten largest counties (named above) and Skagit County.

Four cities in Washington are too populous to be included within a single LD: Seattle, Spokane, Tacoma and Vancouver. In addition to these cities, the 2012 Redistricting Plan divides Aberdeen, Auburn, Battle Ground, Bellevue, Bellingham, Bremerton, Burien, Des Moines, Edmonds, Everett, Issaquah, Kennewick, Kent, Kirkland, Lakewood, Lynnwood, Marysville, Mount Vernon, Mountlake Terrace, Pasco, Redmond, Renton, Sammamish, and Yakima. In addition to the four cities which must be divided, the Plan offered here by Petitioner divides only Bellevue, Bothell, Coulee Dam, Renton, and Yakima.

For population data on the proposed LDs, *see* Appendix 7.

The plan offered by Petitioner does not have the pervasive violations of governing law which characterize the 2012 Redistricting Plan. In the absence of the definitions the Commission did not provide and the explanations of its work which the law required it to give, but it did not give, it is not fully possible to say that any particular plan is constitutional. Only by comparison with a plan more clearly compliant with governing law is one able to declare a plan unconstitutional.

Petitioner urges the Court to order the 2012 Redistricting Plan null and void for its violations of governing law and to order the plan offered here by Petitioner as the law of the state.

### **CONCLUSION**

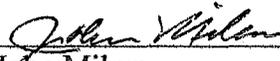
The best interests of the voters of the State of Washington would be served by the Court promptly issuing an order striking down the 2012 Redistricting Plan as failing to comply with the requirements of the State Constitution and the Redistricting Act.

Upon such order by this Court, the best interests of the voters of the State of Washington would be served by a process to select from

among available plans one which satisfies applicable legal requirements.  
In the absence of such a process, Petitioner requests that the Court adopt  
the plan offered by Petitioner.

DATED this first day of March, 2012.

Respectfully submitted,

  
\_\_\_\_\_  
John Milem  
Petitioner, *pro se*

## APPENDIX 1

### DRAGGING THE PAST INTO THE FUTURE

The common characteristic of all Washington redistricting plans by officeholders or their deputies, the Commissioners, has been to maximize the retention of the status quo. On some occasions, there has been no alternative to moving entire districts from one area of the state to another. However, whenever possible, growing areas have been cannibalized to preserve representation for an area which its population no longer justifies.

An example is Walla Walla and Whitman Counties. In the 1931 redistricting, each of these counties was a legislative district, electing one state senator and two state representatives. At that time, Benton and Franklin Counties had a population justifying about half a district and shared a district with Klickitat and Skamania Counties. By 1960, the populations of Benton and Franklin Counties had exceeded those of Walla Walla and Whitman Counties. And by 2010, Benton and Franklin Counties had almost two and a half times as many people as Walla Walla and Whitman Counties.

In spite of this population imbalance in favor of Benton and Franklin Counties, Benton and Franklin Counties have among their residents, one state senator and two state representatives, all living in Benton County, none in Franklin, while Walla Walla and Whitman Counties have one resident state senator and three resident state representatives.

This result, perpetuated by the 2012 Redistricting Plan, is produced by cannibalizing Benton and Franklin Counties to provide sufficient populations to the Walla Walla and Whitman legislative districts to allow those districts to continue to exist as separate districts and to allow those districts to continue to reelect incumbents from Walla Walla and Whitman Counties. The result of this emphasis on maintaining legislative delegations for Walla Walla and Whitman Counties which their populations no longer justify is that people in Franklin County, as indicated by testimony at the Commission's Pasco public forum, feel unrepresented in the legislature. One person spoke of calling the senator resident in Benton County to speak about legislative matters.

It is not necessary for Franklin County (the largest Hispanic-majority county in the state) or the City of Pasco to be divided in forming legislative districts. Both are divided in the 2012 Redistricting Plan.

If the new redistricting reflected the actual realities of population distribution, all five counties of southeastern Washington would be in a single district, Franklin County and the City of Pasco would not be divided. Benton and Franklin Counties would constitute one legislative district and over 80% of a second one. This would significantly increase the likelihood that these two counties would have two senators and three or four representatives, instead of the one senator and two representatives they currently have and will probably continue to have under the 2012 Plan.

This solution is also the one which complies with the state constitution. The division of Franklin County to preserve historical representation for Walla Walla and Whitman Counties is a violation of the county integrity provision of governing law.

Another example of the past controlling the future is Grays Harbor County. In the early years of statehood, Grays Harbor County was too populous to be a legislative district. By 1960, Grays Harbor County was too small to be a district and in the redistricting of that decade, the 21<sup>st</sup> district which had been in Grays Harbor County was moved to Snohomish County. By 1980, Grays Harbor and Pacific Counties were too small to be a district. Nonetheless, the only time Grays Harbor County has been undivided was in the redistricting done in the 1970s by a master. As soon as redistricting returned to officeholders or their delegates, Grays Harbor was once again divided and remains divided in the 2012 Plan.

This division of Grays Harbor County separates the Cities of Aberdeen and Hoquiam which share a common boundary. Voters in Aberdeen share state legislators with voters in Longview, 100 miles away. Meanwhile, voters in Hoquiam share state legislators with voters in Port Townsend, 125 miles away. And each distance is significantly longer if the route of travel is limited to routes within the district.

In the 2012 Redistricting Plan, this division of Grays Harbor County forces the division of Cowlitz and Lewis Counties as well, neither of which would need to be divided if Grays Harbor were united. So, here the tradition of dividing Grays Harbor County between legislative districts now requires also the division of Cowlitz and Lewis Counties, all three divisions in violation of governing law, since on 2010 population data it is possible to create compact districts without dividing any of these counties.

A third example of the past controlling the future is represented by the 13<sup>th</sup> legislative district. The district was formed of Grant and Kittitas Counties in the redistricting by initiative in 1930. In the 1930 census, Kittitas County had a population of about 18,000 and Grant County, fewer than 6,000. Over the more than 80 years since the passage of the initiative, the population of Kittitas County has slightly more than doubled. Grant County has been revolutionized by the Columbia Basin Project. Its population has increased by more than 15 times. The two counties have become very different. Grant County was the second county in the state in value of agricultural production according to the 2007 Census of Agriculture at about \$1.2 billion, twenty times the value of agricultural production in Kittitas County which was about \$60 million.

As a result of the growth of Grant County, it has been an attractive target to supply population to the 12<sup>th</sup> district, Chelan and Douglas Counties, which had been growing more slowly than the state. In the 1970s and 1980s, Grant County also supplied population to the Whitman County district mentioned above, the 9<sup>th</sup>.

This has not been necessary. But the past continues to rule to the disadvantage of the voters and in violation of governing law.

A fourth example of the past controlling the future is the multiple boundaries in an uninhabited area of northeastern King County. The master, instructed by the federal court in the 1970s redistricting, was not to use precinct boundaries but to use boundaries of census geography. At that time, the census geography did not include school district boundaries. The master placed the Skykomish area into a different legislative district from the neighboring areas of King County, presumably because there is no transportation network connecting the Skykomish area to the rest of King County, except by passing through Snohomish County. However, since he was limited to census geographies, he could not follow

the school district boundary or the precinct boundaries. So, for the next 40 years, there have been two precincts which crossed the boundary between the Skykomish and Snoqualmie Valley School Districts. It makes no practical difference, because no one lives there. However, there is an unnecessary administrative burden due to the rules about precinct boundaries. Precincts may not cross county, municipal, congressional district or legislative district boundaries. They may cross school district boundaries. So, in this uninhabited area, there are two separate boundaries for the school district and the legislative district. This means that in any listing of school district precincts, the two precincts which must cross the school district boundary must be listed as only partly in each school district. Upon further investigation, one discovers that the part of Stevens precinct in the Snoqualmie Valley school district has no population and the part of the Sno-Pass precinct in the Skykomish school district has no population. But for the limitation imposed by the federal court, there would have been no reason for this complication. However, for three successive redistrictings nothing was done about it. Even absurd boundary decisions can last for decades.

