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REDISTRICTING SUBCOMMITTEE MEETING

PUBLIC SESSION

Wednesday, April 13, 2011

9:20 a.m.

Room 308, Gressette Building

Columbia, South Carolina

REPORTED BY: Janni S. Jardine
Court Reporter

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1 MEMBERS IN ATTENDANCE:

2

3 SENATOR GLENN F. McCONNELL, CHAIRMAN

4 SENATOR RAYMOND E. CLEARY

5 SENATOR ROBERT FORD

6 SENATOR C. BRADLEY HUTTO

7 SENATOR GERALD MALLOY

8 SENATOR LARRY A. MARTIN

9 SENATOR PHILLIP W. SHOOPMAN

10

11

STAFF PRESENT:

12

13 BONNIE ANZELMO, ESQUIRE

14 PAULA BENSON, ESQUIRE

15 CHARLES TERRENI, ESQUIRE

16 E. KATHERINE WELLS, ESQUIRE

17 DEBBIE HAMMOND

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1 SENATOR McCONNELL: Good morning. I
2 would like to call this meeting of the
3 Redistricting Subcommittee to order.

4 First, I would like to thank the
5 subcommittee members for the time they've spent
6 over the past three weeks traveling all over the
7 state to attend ten public hearings.

8 The purpose of these hearings was to
9 solicit comments from the public as to their
10 opinions on the criteria this committee should use
11 when developing new district boundaries.

12 All of this was done in addition to
13 these senators' numerous committee and subcommittee
14 responsibilities, as well as their regular
15 attendance in the Senate when it was in session.

16 I would also like to thank the more
17 than 700 citizens who attended these hearings. We
18 had approximately 144 speakers testify, and we had
19 others who submitted written comments as well.

20 We had several persons who commented
21 favorably on the Senate's redistricting website,
22 and I hope the website will be a useful tool in
23 keeping the public informed of our progress.

24 At this time, I would like to call on
25 Ms. Katherine Wells to give us an overview of the

1 media coverage relating to the public hearings.

2 Ms. Wells.

3 MS. WELLS: Thank you, Mr. Chairman.

4 Members of the Subcommittee,

5 Mr. Chairman, I contacted all the senatorial
6 offices and requested e-mail addresses of any
7 newspaper, TV, or radio stations that were in their
8 districts to be sure that any of the press releases
9 on the public hearings would be circulated
10 throughout both the rural and the urban areas of
11 the state.

12 From that, Ms. Traywick compiled a
13 media contact list of all major daily newspapers,
14 TV, and radio stations, and she also grouped media
15 contacts by each region where public hearings were
16 to be held. And I also wanted to thank one of our
17 pages, Beth Ann Sample, that assisted her with
18 verifying and getting the correct e-mail addresses
19 for some of the media contacts that were given to
20 us.

21 Then we sent out press releases on all
22 hearings -- before all hearing dates and the
23 locations at least two to three days prior to each
24 public hearing. And we also sent out, at the very
25 beginning, an overall press release with all the

1 hearing dates and locations.

2 In addition, we followed up with phone
3 calls or e-mails to media contacts if nothing had
4 been printed or broadcast about the meeting prior
5 to the meeting being held. We also requested
6 assistance from some senators where the public
7 hearings were going to be held.

8 In addition, anyone on the regular
9 contact list received each press release when it
10 was sent to the media. The redistricting website
11 was updated daily on the date and location for the
12 next public hearing with an asterisk.

13 As a result, we have probably over a --
14 close to 300 to 350 e-mail addresses of newspaper,
15 TV, and radio contacts to get the word out. And,
16 as a result, just a sampling of the -- the e-mails
17 of the websites and some of the publicity is on Tab
18 1 of your notebooks.

19 And I believe you will see that in each
20 public hearing there was quite a lot of information
21 either prior to the hearing being held or at the
22 same time the coverage was. And as Senator
23 McConnell has remarked, we had over 700 people
24 attend and approximately 144 speakers as a result
25 of all the ten public hearings across the state.

1 SENATOR McCONNELL: Thank you, ma'am.

2 All right. We'll move on to the next
3 step in our process, as I've stated before,
4 adopting criteria, or so-called rules of the road,
5 we need to follow through the map-drawing process
6 that will provide us with a consistent rationale
7 for our decision-making.

