

8/27/21

RE: Ensuring Fair and Equal Representation for All South Dakotans

Hello members of the South Dakota House & Senate Legislative Redistricting Committee,

We write to you today on behalf of the ACLU of South Dakota to discuss the importance of ensuring your compliance with the US and South Dakota Constitutions, as well as the Federal Voting Rights Act of 1965 and South Dakota law during the map making portion of the state's 2021 Redistricting Process.



South Dakota

P.O. Box 1170
Sioux Falls, SD 57101
aclusd.org

As you know, redistricting is a once-a-decade process that has a unique and substantial impact on the political make-up and ultimately the day-to-day lives of all South Dakotans. Not only does redistricting play a role in the design of the district boundaries for South Dakota state legislative offices, but also how financial resources are allocated for schools, hospitals, roads and more.

As legislators on this committee, you have the power to make decisions in this process that will greatly impact the futures of all members of the diverse communities that you have been elected to represent. With that power comes the responsibility to fulfill your constitutional obligation of ensuring fair and equal representation for all people, upholding the Fourteenth Amendment's guarantee of equal protection and complying with the requirements of Section 2 of the Voting Rights Act of 1965. All of these constitutional provisions and laws forbid redistricting being used to dilute the voting power of people who belong to racial, ethnic, and language minority groups--whether this dilution was done intentionally or not.

You can ensure that you are meeting these requirements by drawing districts that:

- Have substantial equality of population
- Preserve communities of interest by being compact and contiguous
- Respect existing political subdivisions and natural boundaries

Another essential part of this process is hearing directly from your constituents and incorporating their feedback. We want to thank this committee for developing a public hearing process that will provide many South Dakotans the opportunity to advocate for their communities to stay together. However, considering there is only one public hearing that will be located on a reservation included in the tour around the state, we are concerned that this opportunity is not being extended equally to Indigenous people living on reservations around South Dakota.

This is especially concerning given that the South Dakota legislature has neglected to include Indigenous people in the redistricting process in the past and ended up drawing maps that attempted to dilute Indigenous voting rights. For example, in 2001, South Dakota legislators drew a map that lumped Native American voters living in the counties where Pine Ridge and Rosebud Indian reservations are located into a single district, effectively diluting Native American voting power. If the state had drawn districts more fairly, Native Americans would have been a majority in two districts instead of a supermajority in only one. The ACLU sued on behalf of the Native American voters and federal judges blocked the legislators' plan. *See Bone Shirt v. Hazeltine*, 461 F.3d 1011 (8th Cir. 2006).

In *Bone Shirt*, both the district court held and the Eighth Circuit affirmed that the failure to obtain adequate testimony and input from Indigenous people at public hearings was a factor in holding that a violation of the Voting Rights Act occurred through discriminatory redistricting. Because the current hearing locations only include one out of the nine reservations in South Dakota, public testimony from Indigenous people at public meetings could be even more limited than what occurred in *Bone Shirt*. Another factor that could limit Indigenous participation in public meetings if they are not held on reservations is the on-going COVID-19 pandemic, which has disproportionately affected Indigenous South Dakotans, and may increase hesitancy to travel far distances.



P.O. Box 1170
Sioux Falls, SD 57101
aclusd.org

By failing to provide additional public comment locations on reservations, this will unduly create an added burden on the Indigenous people that live there to travel further during a pandemic. There is a real concern that public testimony in the locations selected, which are almost entirely outside of reservations, will result in even fewer Indigenous people providing public testimony and input if not eliminating it entirely in some regions. The concerns the courts had in *Bone Shirt* will be repeated in this regard or amplified further.

Thankfully, that was 20 years ago and we now have the opportunity to prove that South Dakota can be a champion for equal voting rights for all, including Indigenous South Dakotans. We echo the testimony that has previously been submitted by the Great Plains Tribal Chairman's Association and Four Directions. We urge you to involve Indigenous communities in the 2021 redistricting process by (1) scheduling additional public meetings on reservations, (2) providing adequate time for the public hearings on reservations, (3) providing sufficient advance notice of the public meetings to tribal members on reservations and (4) engaging in meaningful consultation with tribal leaders to obtain input regarding their preferences in the redistricting process.

This is an exciting time in our state's history and we thank you for your leadership on this committee. We look forward to following this process and hope to see the Constitutional principle of "one person, one vote" be realized for all South Dakotans.

Sincerely,

Jett Jonelis
Advocacy Manager
ACLU of South Dakota

Candi Brings Plenty
Indigenous Justice Organizer
ACLU of South Dakota

Stephanie Amiotte
Legal Director
ACLU of South Dakota