It is entirely likely that, with a great deal of research, one could develop similar examples relating to the cities east of Lake Washington and in southwest Snohomish. However, since municipalities can annex and may at some times have annexed across a district boundary, such examples would be more complex to determine and present.

The history of redistricting in Washington shows that it is very hard to make changes in district boundaries and that boundaries may long survive the extinction of the reasons for their creation.

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Prepared by John Milem  
2012 February 28  
milemjohn@comcast.net  
360.909.7592

## APPENDIX 2

### GERRYMANDERING THE RURALS

Washington has had nine seats in the U S House of Representatives. As a result of the 2010 census, Washington gained a seat and will have ten seats during the coming decade.

The districts for election of these ten members of Congress were drawn by the Washington State Redistricting Commission.

The four voting members of the Commission were all selected from the five counties (King, Pierce, Snohomish, Thurston and Kitsap) of Metropolitan Puget Sound (the "Heartland").

These appointments were criticized, particularly in eastern Washington. The concerns of bias against the rural areas of the state appear justified by the congressional districts drawn by the Commission.

During the last decade, the Heartland provided all of the population for four congressional districts (1, 7, 8, 9). They also provided 67% of the population of district 6. The other 34 counties of the state (the "Hinterland") provided all of the population for two districts (4, 5), and 82% of the population of district 3.

The remaining district, district 2, was divided nearly equally between the Heartland and the Hinterland. 46% of its population was from the Heartland and 54% was from the Hinterland. Even though a majority of the population of this district was from the Hinterland, the elected representative was from the Heartland.

This division of the nine districts, more or less 5 and a half to the Heartland and 3 and a half to the Hinterland roughly reflected the division of the population in the state.

The last five censuses (1970 to 2010) have shown a remarkable stability in the rate of population change between those two parts of the state. During that period the five counties have had about 59% of the state's population and the other 34 counties have had about 41%. Here's the data:

#### Percentages of State Population in Heartland and Hinterland

Census Year	<u>1970</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2010</u>
Heartland	59%	57%	60%	59%	59%
Hinterland	41%	43%	40%	41%	41%

With the addition of a tenth seat in Congress, it was reasonable to suppose that six districts would be drawn for the 59% of the state's population in the Heartland and that four districts would be drawn for the 41% in the Hinterland.

Gerrymandering came to the rescue of the Heartland. Not only did the Heartland get the new district, but they also now have taken away one district from the Hinterland. Whereas the old district 2 had 54% of its population outside the Heartland, the new district 2 has only 38% of its population there.

As a result, the Heartland with 59% of the state's population will be able to elect seven members of Congress and the Hinterland with 41% of the state's population will only be able to elect three members of Congress.

How was this done? Two classic gerrymandering tactics, usually used for partisan purposes, were here used to disadvantage the people who live in the Hinterland. They are called packing and cracking. Pack as much of the disfavored, Hinterland population into as few districts as possible (no way to do fewer than three) and then crack the remaining population among districts controlled by the favored, Heartland population. This cracking involved the old district 2, which had been divided almost evenly in population between the two areas. Cracking involves reducing the number of districts exclusively located within the favored area. Whereas, there were four districts entirely within the Heartland during the last decade, that number is now reduced to two. The population which could otherwise be a district controlled by the Hinterland is instead divided among other Heartland districts.

So, even though the state gained a seat in Congress, the Hinterland lost a seat while the Heartland gained two. This happened even though there was no change in their shares of the state's population

Here's the data. Each district is listed by number with the percentage of its population in the Hinterland. Districts above the line have a majority of population in the Hinterland. Districts below the line have a majority of population in the Heartland.

<b>2002 Districts</b>		<b>2012 Districts</b>	
4	100%	4	100%
5	100%	5	100%
3	82%	3	98%
2	54%		
<hr/>			
		2	38%
6	33%	6	32%
1	0%	1	23%
8	0%	8	19%
		10	2%
7	0%	7	0%
9	0%	9	0%

This table makes clear the situation. Districts 1, 2 and 8 contain Hinterland populations amounting to 89% of a district. But being divided among the three districts as they are, they are unlikely to be successful in winning the election of a Hinterland resident in any of these three districts.

Fair representation for these people requires that districts 1, 2 and 8 be redrawn to combine these Hinterland populations in a single district.

Prepared by John Milem  
2012 March 1  
[milemjohn@comcast.net](mailto:milemjohn@comcast.net)  
360.909.7592

### APPENDIX 3

#### THE HISPANICS' ILLUSORY VICTORY

There is a history of dissatisfaction on the part of persons of Hispanic ancestry in central Washington over the difficulty they experience in winning election of candidates of their choice for the state legislature. There is no evidence through litigation that this is the result of any violation by the state of its responsibilities to protected minorities under section 2 of the federal Voting Rights Act.

Nonetheless, that community joined with other communities of color during 2011 to make presentations to the Washington State Redistricting Commission, requesting that the Commission draw various districts to improve the experience of these communities in electing candidates of their choice.

One of these requested districts was to be in the Yakima valley. The Commission responded favorably to the request, forming a district in which the population is approximately 55% Hispanic, 40% non-Hispanic White, and the remaining 5% principally Native American.

There was much ballyhoo over the creation of this district. However, there appears to be an untold part of the story.

This legislative district is the 15th. Compare the votes in the old 15<sup>th</sup> district, unsatisfactory to the Hispanics, with the votes in the new Hispanic majority 15<sup>th</sup> district. (Data for the old 15<sup>th</sup> is from the Elections Division of the Secretary of State. Data for the new 15<sup>th</sup> is based upon data furnished by the Redistricting Commission disaggregating precinct results to census blocks. These estimated census block election returns are aggregated to the new district.) These results are compared with an alternative district which could be created in place of the 15<sup>th</sup> district to increase competitiveness between the parties in a legislative district in Yakima County.

<u>Year/Office</u>	<u>Candidates</u>	<u>Old 15<sup>th</sup></u>	<u>New 15<sup>th</sup></u>	<u>Alternative</u>
2006 Senator	Cantwell D	<b>14,474</b>	12,010	<b>12,335</b>
	McGavick R	13,817	<b>13,530</b>	9,799
2008 President	Obama D	<b>20,622</b>	17,082	<b>18,317</b>
	McCain R	20,064	<b>19,821</b>	14,364
2008 Governor	Gregoire D	18,622	15,146	16,363
	Rossi R	<b>22,481</b>	<b>22,335</b>	<b>16,803</b>
2008 Treasurer	McIntire D	19,223	16,613	<b>17,627</b>
	Martin R	<b>19,766</b>	<b>18,969</b>	13,949
2008 Land Comm	Goldmark D	17,928	15,005	<b>16,265</b>
	Sutherland R	<b>21,103</b>	<b>20,487</b>	15,271
2010 Senator	Murray D	14,003	11,188	11,967
	Rossi R	<b>19,032</b>	<b>18,336</b>	<b>13,433</b>

The six contests for which results are shown were among eleven statewide partisan contests in 2006 through 2010. The six were selected either because they were relatively close in the statewide vote or relatively close in the vote in district 15.

All six of these statewide contests were won by the Democrat. However, in the old 15<sup>th</sup> district, four of these contests were won by the Republican candidate. In the 15<sup>th</sup> as redrawn by the Redistricting Commission, the Republican candidates would have won all six contests. In the alternative district offered here, the Democrats would have won four of the six contests.