8 Therefore, I asked the staff to review
9 the public hearing testimony and the applicable law
10 and develop a proposal for criteria that we could
11 discuss today, and so Mr. Terreni will present the
12 proposed criteria and give us a brief explanation.

13 Mr. Terreni.

14 MR. TERRENI: Thank you, Mr. Chairman.

15 You have in your notebooks a set of
16 proposed criteria, which -- at Tab 2. And you will
17 see that these criteria are organized into four
18 principal sections: Requirements of Federal Law,
19 Contiguity, Additional Considerations, and Data. I
20 would like to briefly review each of these
21 sections.

22 First let me say that the staff drafted
23 this proposal considering drawing information
24 from -- that was received at the public hearings
25 from the 700 citizens in attendance, as you -- as

1 you mentioned, and the 140 that testified. We also
2 looked and relied heavily on the past criteria
3 adopted by the Senate in 2003, 2001, and 1997.
4 These three sets of criteria were substantially the
5 same in many respects. And you will see a
6 continuity between the past criteria and these.

7 We also looked to applicable case law,
8 especially the three-judge District Court's
9 decision in Colleton County versus McConnell, which
10 contained an extensive discussion of not only the
11 Senate's criteria, but the state's traditional
12 redistricting criteria.

13 Beginning with Section 1, dealing with
14 population equality, this section is divided into
15 two subsections, one dealing with legislative
16 districts, the Senate and House districts, and the
17 second dealing with congressional districts.
18 That's because slightly different standards apply
19 to congressional districts than legislative
20 districts.

21 First, with regard to legislative
22 districts, this criterion is substantially
23 unchanged from the criteria that was adopted by the
24 Senate Judiciary Committee in 2003. However, we do
25 articulate the standard for applying equal -- for

1 achieving equal population between legislative
2 districts, and that is that the 14th Amendment
3 requires an honest and good faith effort to
4 construct legislative districts that are nearly
5 as -- of equal population as possible. That is the
6 point of departure for any redistricting plan.
7 And, indeed, the 2003 criteria stated this as
8 saying that equality of population in legislative
9 and congressional districts, insofar as practical,
10 was the goal of reapportionment and redistricting.

11 However, what the courts have
12 acknowledged is that within an overall range -- and
13 a brief discussion of terms is appropriate here.
14 Deviation is the variance that an individual
15 district will have from the ideal population size.
16 Range is the absolute number of the highest --
17 equal to the highest and lowest deviation within a
18 plan.

19 So, for instance, if you had a plan
20 with a district that was underpopulated by negative
21 4 percent and a district that was overpopulated by
22 plus 4 percent, the overall range of that plan
23 would be 8 percent.

24 What the courts have held is that
25 within a 10-percent range, which is traditionally

1 expressed as a plus or minus 5 range of deviations,
2 that the state has -- may vary from an absolute
3 standard of equality in the pursuit of traditional
4 redistricting principles. It still must make an
5 honest and good faith effort to achieve equality in
6 population, but it is accorded that latitude within
7 that range.

8 Once a plan is outside of a plus or
9 minus -- or rather is outside of the 10-percent
10 range of deviation, it is presumptively unlawful,
11 and it becomes the burden of the state to establish
12 that that plan is -- deviation from population
13 quality is -- resulting from the pursuit of
14 traditional redistricting principles and legitimate
15 state interests.

16 We have fleshed that out. We think
17 it's important for the committee to acknowledge
18 that in drafting its redistricting plan its goal is
19 to meet the requirements of the Equal Protection
20 Clause, and that, to the extent that it deviates
21 from a -- from equality, it will do so in the
22 pursuit of traditional redistricting principles and
23 legitimate state interests; and that, furthermore,
24 the Senate adopt as a criteria a policy of not
25 exceeding plus or minus 5 percent in order to avoid

1 assuming the additional burden of having to justify
2 a deviation and having the burden of proof shifted
3 against it.

4 With regard to congressional districts,
5 the standard is much stricter.

6 SENATOR McCONNELL: Yes, sir, Senator
7 from Orangeburg.

8 SENATOR HUTTO: Do we want to take
9 these up one at a time, or do you want him to go
10 through all of them first?

11 SENATOR McCONNELL: Well, if you
12 want -- if you've got questions on legislative
13 districts, we'll stop here and take those.

