

From: Forrest Darby

To: Assemblywoman Brittney Miller; Senator Roberta Lange; Senator Fabian Donate; Senator Pete Goicoechea; Assemblywoman Teresa Benitez-Thompson; Assemblyman Glen Leavitt

Cc: Committee to Conduct an Investigation into Matters Relating to Reapportionment and Redistricting in Nevada <Redistricting@lcb.state.nv.us>; Joyce Woodhouse; Kathy Steinle; Tick Segerblom

Re: Advance notice in preparation for our Redistricting Meeting on Saturday

October 21, 2021

Dear members of the Nevada Legislative Interim Redistricting Committee, and others.

On Saturday, October 23, 2021, I will be given a few minutes to address your committee in the Clark County Auditorium. During that time I will summarize what is in this email in less than 3 minutes, but this email is the best way to list what our Grassroots Team has come up with.

Recently, on the 4th Floor of the Sawyer Building I witnessed the most misleading presentation of the law, any law, I have ever heard, and I have been doing legal research and preparing briefs for over 55 years.

Before the common use of computers, a small cabal of "redistricting experts" traveled the land using *Wesberry v. Sanders* (1964) as their bible. They promised State Legislatures "to keep their State out of the courts"- for a handsome price. How? By spending a month or so getting all Congressional Districts (CDs) to a population difference of no more than 1 person.

As technology developed, the 1-person deviation became easier to implement and became the gold standard for redistricting, which was the basis for the cottage industry of traveling experts. From there it metastasized into books, the most prominent being the "National Conference of State Legislatures Redistricting Law 2020." During our last redistricting meeting in the Sawyer Building, this vacuous publication played center stage, and the Committee's panel of "redistricting experts" championed this con-job like it was the gospel. Sadly, I expect this is going to happen again on Saturday.

Prior to our meeting, it is important for me to focus on some of the pages in this book. The entire purpose of their tome is take us back to 1964 and *Wesberry* and *Reynolds v. Sims*. So they begin their "Executive Summary" on page xv with these cases. No one, who is not deeply steeped in redistricting law, can come away from reading this book without the false impression that State Legislatures must try to get down to a zero CD population difference, or, at most, a one person population variance!

Let's now skip to their Appendix at the back (it begins on page 219 which they forgot to number). They title this part of their Appendix "Historic Supreme Court Redistricting Cases." They list 6 cases, and of course they list *Wesberry*, but they do not mention *Abrams v. Johnson* (1997), and *Tennant v. Jefferson County* (2012), the most recent and controlling cases regarding permissible population differences between Congressional Districts!

Currently the Supremes allow every state Legislature to cut their State Assembly and Senate Districts with a reasonable population deviation of 10%. The 10% rule is spelled out in *Brown v. Thomson* (1983). (Nevada has modified this rule to no more than a 5% up or down difference from the mean CD number.)

OK, in 2014, in *Kostick v. Nago*, the Court went crazy when they ruled 9-0 in their statewide population liberalization, but everyone agrees those far out percentages only apply to Hawaii. (The NCSL doesn't even mention *Kostick*.)

With regards to acceptable CD population differences, it took a long time before the Supremes began to frown on mandatory 1 person differences, boundary lines that by necessity looked like "blown-up cancer cells." This requirement is especially galling when the numbers relied on are at least 9 months old, and folks have moved in-and-out, been born, died, etc.

Moving back to CD lines. The first mention we could find regarding "Compactness" or "Compaction" was in *Karcher v. Daggett* (1983) and then in *Thornburg v. Gingles* (1986), but this argument did not really carry the day until *Abrams and Tennant* came along. In 2011 our Grassroots Team submitted CD maps to the Nevada Legislature that were in lockstep with *Abrams*, and the Court's view on compaction, but our maps were not adopted. The CD maps that were used by the Special Masters relied 100% on *Wesberry*. *Abrams* was called a fluke and an anomaly, something the Supremes would never repeat again.

The following year, when the Court ruled in *Tennant*, interestingly they did not cite *Abrams*, but they followed *Abrams* and the idea of compaction like it was some type of holy text! So what is going to happen on Saturday? I fear it will be a repeat of 2011, some of the speakers will pretend that *Tennant* (9-0) was never decided. They will treat *Tennant* just like they treated *Abrams* 10 years ago.

All my adult life I have associated with some of the brightest attorneys in America. Joe Rauh was my mentor. Since moving to Las Vegas 36 years ago I have met a few attorneys that are as dumb as a box of rocks. Sometimes I can't tell if it is a religious thing or a blindness thing.

One attorney I know is in love with the concept of an exact 1 person 1 vote in the correct CD. As he explained to me: "In *Abrams* and *Tennant* the Supreme Court did not say Nevada could not try to get down to a 1 person CD difference. I don't favor straight lines and main roads as boundary lines. I believe a maximum difference of 1 person is what our founders intended. Because of this, I'm going to push for this close to zero deviation. Even if, in your words, my boundary lines will look like "blown-up cancer cells."

A couple of my friends asked me to eliminate the two paragraphs above, but I'm not going to do that. Sometimes truth is too important to leave out. Sometimes even if truth leads to a poor outcome, it needs to be included. At least that is the way I have always led my life.

I'm sorry this email is so long. I did cut out the fat and only left the meat and bone. Thank you for reading, and have a good life.

Forrest Darby, President, The Grassroots Team