As is apparent from the election results above, the new Hispanic majority district has been carefully constructed to remove about 3,000 Democratic voters from the district while reducing the number of Republican voters by only a few hundred. It is hard to imagine that a Democratic Hispanic candidate will have a better opportunity of being elected in the new Hispanic-majority 15<sup>th</sup> than in the old 15<sup>th</sup>.

The alternative district mentioned includes, in general terms, the following areas: Klickitat County, the reservation of the Yakama Nation, Union Gap, the City of Yakima east of 16<sup>th</sup> Avenue, and the following cities or precincts and everything south of them in Yakima County: Granger, South Sunnyside, Sunnyside and Sunny Valley, including Grandview and Mabton.

The conclusion is that while Washington's redistricting law instructs the Redistricting Commission to encourage electoral competition, it appears that they have condescended to the Hispanic population by creating a Hispanic-majority district, while carefully, and without disclosure, assuring that it is more likely to elect Republicans than the district unsatisfactory to Hispanics which it replaced. The Commission could have drawn a district more like the alternative one described here, which will clearly provide a more competitive district for Democratic candidates.

To complete the information, here are the Hispanic and non-Hispanic white only populations for the three districts from the 2010 census.

	<u>Old 15<sup>th</sup></u>	<u>New 15<sup>th</sup></u>	<u>Alternative</u>
Hispanic	63,221	74,797	81,040
Non-Hispanic White only	58,038	54,961	45,777

One other interesting element to this story is that the Commission's Hispanic-majority district in the Yakima valley has Republican incumbents holding the three seats from that district. In the alternative district, the only incumbent is a Republican state representative. There are no incumbents in the other house seat or the senate seat. This obviously affords a Hispanic candidate of either party a better opportunity to win than to defeat obviously popular Republican incumbents in the district the Commission drew.

Prepared by John Milem  
 2012 February 18  
[milemjohn@comcast.net](mailto:milemjohn@comcast.net)  
 360.909.7592

## APPENDIX 4

### THE SEARCH FOR A CONSTITUTIONAL CONGRESSIONAL DISTRICT

The Washington State Redistricting Commission has drawn boundaries for ten congressional districts ("CDs") for the state of Washington. These districts are to elect members of the United States House of Representatives in the next five elections, 2012 through 2020.

An examination of the work of the Commission indicates that complying with the constitutional and statutory provisions intended to govern their work was not a very high priority for them. The Commission did not spend any time considering and defining various undefined terms in the state constitution and the state redistricting act which are intended to govern their work. In addition, the law indicates that the Commission is explain how it applied the provisions of the law in doing its work. The Commission's report is completely silent about this.

One might conclude that they did not explain because the truth was that they replaced the constitutional and statutory standards with other standards more connected to issues of incumbent protection ("respecting representation" was their euphemism for it), partisan considerations, and racial/ethnic considerations.

This evaluation is necessarily somewhat indefinite because the absence of explanations justifying their work and the absence of definitions of terms necessary to be used to evaluate definitively the legal compliance of their work.

#### **The First Congressional District**

The first congressional district is composed of parts of four counties: King, Snohomish, Skagit and Whatcom. Since Skagit and Whatcom are each too small to be a congressional district and since it has been shown that no county in the state too small to be a district has to be divided in the formation of congressional districts, the division of these counties is a violation of the provision that the number of counties divided should be as small as possible.

The first congressional district is the keystone in the reduction in the representation of the 41% of the people of Washington who live outside the five counties of Metropolitan Puget Sound. The North Cascades area is the most rural area of the state. One might think that a focus on communities of interest and fair representation would suggest that the most rural area of the state, and the area which is second in the state in the value of agricultural production, should be made a congressional district. If it were, it would be the congressional district most different from any other in the state. However, the Commission decided not to create such a district, although one Commissioner included such a district in his proposal. They instead fragmented it among five other districts with the great majority of its population assigned to three congressional districts, including CD 1, whose populations are overwhelmingly in the metropolitan area. It is hard to avoid the conclusion that the rural and agricultural interests have been denied a voice they might have had for the sake of another metropolitan member of congress. Although the terms 'community of interest' and 'fair representation' have not been defined by the Commission, it is reasonable to believe that if those terms had received reasonable definitions, the first CD would be found to be violative of the law, since its form prevents the creation of that rural, agricultural district.

Within the frame of reference of the entire plan, CD 1 is not as compact as it could be. It shares a long boundary with CD 2 and both districts are significantly elongated. Within the area of the two districts, two much more compact districts could have been created. One must conclude that CD 1 fails the test of compactness.

### **The Second Congressional District**

CD 2, being the unnecessary twin of CD 1, shares many of the same faults. It participates in the unnecessary division of Skagit and Whatcom Counties; it participates in the denial of fair representation to the rural and agricultural areas of the North Cascades, it is much less compact than it would be were it limited to the urban part of Snohomish County.

### **The Third Congressional District**

CD 3 is an inevitable district. Clark County, part of metropolitan Portland, has a population of about 65% of a CD. The only question is what counties or parts of counties will be added to Clark County to bring the district up to the necessary population. The Commission's choice was to add Cowlitz, Klickitat, Lewis, Pacific, Skamania and Wahkiakum Counties and part of Thurston County. Since CDs can be formed without dividing any county too small to be a district, the division of Thurston County is unnecessary and, therefore, a violation of the law.

The addition of Klickitat County to the district is a combining of an eastern Washington county with a group of western Washington counties. It is necessary to create a district composed of about 520,000 people from western Washington and about 150,000 from eastern Washington. Fair representation of these people from eastern Washington would suggest that the protection of their interests in a western-dominated district requires that those 150,000 should all be in a single district instead of divided between CDs 3 and 8. It is much easier to see Klickitat County as similar to its adjoining eastern Washington counties than it is to the western Washington counties with which it is joined. This suggests a failure to respect Klickitat County's community of interest with south central Washington.

Largely because of the addition of Klickitat County to the district, the district is considerably less compact than it could be.

### **The Fourth Congressional District**

CD 4 participates in the denial of fair representation to the North Cascades by including Okanogan County and part of Douglas County. A majority of the population of this district is in Benton, Franklin and Yakima Counties. Like CD 3, this is an inevitable district. The issue is what counties should be added to Benton, Franklin and Yakima Counties to complete the district. Clearly the wrong counties were added.

CD 4 participates in the unnecessary divisions of Douglas and Walla Walla Counties. Neither of these counties is required to be divided in forming congressional districts.

CD 4 would be much more compact if Okanogan County and the parts of Douglas and Walla

Walla Counties were removed and Kittitas and Klickitat added, along with a small population of King County in the vicinity of Snoqualmie Pass.

### **The Fifth Congressional District**

CD 5 is another inevitable district. Like the third and fourth, a large majority of its population is in a single county, Spokane County. Its population is 70% of a district. As with the other districts, the question is which other counties to add to the district.

CD 5 participates in a small way in contributing to the failure to provide fair representation for the North Cascades region of the state. It does this by including Ferry County. And the inclusion of Ferry County requires the division of Walla Walla County. Were Ferry County included in the North Cascades CD, CD 5 could be formed only of whole counties.

### **The Sixth Congressional District**

CD 6 is flawed by its participation in the unnecessary division of Mason County and the unnecessary division of the City of Tacoma.

### **The Seventh Congressional District**

CD 7 is flawed by the unnecessary division of the Cities of Seattle and Lynnwood. The division of Lynnwood is very minor, a few people in a part of the city surrounded by the City of Edmonds which is in CD 7, while the remainder of Lynnwood is in CD 2. Of course, this entire area of southwest Snohomish should be included within a single district, making the division of Lynnwood unnecessary.