14 SENATOR HUTTO: I do.

15 Does it have to be plus or minus 5?
16 Can it be minus 4, plus 6?

17 MR. TERRENI: It may, Senator Hutto.
18 In the past, the Senate has adopted a plus or minus
19 5 standard. And I think as a -- probably out of
20 practical consideration, that if somebody is minus
21 6, that means that another district can only be
22 plus 4. So it has the effect in the drafting
23 process of pitting members against one another in
24 the sense that somebody dropping a deviation lower
25 is going to restrict the ability of the district to

1 go higher. It makes for a much more complicated
2 process.

3 SENATOR HUTTO: Well, and I understand
4 that, but at the same time, the legal standard is a
5 deviation of 10 percent, and it may -- because we
6 haven't drawn any maps yet, we don't know. But it
7 may well turn out that we can get almost everybody
8 within 3 percent, but there is an outlier that goes
9 to 7. If we've got this criteria of plus or minus
10 5, we can't do that. Or can we do that? That's my
11 question. Because I hope we get them all plus or
12 minus 1. I mean, that would be ideal.

13 But let's say that we get very close
14 from 45 of them, but there's one that just, for
15 whatever reasons, county lines and other legitimate
16 reasons we're trying to keep this policy intact or
17 adhere to a precinct line or whatever it is, that
18 that one goes above 5 but is less than the total of
19 10. Would that, by adopting this plus or minus 5,
20 keep us from doing that even though the legal
21 standard is 10?

22 MR. TERRENI: Senator, ultimately, the
23 General Assembly is -- can pass a plan, and if it
24 decides that it needs to alter its criteria in the
25 process, I think it would have the latitude to do

1 this.

2 My observation would be this. In 2003,
3 the Senate was able to produce a plan within plus
4 or minus 5. In 2001, it was able to submit a plan
5 to the United States District Court that was plus
6 or minus 1 because we knew if it did pass
7 litigation, we would have to achieve that standard.

8 What I would submit is the case law
9 establishing the 10-percent variance is
10 longstanding, meaning that these are cases that
11 were decided in the 1960s.

12 There has been more recent case law
13 that has -- not changed the standard regarding
14 deviation, but it certainly focused more attention
15 on deviations. I think for a while jurisdictions
16 have fallen into the idea that they had this safe
17 harbor of plus or minus 5 to work in and that
18 whatever they wanted to achieve within plus or
19 minus 5 was permissible. That never was the law,
20 but they've been reminded --

21 SENATOR HUTTO: It isn't the law now.

22 MR. TERRENI: And it's not the law now.
23 But what's changed is, I think, in light of recent
24 decisions, especially in Georgia, jurisdictions
25 have been reminded of that.

1 SENATOR HUTTO: Okay.

2 MR. TERRENI: I think if you find
3 yourself in the situation where you want -- where
4 you realize that you may need to depart from plus
5 or minus 5, it should be an affirmative step of
6 this subcommittee to say, you know, we've looked at
7 the plan, and in order to do this, we need to
8 depart from it. But establish your beginning rules
9 of the road as being contained within this plus or
10 minus 5.

11 SENATOR HUTTO: And I don't have a
12 problem with that. I just wanted to make sure that
13 since the legal standard was 10, that if, in fact,
14 we get to a point where we've got everybody within
15 3 except one, that we could come back and make an
16 adjustment, that this isn't going to bind us in
17 case something -- and I hope that doesn't happen.

18 MR. TERRENI: Right.

19 SENATOR HUTTO: And I'm not predicting
20 that that will happen, but I just -- I just
21 wondered from a legal point of view how binding our
22 adoption of this criteria would be, should we find
23 ourselves in a need to make an adjustment.

24 MR. TERRENI: I believe you have the
25 discretion to revisit it.

1 SENATOR McCONNELL: All right. Next
2 we'll move to congressional districts.

3 MR. TERRENI: With regard to
4 congressional districts, Mr. Chairman, the courts
5 have interpreted Article 1 Section 2 of the United
6 States Constitution as requiring a much stricter
7 standard with regard to population equality between
8 congressional districts. And that was most
9 recently articulated in Colleton County versus
10 McConnell as being a standard of mathematical --
11 virtual mathematical equality, meaning plus or
12 minus 1.

13 The criteria that we're proposing to
14 the subcommittee doesn't vary from what was adopted
15 by the subcommittee in 2003, except that we have
16 added explicitly that we will draw plus or minus 1
17 persons.

18 We submitted, in fact, the plan to the
19 United States District Court with a plus or minus 1
20 variance in 2002 in the litigation, so we know
21 that's achievable.