The division of Seattle is a whole other matter. In the 2002 districts, CD 7 included all of Seattle, except for a few thousand people in the far northwest corner of the city. Reportedly this division was made because Congressman Inslee said that he wanted to represent Seattle. So, the law to the contrary notwithstanding, the city was divided to satisfy this request. The situation this time is similar but the request is now not from a member of Congress, but from a coalition of racial and ethnic minorities. There is no indication in litigation history that the State of Washington is in violation of its obligations to protected minorities under section 2 of the Voting Rights Act. With no showing that the coalition of minorities actually satisfies the tests of *Thornburg v. Gingles* (478 U. S. 30 (1986)), a coalition majority minority district was created here. And this is the reason for the division of the City of Seattle. It remains to be seen whether this district will perform for this minority coalition. In any case, with no legal requirement to create such a district (and with the risk that the district may be violative of the federal Voting Rights Act, being subject to strict scrutiny due to the failure of satisfaction of the *Gingles* tests), the City of Seattle is divided in spite of the rule of governing law to minimize the division of cities. Seattle's population is too small to be a full congressional district, and it has been shown that congressional districts can be formed in this state without dividing the population of any city.

CD 7 also participates in a violation of the obligation to encourage electoral competition. The current district 7 is overwhelmingly Democratic, typically voting about 23 percentage points more

Democratic than the state. By dividing the city and replacing the removed population elsewhere, the district has been made about five points less Democratic. This in itself is of no use in making CD 7 a district characterized by electoral competition. However, the effects are felt in the reduction of electoral competitiveness in CD 9, which is discussed below.

CD 7 is a long narrow district running from Tablequah at the south end of Vashon Island to the north limits of the City of Edmonds. A much more compact district could be created in this area by combining the Cities of Seattle and Burien and including unincorporated areas between them. Thus, this CD 7 fails the compactness test.

### **The Eighth Congressional District**

Similarly to CDs 1 and 2, CDs 8 and 9 are twin districts and share common faults as well as a long common boundary.

CD 8 includes part of Douglas County and part of the City of Kent, neither of which has to be divided.

CD 8 participates in the denial of fair representation to the rural and agricultural North Cascades region of the state, since it includes Chelan County and part of Douglas County.

CD 8 is a far less compact district than can be created in this area.

It is an example of the Commission using its power to discourage electoral competition rather than to increase it. CDs 8 and 9 as they exist in the 2002 redistricting have voted reasonably similarly. CD 9 has voted as the state; CD 8 has voted three points more Republican than the state. Since the state is about four points Democratic, this means that CD 8 has been one of the most contested CDs in the state.

In the new districting, CD 8 is made four points more Republican than it was before. While this is not a large advantage for the Republicans in that district, the fact that they have been able to hold it when it was four points more competitive means that the Democrats will have an even more difficult time winning it in its new configuration. This fails to comply with the obligation of the Commission to encourage electoral competition.

### **The Ninth Congressional District**

CD 9 includes parts of three of the four unnecessarily divided cities, Seattle, Tacoma and Kent.

It is a long, narrow district, lacking compactness, running from south of the Puyallup River in Tacoma to the south boundaries of Kirkland and Redmond.

Although the term, political group, has not been defined for purposes of the redistricting law, one must wonder about a district being created which responds to the requests of a political group composed of a coalition of racial and ethnic minorities. In the absence of a legal requirement under the federal Voting Rights Act, it appears that creating the district they request amounts to favoring a political group.

This is the most egregious case of violating the obligation to encourage electoral competition. The old 9<sup>th</sup> district voted as does the state. By drawing a racial/ethnic district and by carefully drawing the boundary between CD 8 and CD 9 along partisan lines, the district has become eight percentage points more Democratic than the state. Factoring in the four point Democratic advantage in the state, this means that when the state vote is normal, about 54% Democratic and about 46% Republican, the vote in this district is likely to be around 62% Democratic and about 38% Republican. This is not a prescription for electoral competition.

Without considering the other problems with CDs 8 and 9, looking just at the length of the common boundary and at the issue of electoral competition, it is pretty clear that two districts could have been drawn in this area which would be much more similar than these two districts are. This is the most egregious case of turning a previously theoretically competitive district into a safe Democratic district, the second safest in the state after CD 7.

### **The Tenth Congressional District**

Although this district is presented by the Commission as the new district, it actually is a replacement for the old CD 9. In the dispersal of the populations of the old CD 9, the greatest number is included in the new CD 10. And this district has the same political characteristic as the old CD 9, that is, it votes as does the state. If the state votes 54% Democratic and 46% Republican, the vote in this district is going to show about the same advantage for the Democrats.

But for the Commission's choice to submerge the rural and agricultural North Cascades population in various metropolitan districts, the North Cascades district would be the new CD 10 and this district would be seen as the new CD 9.

The legal flaws of this CD 10 arise from the fact that it includes parts of Mason and Thurston Counties and part of the City of Tacoma, none of which need to be divided in forming CDs.

\* \* \*

In summary, every CD formed by the Commission has legal flaws. Not a single district survives examination against the legal standards.

The following chart shows the obvious legal failures of the districts. Of course, there may be more but in the absence of definitions of terms by the Commission and in the absence of explanations by the Commission of why they did not comply with the legal standards intended to govern their work, I forebear charging additional violations. F indicates failure to comply with legal standards.

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<b>Compactness</b>	F	F	F	F			F	F	F	
<b>Political bias</b>									F	
<b>County divisions</b>	F	F	F	F	F	F		F		F
<b>Municipal divisions</b>		F				F	F	F	F	F
<b>Fair representation</b>	F	F	F	F	F			F		
<b>Electoral competition</b>							F	F	F	

I have argued elsewhere that the disregard of the legal standards intended to govern the work of the Commission was pervasive. Without having the necessary clarity to address all of the issues listed here, the fact that every CD shows evidence of legal violations, and none fewer than two violations, supports the conclusion that the standards intended to govern the work of the Commission did not govern its work.

The plan should be found to be in violation of governing law and removed from the laws of the state.

Prepared by John Milem  
2012 February 18  
[milemjohn@comcast.net](mailto:milemjohn@comcast.net)  
360.909.7592

## APPENDIX 5

### THE SEARCH FOR CONSTITUTIONAL LEGISLATIVE DISTRICTS

The Washington State Redistricting Commission has drawn boundaries for 49 legislative districts ("LDs") for the state of Washington. Each LD is to elect one member of the State Senate and two members of the State House of Representatives during the coming decade, 2012 through 2020.

An examination of the work of the Commission indicates that complying with the constitutional and statutory provisions intended to govern their work was not a very high priority for them. The Commission did not spend any time considering and defining various undefined terms in the state constitution and the state redistricting act which are intended to govern their work. In addition, the law indicates that the Commission is explain how it applied the provisions of the law in doing its work. The Commission's report is completely silent about this.

One might conclude that they didn't explain because the truth was that they replaced the constitutional and statutory standards with other standards more connected to issues of incumbent protection ("respecting representation" was their euphemism for it), partisan considerations, and racial/ethnic considerations.

This is an evaluation of each LD in the 2012 Redistricting Plan considering only the division of counties and municipalities which do not need to be divided in order to fulfill the standards of governing law.

<u>LD</u>	<u>Unnecessarily Divided Counties</u>	<u>Unnecessarily Divided Municipalities</u>
01		Kirkland Mountlake Terrace
02		
03		
04		
05		Issaquah
06		
07	Okanogan	
08		Kennewick
09	Franklin	Pasco
10		Mount Vernon
11		
12	Grant Okanogan	
13	Grant	
14		
15		
16	Franklin	Pasco
17		Battle Ground
18		Battle Ground

<u>LD</u>	<u>Unnecessarily Divided Counties</u>	<u>Unnecessarily Divided Municipalities</u>
19	Cowlitz Grays Harbor Lewis	Aberdeen
20	Cowlitz Lewis	
21		Edmonds Everett Lynnwood
22		
23		Bremerton
24	Grays Harbor	Aberdeen
25		
26		Bremerton
27		
28		Lakewood
29		Lakewood
30		Auburn Des Moines
31		Auburn
32		Edmonds Lynnwood Mountlake Terrace
33		Burien Des Moines Kent
34		Burien
35		Bremerton
36		
37		
38		Everett Marysville
39		Marysville
40		Bellingham Mount Vernon
41		Issaquah Sammamish
42		Bellingham
43		
44		Marysville
45		Kirkland Redmond Sammamish
46		

<u>LD</u>	<u>Unnecessarily Divided Counties</u>	<u>Unnecessarily Divided Municipalities</u>
47		Auburn
48		Kent
		Kirkland
49		Redmond

Of the 49 LDs formed by the Commission, 34 violate either the county integrity standard, the municipal integrity standard, or both.

The plan should be found to be in violation of governing law and removed from the laws of the state.

Prepared by John Milem  
2012 February 28  
milemjohn@comcast.net  
360.909.7592

## APPENDIX 6

### PROPOSED CONGRESSIONAL DISTRICT PLAN

Upon request, Petitioner will furnish an electronic block assignment file showing the district assignment of each of the 195,574 census blocks in the State of Washington. This file can be furnished in .dbf, .csv or .xls format.

This appendix includes a table of the counties of the State showing the population of each assigned to each of the ten congressional districts and a table showing the population variance of each district from the population of the ideal district and stating a reason or reasons for the variance.

It also includes a map of the state showing districts, district numbers and county names and a map of the Puget Sound region showing districts, district numbers, county names and the names and boundaries of certain cities. Note that some of these cities' names appear more than once. This is an indication that the city is composed of non-contiguous parts. Usually, non-contiguous parts of cities are uninhabited.

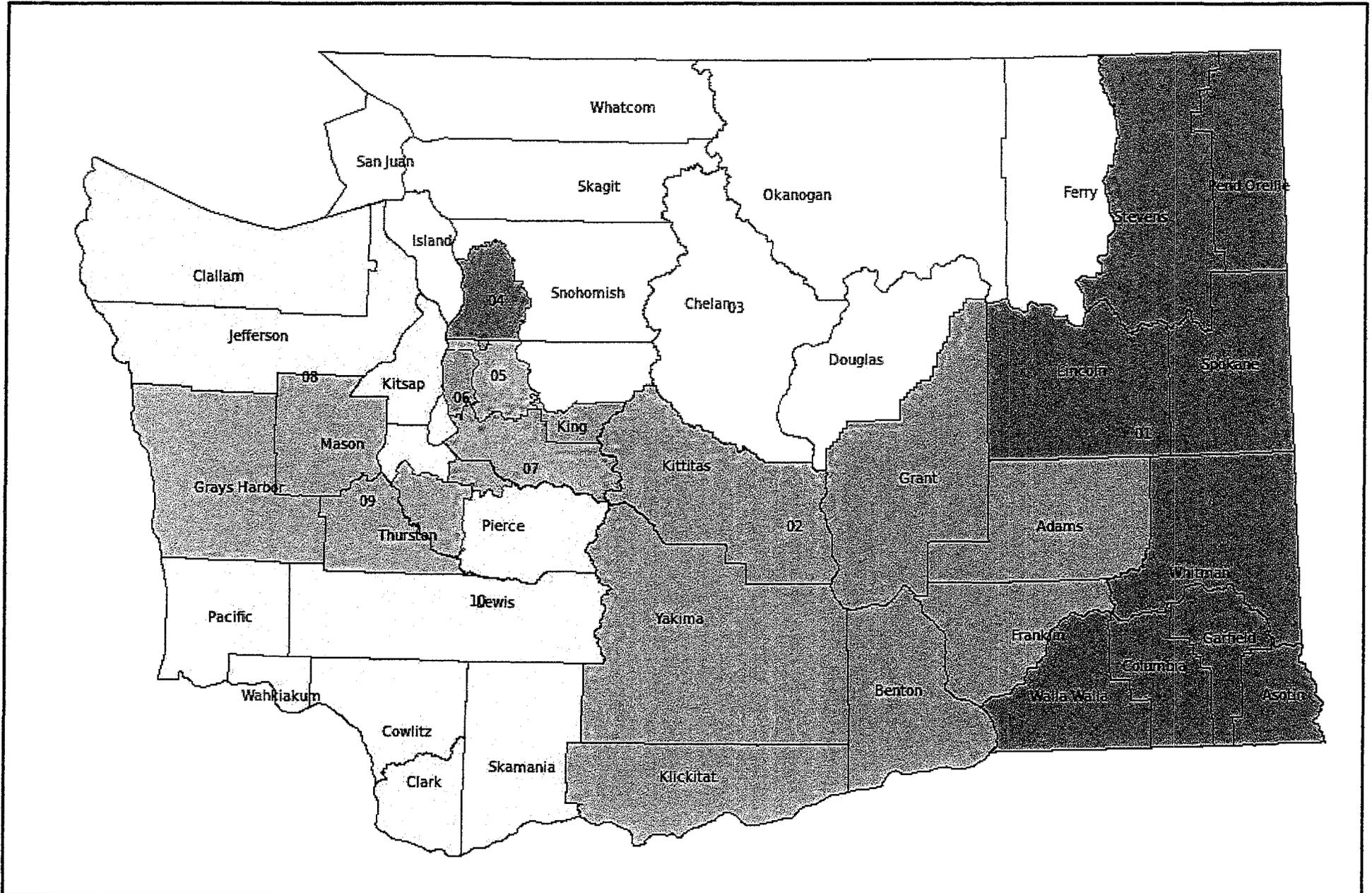
Populations of Proposed Congressional Districts by County

	<u>District 1</u>	<u>District 2</u>	<u>District 3</u>	<u>District 4</u>	<u>District 5</u>	<u>District 6</u>	<u>District 7</u>	<u>District 8</u>	<u>District 9</u>	<u>District 10</u>
Adams		18,728								
Asotin	21,623									
Benton		175,177								
Chelan			72,453							
Clallam								71,404		
Clark										425,363
Columbia	4,078									
Cowlitz										102,410
Douglas			38,431							
Ferry			7,551							
Franklin		78,163								
Garfield	2,266									
Grant		89,120								
Grays Harbor									72,797	
Island			78,506							
Jefferson								29,872		
King		6,434	35,247	23,437	671,304	674,227	509,976	10,624		
Kitsap								251,133		
Kittitas		40,915								
Klickitat		20,318								
Lewis										75,455
Lincoln	10,570									
Mason									60,699	
Okanogan			41,120							
Pacific										20,920
Pend Oreille	13,001									
Pierce							164,208	309,973	287,773	33,271
San Juan			15,769							
Skagit			116,901							
Skamania										11,066
Snohomish			64,057	649,278						
Spokane	471,221									
Stevens	43,531									
Thurston									252,264	
Wahkiakum										3,978
Walla Walla	58,781									
Whatcom			201,140							
Whitman	44,776									
Yakima		243,231								
	<u>669,847</u>	<u>672,086</u>	<u>671,175</u>	<u>672,715</u>	<u>671,304</u>	<u>674,227</u>	<u>674,184</u>	<u>673,006</u>	<u>673,533</u>	<u>672,463</u>