22 SENATOR McCONNELL: All right. Next
23 the --

24 MR. TERRENI: Moving on to the voting
25 rights criteria. You will see in Section I(B), the

1 criteria that is substantial -- virtually identical
2 to the language that's been previously adopted by
3 the subcommittee, which affirms that the Voting
4 Rights Act is the law of the land. Indeed, in
5 2006, the Voting Rights Act, the Section 5
6 provision of the Voting Rights Act, was reenacted
7 by Congress. And it governs this plan and will be
8 a guiding criteria for the adoption of the plan as
9 well as, of course, the 14th and 15th Amendments to
10 the Constitution.

11 SENATOR McCONNELL: All right.

12 SENATOR HUTTO: Mr. Chairman?

13 SENATOR McCONNELL: Yes, sir.

14 SENATOR HUTTO: Can I ask Mr. Terreni a
15 question?

16 SENATOR McCONNELL: Yes, sir.

17 MR. TERRENI: Yes, sir.

18 SENATOR HUTTO: The term minority
19 voting strength, is that an absolute number?

20 MR. TERRENI: With regard to Section 5,
21 it is not defined within the guidelines and the
22 interpretations of DOJ as an absolute.

23 With regard to Section 2, Bartlett
24 versus Strickland, I believe it has spoken to the
25 50-percent standard as constituted in the majority

1 of the minority population, it won't be necessary
2 to constitute a district.

3 SENATOR HUTTO: So just to give you a
4 hypothetical, because we have had growth not
5 uniformly throughout the state, but you might have
6 a district that last time had a BVAP of 55. You
7 just, realistically, no matter how you draw the
8 lines, can't get back to 55 because of population
9 growth. That wouldn't violate -- is that right? I
10 mean --

11 MR. TERRENI: I think it's -- I think
12 it's a fact specific inquiry, district by district.
13 That's what DOJ would say. I wish they would give
14 us something more bright-lined than that, but they
15 haven't. The test is whether or not the minority
16 community has an opportunity to elect a candidate
17 of its choice within those districts.

18 That's going to be the standard of
19 retrogression. It will look to the demographics of
20 it. As you say, and I think DOJ has acknowledged,
21 that, in some instances, you could have some --
22 what they call natural retrogression or unavoidable
23 retrogression in the sense that if the population's
24 just not there, it's not there. But they're going
25 to require a good faith effort to avoid dilutional

1 retrogression.

2 SENATOR MALLOY: Mr. Chair?

3 SENATOR McCONNELL: Yes, sir, Senator
4 from Darlington.

5 SENATOR MALLOY: And adding further to
6 that, Mr. Terreni, just on a practical example, if
7 there is a district that has, say, 60 percent
8 voting strength in a -- in a district, is it
9 necessary that -- I mean, is it retrogressing then
10 if that district goes to, say, a number -- I'll
11 throw it out of the blue -- 53, 54 percent? That
12 doesn't violate -- does that violate any
13 retrogressive standards that we're aware of?

14 MR. TERRENI: Well, I hate to be like
15 this, but it's a district-by-district analysis.

16 SENATOR MALLOY: Right.

17 MR. TERRENI: In other words, it's not
18 a -- I don't believe the test ends at, You have a
19 certain percentage of BVAP, and it can't go lower.
20 It's a district specific analysis, and that's what
21 we go through in preclearance.

22 SENATOR MALLOY: And so I guess -- and
23 so, I guess, the question is legal in nature, and
24 you actually are doing it on a district-by-district
25 basis. If there is a district that has a certain

1 population BVAP, the fact that -- and once you look
2 at it, if you're not affecting this particular
3 community interest, you're not really having a
4 greater effect upon the certain population if the
5 number goes down. It's not violative of the
6 retrogressive aspect of this part that you are
7 discussing now.

8 MR. TERRENI: If, by the number going
9 down, the minority community's voting strength is
10 not diluted --

11 SENATOR MALLOY: Right.

12 MR. TERRENI: -- in the sense of the
13 Section 5 guidelines, it does not -- it would not
14 violate Section 5, is my understanding.

15 SENATOR MALLOY: Okay.

16 MR. TERRENI: I would say, again, it's
17 something we will examine with the advice of
18 counsel and --

19 SENATOR MALLOY: District by district.

20 MR. TERRENI: -- on a
21 district-by-district basis.

22 SENATOR MALLOY: Okay.

23 SENATOR HUTTO: Mr. Terreni, can I ask
24 another question, Mr. Chairman?

25 SENATOR McCONNELL: Yes, sir. Senator

1 from Orangeburg.