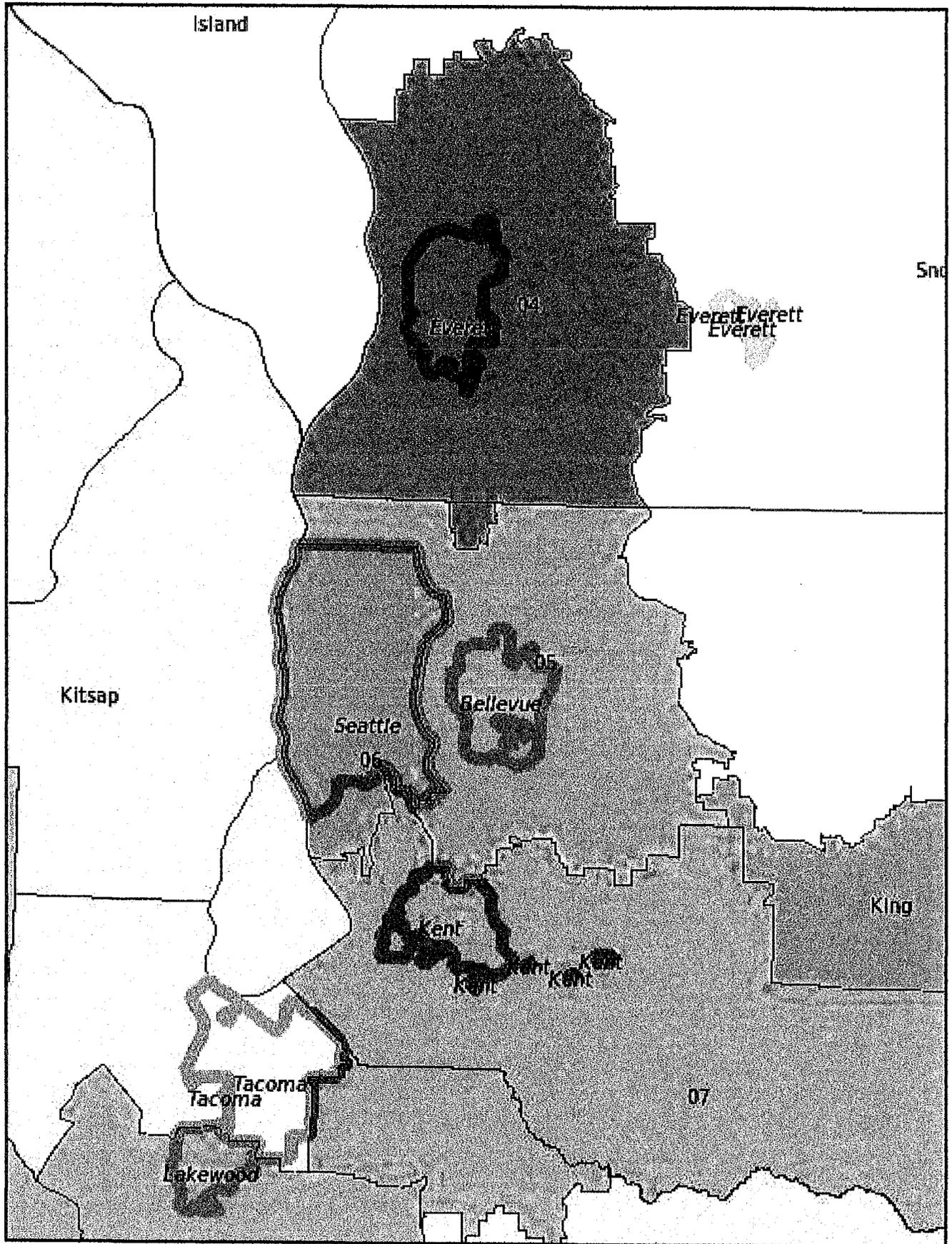
Populations of Proposed Congressional Districts

<u>Largest City</u>	<u>District Number</u>	<u>District Population</u>	<u>Variance from Ideal</u>	<u>Reason for Variance</u>
Spokane	1	669,847	-2,607	To follow county boundaries
Yakima	2	672,086	-368	To follow county, municipal and school district boundaries and river
Bellingham	3	671,175	-1,279	To follow county, municipal and school district boundaries and highways and improve compactness
Everett	4	672,715	+261	To follow county, municipal and school district boundaries and highways and improve compactness
Bellevue	5	671,304	-1,150	To follow county, municipal and school district boundaries and highways
Seattle	6	674,227	+1,773	To follow county and municipal boundaries
Kent	7	674,184	+1,730	To follow county, municipal and school district and urban growth boundaries and highways
Tacoma	8	673,006	+552	To follow county, municipal and CDP boundaries
Lakewood	9	673,533	+1,079	To follow county, municipal and school district and urban growth and CDP boundaries and highways
Vancouver	10	672,463	+9	To follow county, municipal and school district boundaries and highways

# PROPOSED CONGRESSIONAL DISTRICTS



# PROPOSED CONGRESSIONAL DISTRICTS



## APPENDIX 7

### PROPOSED LEGISLATIVE DISTRICT PLAN

Upon request, Petitioner will furnish an electronic block assignment file showing the district assignment of each of the 195,574 census blocks in the State of Washington. This file can be furnished in .dbf, .csv or .xls format.

This appendix includes a table of the counties of the State showing the population of each assigned to each of the 49 legislative districts and a table showing the population variance of each district from the population of the ideal district and stating a reason or reasons for the variance.

Because the population of the State is not equally divisible by the number of legislative districts, a zero deviation plan would have 24 districts of 137,235 persons and 25 districts of 137,236.

This appendix also includes a map of the state showing districts, district numbers and county names and a map of the Puget Sound region showing districts, district numbers, county names and the names and boundaries of certain cities. Note that some of these cities' names appear more than once. This is an indication that the city is composed of non-contiguous parts. Usually, non-contiguous parts of cities are uninhabited.

**Populations of Proposed Legislative Districts by County**

Names of Divided Counties Shown in Boldface Type

	<u>District 1</u>	<u>District 2</u>	<u>District 3</u>	<u>District 4</u>	<u>District 5</u>	<u>District 6</u>	<u>District 7</u>	<u>District 8</u>	<u>District 9</u>	<u>District 10</u>
Clallam			71,404							
Island						78,506				
Jefferson			29,872							
<b>Kitsap</b>	76,557	137,770	36,806							
Mason	60,699									
San Juan						15,769				
<b>Skagit</b>					76,506	40,395				
<b>Snohomish</b>							137,592	137,170	137,903	137,399
<b>Whatcom</b>				137,752	61,571	1,817				
	<u>137,256</u>	<u>137,770</u>	<u>138,082</u>	<u>137,752</u>	<u>138,077</u>	<u>136,487</u>	<u>137,592</u>	<u>137,170</u>	<u>137,903</u>	<u>137,399</u>
	<u>District 11</u>	<u>District 12</u>	<u>District 13</u>	<u>District 14</u>	<u>District 15</u>	<u>District 16</u>	<u>District 17</u>	<u>District 18</u>	<u>District 19</u>	<u>District 20</u>
Chelan		72,453								
Douglas		38,431								
<b>King</b>		627	136,443	136,269	136,675	136,451	135,972	138,167	137,939	136,954
<b>Snohomish</b>	137,544	25,727								
	<u>137,544</u>	<u>137,238</u>	<u>136,443</u>	<u>136,269</u>	<u>136,675</u>	<u>136,451</u>	<u>135,972</u>	<u>138,167</u>	<u>137,939</u>	<u>136,954</u>
	<u>District 21</u>	<u>District 22</u>	<u>District 23</u>	<u>District 24</u>	<u>District 25</u>	<u>District 26</u>	<u>District 27</u>	<u>District 28</u>	<u>District 29</u>	<u>District 30</u>
<b>King</b>	137,056	137,097	135,831	135,094	139,023	130,810	20,010	831		
<b>Pierce</b>						7,714	116,036	136,400	137,924	136,583
	<u>137,056</u>	<u>137,097</u>	<u>135,831</u>	<u>135,094</u>	<u>139,023</u>	<u>138,524</u>	<u>136,046</u>	<u>137,231</u>	<u>137,924</u>	<u>136,583</u>