2 SENATOR HUTTO: So as part of that
3 analysis of the district-by-district basis to
4 determine the dilution of the voting strength,
5 would an inquiry into historic patterns of turnout
6 be something you would look to, that if one
7 particular county just had a history of high,
8 high -- higher than the average turnout versus
9 another, is that -- do you look to that at all?

10 MR. TERRENI: Absolutely, Senator.
11 It's one of -- it's one of the factors that will
12 be -- that are considered in the preclearance
13 process.

14 SENATOR HUTTO: Okay.

15 SENATOR McCONNELL: All right. Next
16 issue or criteria.

17 MR. TERRENI: The final criteria in
18 regards to compliance with federal law is the
19 avoidance of racial gerrymandering. And this is a
20 criteria that we -- the subcommittee adopted in
21 2003.

22 We have articulated the standard,
23 however, that the 14th Amendment requires, and it
24 prohibits racial gerrymandering, and we -- as first
25 interpreted by the Supreme Court in Shaw versus

1 Reno and in subsequent cases. And that is to say
2 that the consideration of race in redistricting,
3 while permissible, must not be the predominant
4 factor in that race-neutral considerations are
5 subordinated to race unless the state finds that it
6 must subordinate other considerations to race in
7 order to serve a narrowly tailored -- in order to
8 serve a compelling state interest in a narrowly
9 tailored fashion. Now, that's a mouthful.

10 But, essentially, what we're saying is
11 that while race may be considered, it will be one
12 of many factors and not the predominant factor in
13 the Subcommittee's redistricting efforts absent a
14 compelling state interest to do so.

15 SENATOR McCONNELL: All right.

16 MR. TERRENI: Contiguity is the next
17 criterion in Section 2. This language is identical
18 to the language adopted by the subcommittee in
19 2003. It states, essentially, that all districts
20 must be contiguous. It further provides that
21 contiguity by water is acceptable as long as there
22 is a reasonable opportunity to access all parts of
23 the district, and that the linkage is designed to
24 meet other criteria that is stated and that are
25 adopted by the subcommittee.

1 It also allows for the point-to-point
2 contiguity in certain instances as long as adjacent
3 districts do not use the same vertex, meaning that
4 you could have point-to-point contiguity to two
5 districts but not for four or not six. No crosses
6 or asterisks, but perhaps point-to-point contiguity
7 in a certain point in one -- between two districts.

8 Section 3 --

9 SENATOR HUTTO: Mr. --

10 SENATOR McCONNELL: Yes, sir, Senator
11 from Orangeburg.

12 SENATOR HUTTO: Does that -- is that
13 a -- point-to-point contiguity -- and I don't even
14 know if we actually have any of this -- would that
15 apply even if that were -- you know, there are
16 some -- I think about the four corners of the
17 United States where those four states actually all
18 come together at one point.

19 Do we have any counties that -- where
20 three counties come together on one point? In
21 other words, that's not the -- if it's a natural
22 division be county line and they happen to come
23 together, it wouldn't -- it wouldn't matter. So if
24 we create an artificial point-to-point --

25 MR. TERRENI: Yeah. Here we're talking

1 about the contiguity between Senate districts in
2 the sense that a Senate district could hourglass --

3 SENATOR HUTTO: Yes.

4 MR. TERRENI: -- potentially.

5 SENATOR HUTTO: Exactly.

6 MR. TERRENI: So maybe I misstated, but
7 really what we're saying is you could have --

8 SENATOR HUTTO: Just that one district
9 could --

10 MR. TERRENI: One district, not two.

11 SENATOR HUTTO: -- come to a point and
12 deviate back out from that same point.

13 MR. TERRENI: Exactly. But you
14 couldn't make a cross.

15 SENATOR HUTTO: Couldn't make a cross
16 of two hourglass districts.

17 MR. TERRENI: That's right.

18 SENATOR HUTTO: I got you.

19 SENATOR McCONNELL: Go ahead.

20 MR. TERRENI: With regard to Section 3,
21 Additional Considerations, again, we drew from the
22 criteria that were adopted in 2003, but reorganized
23 them, first of all, to state that each of these
24 criteria should be given consideration by the
25 subcommittee when practical and appropriate and in

1 no particular order of preference because in some
2 areas of the state, one criterion may be more
3 appropriate as the predominant criterion, and in
4 others, it may not be.