**Populations of Proposed Legislative Districts by County, continued**

	<u>District 31</u>	<u>District 32</u>	<u>District 33</u>	<u>District 34</u>	<u>District 35</u>	<u>District 36</u>	<u>District 37</u>	<u>District 38</u>	<u>District 39</u>	<u>District 40</u>
<b>Clark</b>						18,275	135,542	135,462	136,084	
Cowlitz						102,410				
Grays Harbor				72,797						
Klickitat										20,318
Lewis					75,455					
Pacific				20,920						
<b>Pierce</b>	136,803	123,765								
Skamania						11,066				
<b>Thurston</b>		11,169	136,280	42,854	61,961					
Wahkiakum						3,978				
<b>Yakima</b>										119,068
	<u>136,803</u>	<u>134,934</u>	<u>136,280</u>	<u>136,571</u>	<u>137,416</u>	<u>135,729</u>	<u>135,542</u>	<u>135,462</u>	<u>136,084</u>	<u>139,386</u>
	<u>District 41</u>	<u>District 42</u>	<u>District 43</u>	<u>District 44</u>	<u>District 45</u>	<u>District 46</u>	<u>District 47</u>	<u>District 48</u>	<u>District 49</u>	
Adams				18,728						
Asotin									21,623	
<b>Benton</b>		113,669	61,508							
Columbia									4,078	
Ferry					7,551					
Franklin			78,163							
Garfield									2,266	
Grant				89,120						
Kittitas	40,915									
Lincoln				10,570						
Okanogan					41,120					
Pend Oreille					13,001					
<b>Spokane</b>				19,170	32,940	137,934	137,805	137,586	5,786	
Stevens					43,531					
Walla Walla									58,781	
Whitman									44,776	
<b>Yakima</b>	98,488	25,675								
	<u>139,403</u>	<u>139,344</u>	<u>139,671</u>	<u>137,588</u>	<u>138,143</u>	<u>137,934</u>	<u>137,805</u>	<u>137,586</u>	<u>137,310</u>	

### Variances in Populations of Proposed Legislative Districts

This information is provided in two stages. The first stage is the grouping of counties to minimize the number of divided counties. Each group of counties includes at least one county which must be divided. Names of divided counties are shown in boldface type. Each of these county groups has a variance from the ideal district population. The variance for the group is the variance of the ideal population for the group from the ideal population for the state.

<u>Group</u>	<u>Counties</u>	<u>Population</u>	<u>Districts</u>	<u>Group Ideal</u>	<u>State Ideal</u>	<u>Variance</u>
A	Clallam	71,404				
	Jefferson	29,872				
	<b>Kitsap</b>	251,133				
	Mason	<u>60,699</u>				
	Group A	413,108	3 (1-3)	137,703	137,236	+467
B	Island	78,506				
	San Juan	15,769				
	<b>Skagit</b>	116,901				
	<b>Whatcom</b>	<u>201,140</u>				
	Group B	412,316	3 (4-6)	137,439	137,236	+203
C	Chelan	72,453				
	Douglas	38,431				
	<b>King</b>	627	Skykomish School District only			
	<b>Snohomish</b>	<u>713,335</u>				
	Group C	824,846	6 (7-12)	137,474	137,236	+238
D	Grays Harbor	72,797				
	<b>King</b>	1,930,622	Except Skykomish School District			
	Lewis	75,455				
	Pacific	20,920				
	<b>Pierce</b>	795,225				
	<b>Thurston</b>	<u>252,264</u>				
	Group D	3,147,283	23 (13-35)	136,838	137,236	-398

**Variances in Populations of Proposed Legislative Districts, continued**

<u>Group</u>	<u>Counties</u>	<u>Population</u>	<u>Districts</u>	<u>Group Ideal</u>	<u>State Ideal</u>	<u>Variance</u>
E	<b>Clark</b>	425,363				
	Cowlitz	102,410				
	Skamania	11,066				
	Wahkiakum	<u>3,978</u>				
	Group E	542,817	4 (36-39)	135,704	137,236	-1,522
F	<b>Benton</b>	175,177				
	Franklin	78,163				
	Kittitas	40,915				
	Klickitat	20,318				
	<b>Yakima</b>	<u>243,231</u>				
Group F	557,804	4 (40-43)	139,451	137,236	+2,215	
G	Adams	18,728				
	Asotin	21,623				
	Columbia	4,078				
	Ferry	7,551				
	Garfield	2,266				
	Grant	89,120				
	Lincoln	10,570				
	Okanogan	41,120				
	Pend Oreille	13,001				
	<b>Spokane</b>	471,221				
	Stevens	43,531				
	Walla Walla	58,781				
	Whitman	<u>44,776</u>				
	Group G	826,366	6 (44-49)	137,728	137,236	+492

**Variances in Populations of Proposed Legislative Districts, continued**

<u>City Providing Largest Population</u>	<u>District Number</u>	<u>District Population</u>	<u>Variance from Group Ideal</u>	<u>Reason for Variance Within Divided Counties</u>
Port Orchard	1	137,256	-447	To follow municipal and precinct boundaries and improve compactness
Bremerton	2	137,770	+67	To follow municipal, reservation and precinct boundaries and highways and improve compactness
Port Angeles	3	138,082	+380	To follow municipal, reservation and precinct boundaries and highways and improve compactness
Bellingham	4	137,752	+313	To follow municipal boundaries and highways
Mount Vernon	5	138,077	+638	To follow municipal and school district boundaries and highways
Oak Harbor	6	136,487	-951	To follow municipal and school district boundaries and highways
Marysville	7	137,592	+118	To follow municipal, school district and precinct boundaries
Everett	8	137,170	-305	To follow municipal and precinct boundaries and improve compactness
Edmonds	9	137,903	+428	To follow municipal and precinct boundaries and improve compactness
Mill Creek	10	137,399	-75	To follow municipal, school district and precinct boundaries and highways and improve compactness
Lake Stevens	11	137,544	+70	To follow municipal, school district and precinct boundaries and improve compactness
Wenatchee	12	137,238	-236	To follow school district and precinct boundaries and improve compactness
Snoqualmie	13	136,443	-395	To follow municipal, school district and precinct boundaries and highways and improve compactness
Sammamish	14	136,269	-569	To follow municipal and precinct boundaries and improve compactness
Bellevue	15	136,675	-164	To follow municipal and precinct boundaries and improve compactness