5 First of all, this -- we propose that
6 the subcommittee should consider communities of
7 interest. We've heard a great deal of testimony
8 from citizens in public hearings regarding
9 communities of interest. It's obvious they've got
10 the concept. We've had testimony regarding
11 communities of interest being constituted by
12 political subdivisions, specific neighborhoods,
13 institutions. I believe, for instance, Travelers
14 Rest and Furman University were mentioned, Senator
15 Shoopman, as forming a community of interest.
16 Activity-based communities of interest,
17 economically based communities of interest
18 sometimes intersect, and there was a great deal of
19 testimony regarding Horry County and the community
20 of interest from the Florence and the Pee Dee
21 regions and Myrtle Beach.

22 Media coverage is also a community of
23 interest, and there may be overlapping communities
24 of interest. I would also remind everyone that the
25 members themselves ultimately may recognize

1 communities of interest in their own districts and
2 throughout the state and articulate them throughout
3 the mapping process.

4 With regard to consistent --
5 constituent consistency, in 2003, this criteria was
6 described as maintaining the cores of existing
7 districts, and that's encompassed within
8 constituent consistency. It also, I think, implies
9 a policy of avoiding contests between incumbents.
10 Both of which -- of these considerations were
11 acknowledged as traditional and legitimate state
12 interests by the United States District Court in
13 Colleton County versus McConnell.

14 Number III(C), the next additional
15 consideration is not dividing county boundaries.
16 And there was a great deal of testimony
17 regarding -- from citizens regarding their desire
18 that the Senate avoid unnecessarily dividing county
19 boundaries in the redistricting process.

20 Citizens wanted to maximize their
21 influence within a single Senate district. In
22 other cases, they articulated a desire to elect a
23 resident senator. Some citizens perceived their
24 counties as constituting a community of interest.

25 On the other hand, the subcommittee

1 also heard testimony that -- from some citizens who
2 believe their counties benefited from being divided
3 and having more than one Senate district in them.
4 That testimony was given in multiple instances. In
5 some of the public hearings, county lines barely
6 came up.

7 So they're clearly more of an issue in
8 some areas than others, and it will fall to the
9 subcommittee to make those judgments in the
10 processes to when it is important to respect county
11 boundaries and when it is not as important.

12 An additional consideration would be
13 not dividing municipal boundaries. This is
14 substantially the same criteria that was
15 articulated in 2003 when the subcommittee said that
16 it would consider county lines and county
17 boundaries.

18 There was testimony, as we've
19 mentioned, regarding citizens' desire to keep
20 certain municipalities intact within districts. I
21 believe we heard from citizen in Summerville,
22 Timmonsville, Walterboro with various testimony to
23 that effect.

24 In other instances, clearly, it wasn't
25 an issue. The Court in Colleton County versus

1 McConnell spoke to the amorphous nature of some of
2 our larger urban centers where, in which, municipal
3 boundaries in its judgment weren't as significant
4 of a consideration.

5 I would also note that our boundaries
6 are fluid. Due to the nature of the state's
7 annexation laws, they are sometimes irregularly
8 shaped, don't necessarily follow census blocks.
9 So, you know, I think this will be a case-by-case
10 determination for the subcommittee to decide when
11 this is an important consideration, when it matters
12 to your constituents and when it doesn't.

13 With regard to voting district
14 boundaries or VTDs, in 2003, the Senate's policy
15 was that, to the extent practical, VTD lines should
16 not be split. We're proposing that the Senate
17 adopt a criteria which states that both existing
18 and pending precinct boundary alignments as
19 represented by VTDs should be considered in
20 redistricting efforts. And I would like to make a
21 few observations about VTDs now.

22 VTDs, for the first time in a long time
23 in the redistricting process, do fairly well, and
24 most parts of the state correspond with precinct
25 boundaries. This hasn't always been the case in

1 the past, but due to a lot of good work from the
2 Office of Research and Statistics with the Census
3 Bureau, we now have a pretty good match between
4 VTDs and precincts in a lot of cases.

5 We -- the subcommittee did hear
6 testimony from various citizens expressing a desire
7 that it avoid splitting precincts in order to ease
8 administrative actions and minimize confusion.
9 And as practical matter, it is more efficient to
10 draw the VTDs when it's possible.

11 On the other hand, I would caution the
12 subcommittee that an absolute VTD standard policy
13 of not splitting VTDs probably should not be
14 adopted. For one thing, the growth in the state's
15 precincts has not kept up with the state's
16 population.

17 As a consequence, we have a lot of
18 precincts this time around with populations, with
19 resident populations, of 3,000, 4,000, 5,000. I
20 believe there may even be one in Dorchester with
21 6,000 people in it. This would make it extremely
22 difficult to follow other criteria if you adopt a
23 policy of not dividing VTDs in all instances.

24 Therefore, I think VTDs should -- I
25 would recommend the subcommittee consider VTDs as

1 part of its drawing process, but -- and absorb
2 those lines as appropriate.

3 SENATOR HUTTO: Mr. Chairman?

4 SENATOR McCONNELL: Yes, sir, Senator
5 from Orangeburg.

6 SENATOR HUTTO: Mr. Terreni, in fact,
7 if you absolutely adhere to it, you never would get
8 a congressional district in plus or minus one
9 person.

10 MR. TERRENI: That's correct. And with
11 congressional districts, absolutely not.

12 With regard to compactness, again,
13 we're proposing a criterion that's substantially
14 similar to what has been employed by the Senate in
15 the past perhaps a little briefer, which says that
16 in determining the relative compactness of a
17 district, consideration should be given to
18 geography, demography, communities of interest,
19 and, to the extent to which parts of the district
20 are joined by roads, media outlets, or other means
21 for constituents to communicate effectively with
22 each other and with their representatives.

23 The gist of this criteria is that
24 compactness is not strictly defined by some
25 mathematical formula of geography, that rather it

1 had -- the Senate's redistricting compactness
2 should acknowledge that compactness is a function
3 that serves citizens in their ability to coalesce
4 in the district and communicate with each other and
5 their representatives.

6 We have a state -- as Senator Hutto
7 recently just mentioned, we have a state with a
8 variety of geography. We have urban centers that
9 are very densely populated in some areas. We have
10 large parts of the state that are not densely
11 populated.

12 And so taking a superficial approach to
13 compactness, when one looks at a map and just says,
14 Well, that's -- you know, that district is bigger
15 than the district next to it, it doesn't take into
16 account such factors as some districts are going to
17 have large swaths of unpopulated territory. They
18 may constitute marshland. They may have rivers
19 running through them. There may be a number of
20 things that lead to what is, by one measure, not a
21 compact district but by other measures, functional
22 measures, such as communications, access, et
23 cetera, is a compact district.

24 So we urge that they -- that the Senate
25 adopt a criteria of compactness that reflects the

1 state's diverse geography and population density.

2 Finally, with regards to data, the
3 Senate, we propose, should, of course, redistrict
4 on the basis of the 2010 census data but may
5 consider other sources of data as appropriate as
6 long as they are verifiable and succinct.

7 For instance, we have had -- senate
8 staff has been surveying college dormitories,
9 institutional populations throughout the state such
10 as prison population, nursing homes, and is going
11 to make that provide -- available to the public as
12 well as to the membership in the redistricting
13 process.

14 While the census should -- while the
15 census population is the primary source of data, I
16 think the Department of Justice regulations, the
17 preclearance process, as well as common sense would
18 provide that the Senate could take into account
19 other sources of data regarding population, which
20 would give it indications as to what the nature of
21 that population is, whether it's voting or
22 nonvoting, et cetera.

23 Mr. Chairman, that concludes our
24 presentation for the proposal.

25 SENATOR HUTTO: Senator?

1 SENATOR McCONNELL: All right. Yes,
2 sir.

3 SENATOR HUTTO: One of the things we
4 heard from -- at the public hearings and I've also
5 seen from some of our editorial writers is that
6 they would like us to consider the issue of
7 competitiveness in districts and have -- I'm not
8 sure that you can actually define what that means
9 because, obviously, anybody can file to run, and it
10 may or may not be competitive depending on how well
11 they pursue their campaign. But has
12 competitiveness ever been a standard that's been
13 looked at by the courts?

14 MR. TERRENI: Competitiveness -- well,
15 competitiveness has been a standard that has been
16 examined by the courts in the context of some of
17 the political gerrymandering cases such as Vieth
18 versus Jubelirer.