**Variances in Populations of Proposed Legislative Districts, continued**

<u>City Providing Largest Population</u>	<u>District Number</u>	<u>District Population</u>	<u>Variance from Group Ideal</u>	<u>Reason for Variance Within Divided Counties</u>
Kirkland	16	136,451	-387	To follow municipal, school district and precinct boundaries and improve compactness
Shoreline	17	135,972	-866	To follow municipal, school district and precinct boundaries and improve compactness
Seattle	18	138,167	+1,328	To follow municipal and precinct boundaries and highways and canal and to improve compactness
Seattle	19	137,939	+1,100	To follow precinct boundaries and highways, major streets and canal and to improve compactness
Seattle	20	136,954	+115	To follow municipal and precinct boundaries and major streets and to improve compactness
Seattle	21	137,056	+217	To follow municipal and precinct boundaries and to improve compactness
Seattle	22	137,097	+258	To follow municipal and precinct boundaries and highways and to improve compactness
Renton	23	135,831	-1,007	To follow municipal and precinct boundaries and highways and to improve compactness
Kent	24	135,094	-1,744	To follow municipal, school district and precinct boundaries
Federal Way	25	139,023	+2,185	To follow municipal and precinct boundaries
Auburn	26	138,524	+1,686	To follow municipal, school district, UGA and precinct boundaries.
Bonney Lake	27	136,046	-792	To follow municipal, school district, UGA and precinct boundaries and highways and improve compactness
Puyallup	28	137,231	+393	To follow municipal, school district, UGA and precinct boundaries and river and improve compactness

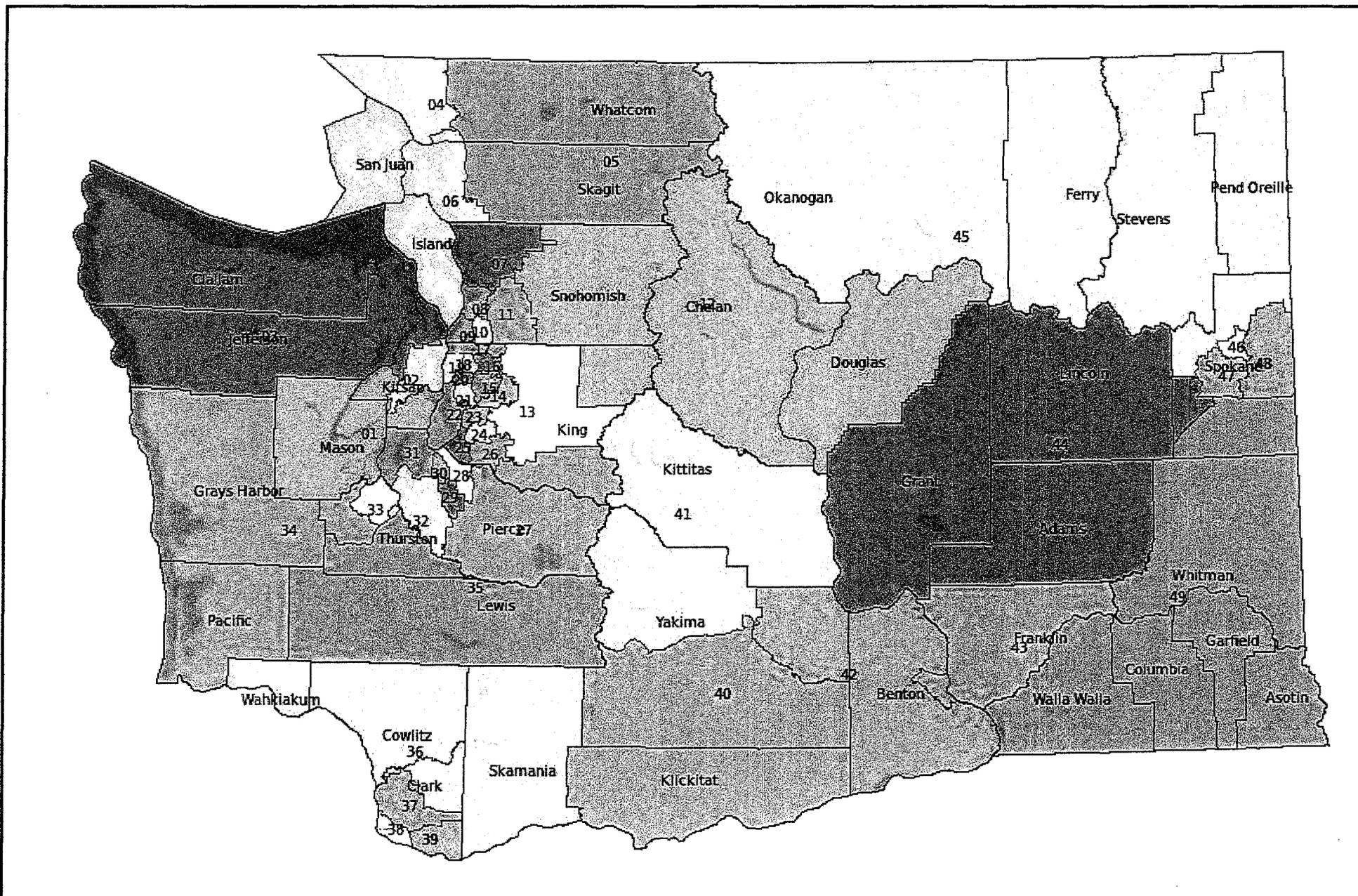
**Variances in Populations of Proposed Legislative Districts, continued**

<u>City Providing Largest Population</u>	<u>District Number</u>	<u>District Population</u>	<u>Variance from Group Ideal</u>	<u>Reason for Variance Within Divided Counties</u>
None	29	137,924	+1,086	To follow municipal, school district and precinct boundaries and improve compactness
Tacoma	30	136,583	-256	To follow municipal and precinct boundaries and improve compactness
Tacoma	31	136,803	-35	To follow municipal and precinct boundaries and improve compactness
Lakewood	32	134,934	-1,904	To follow municipal, school district and precinct boundaries and railroad and improve compactness
Olympia	33	136,280	-559	To follow municipal, school district, UGA and precinct boundaries and highway
Tumwater	34	136,571	-267	To follow municipal, school district, UGA and precinct boundaries and highway and railroad and improve compactness
Centralia	35	137,416	+577	To follow municipal, school district and precinct boundaries and railroad and improve compactness
Longview	36	135,729	+25	To follow school district and precinct boundaries and improve compactness
Battle Ground	37	135,542	-162	To follow municipal, school district and precinct boundaries and highway and streams and improve compactness
Vancouver	38	135,462	-242	To follow municipal, school district and precinct boundaries and highway and streams and improve compactness
Vancouver	39	136,084	+379	To follow municipal, school district and precinct boundaries and highway
Yakima	40	139,386	-65	To follow municipal, indian reservation and precinct boundaries and improve compactness
Yakima	41	139,403	-48	To follow municipal, indian reservation and precinct boundaries and improve compactness

**Variances in Populations of Proposed Legislative Districts, continued**

<u>City Providing Largest Population</u>	<u>District Number</u>	<u>District Population</u>	<u>Variance from Group Ideal</u>	<u>Reason for Variance Within Divided Counties</u>
Kennewick	42	139,344	-107	To follow municipal, indian reservation and precinct boundaries
Pasco	43	139,671	+220	To follow municipal and precinct boundaries
Moses Lake	44	137,588	-140	To follow municipal, school district and precinct boundaries and railroad
Omak	45	138,143	+416	To follow municipal, school district, UGA and precinct boundaries and improve compactness
Spokane	46	137,934	+206	To follow municipal, UGA and precinct boundaries and improve compactness
Spokane	47	137,805	+77	To follow municipal, school district, UGA and precinct boundaries and improve compactness
Spokane Valley	48	137,586	-142	To follow municipal, school district, UGA and precinct boundaries and improve compactness
Walla Walla	49	137,310	-417	To follow municipal and precinct boundaries and improve compactness

# PROPOSED LEGISLATIVE DISTRICTS



# PROPOSED LEGISLATIVE DISTRICTS