19 And what courts have -- what the
20 Supreme Court has come down to is essentially what
21 you just said, that they're unable to articulate a
22 standard for judging them, at least for judging
23 political gerrymandering, which, I think, is an
24 expression of competitiveness.

25 Other states have attempted

1 competitiveness criteria, and, from what I
2 understand, they've opened a can of worms in doing
3 it because, again, they've struggled. It's led to
4 endless bickering about what competitiveness really
5 means. And in some, it also may be -- I think it
6 could be especially difficult in putting that in a
7 Section 5 jurisdiction where you have roughly a
8 third of your districts or -- well, not a third,
9 about a fourth of your districts that are
10 essentially taken out of that calculus, or at least
11 put into a different mathematical construct.

12 SENATOR HUTTO: And, if you would,
13 elaborate on that for a minute. The one-fourth of
14 our districts that are subject to that, does
15 that -- does that mean we have to draw those first?
16 I mean, do we have -- how do --

17 MR. TERRENI: Senator, I don't know
18 that it establishes an order of drawing in a sense
19 that you have to draw those first. What we do know
20 is that we -- absent valid justification, the
21 Senate can't retrogress in these districts.

22 SENATOR McCONNELL: If that concludes
23 it, do I hear a motion we adopt these then with the
24 recommendations of the staff?

25 SENATOR FORD: So moved.

1 SENATOR CLEARY: Second.

2 SENATOR MARTIN: Second.

3 SENATOR McCONNELL: All right. Senator
4 from Charleston moves it, and Senator from
5 Georgetown seconds it, and the senator from
6 Pickens.

7 Is there any further discussion? If
8 there is not, we'll go to a vote.

9 All in favor, please raise your right
10 hand.

11 (Voting by Subcommittee Members.)

12 SENATOR McCONNELL: Thank you.

13 All opposed by like sign.

14 By a vote of seven to zero, the
15 criteria are adopted.

16 Mr. Terreni, do you have anything else
17 for us?

18 MR. TERRENI: No, Mr. Chairman. Thank
19 you.

20 SENATOR McCONNELL: Well, without
21 objection, then we'll stand in recess until the
22 next call.

23 SENATOR HUTTO: Mr. Chairman, can I ask
24 one question?

25 SENATOR McCONNELL: Yes, sir, Senator

1 from Orangeburg.

2 SENATOR HUTTO: What will -- just to
3 give us a road map, what will be -- what do you
4 envision this committee's function over the next
5 weeks?

6 SENATOR McCONNELL: Mr. Terreni, do you
7 want to tell him what you're going to be doing and
8 how that's going to come back to us?

9 MR. TERRENI: Mr. Chairman, in the near
10 future, the staff will announce a period during
11 which the public may submit suggested redistricting
12 plans and make proposals, now that the criteria
13 have been adopted, so that they'll know which
14 criteria they need to follow, and they can make
15 their plans consistent with the subcommittee's
16 criteria. The staff will meet with members, and
17 we'll also begin the formulation of the draft staff
18 plan.

19 SENATOR HUTTO: May I ask a question?

20 SENATOR McCONNELL: Yes.

21 SENATOR HUTTO: If a citizen wants --
22 or group wants -- to submit a plan, can they submit
23 it for a single district? Say they want to tell
24 you where they want the new seventh congressional
25 district to be. Do they -- can they submit that in

1 a vacuum, or do they have to give us the entire
2 state plan?

3 MR. TERRENI: The subcommittee adopted
4 criteria for public submissions earlier on. In
5 order to be helpful, a submission is going to need
6 to be complete because anybody can draw an ideal
7 district in a vacuum but --

8 SENATOR HUTTO: I noticed Senator Rose
9 doing that last week.

10 MR. TERRENI: Exactly. But it's
11 ultimately not very helpful. We have a public
12 submissions policy that is posted on the website,
13 and it also provides guidance to some formatting
14 data and other factors.

15 SENATOR McCONNELL: Anything further,
16 gentleman?

17 All right. We'll stand in recess until
18 the next call.

19 (The meeting was concluded at
20 9:59 a.m.)

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CERTIFICATE OF REPORTER

I, Janni S. Jardine, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceeding was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the matters made at the time of the proceeding were recorded stenographically by me and were thereafter transcribed, that the foregoing transcript as typed is a true, accurate and complete record to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal May 2, 2011, at Columbia, Richland County, South Carolina.



Janni S. Jardine

Janni S. Jardine
Court Reporter
My Commission expires
September 1, 2019