

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Jerome Kelsh, )  
)  
Petitioner and Relator, )  
)  
v. )  
)  
Alvin A. Jaeger, in his capacity )  
as Secretary of State, State of )  
North Dakota )  
)  
Respondent. )

Supreme Court No. 2002-0060

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

MAR 15 2002

STATE OF NORTH DAKOTA

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BRIEF OF RESPONDENT NORTH DAKOTA DEMOCRATIC – NPL PARTY

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Dated this 15<sup>th</sup> day of March, 2002.



JEFFREY S. WEIKUM (ND BAR ID# 05344)  
PAGEL & WEIKUM PLLP  
1715 Burnt Boat Drive, Madison Suite  
Bismarck, North Dakota 58503  
Phone: 701-250-1369  
Attorney for Respondent North Dakota  
Democratic – NPL Party

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## **STATEMENT OF THE ISSUES**

The North Dakota Supreme Court should:

1. Take jurisdiction of this matter and exercise its supervisory powers
2. Hold the redistricting plan unconstitutional; and
3. Require the 58th Legislative Assembly to reapportion the State in a manner that is consistent with the constitutional directive to “guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates.” N.D. Const. Art. IV, § 2.

## **LAW AND ARGUMENT**

The Democratic NPL Party supports the efforts of Petitioner Senator Jerome Kelsh, adopts the arguments he presents and further urges this court to:

1. Take jurisdiction of this matter and exercise its supervisory powers
2. Hold the redistricting plan unconstitutional; and
3. Require the 58th Legislative Assembly to reapportion the State in a manner that is consistent with the constitutional directive to “guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates.” N.D. Const. Art. IV, § 2.

Respondent Democratic NPL urges the Court to take these actions because the current apportionment plan does not give all voters the same power to exercise their elective franchise as required by section 2 of Article IV of the North Dakota Constitution.

The current legislative redistricting plan results in over 25,000 North Dakota voters having to wait six years to vote for their legislative representatives. These individuals will cast ballots for legislatures only twice in this decennial. The remaining citizens will have the right to vote three times during this ten-year period.

Prior to the constitutional change in 1996, granting members of the House of Representatives 4 years terms, a voter would never have had to wait 6 years to vote for a legislator. Voters were guaranteed a right to vote for their representatives every two-year regardless of the district they were placed in.

Knowing the impact of 4-year house terms on redistricting, the Legislature should have made every accommodation to guarantee that voters could exercise their voting franchise at least once every four year. Instead the Legislature created a redistricting plan that results in one in every 11 voters being denied an opportunity to vote for 6 years.

To illustrate the harm, consider that some of these disenfranchised voters are residents of the North Dakota Veterans Home. When the Legislature enacted the plan now before this Court, it moved the entire population of the North Dakota Veterans Home at Lisbon from an odd numbered district into an even numbered district. Even numbered districts elected their representatives and senators in 2000 and will not have an election until 2004. However, in the case of the veterans at Lisbon, they were last entitled to vote in 1998. Had they not been moved into an even numbered district, they would be voting this year. Their ability to exercise their elective franchise is denied until 2004.

These veterans, who put their lives on the line for this country, have been effectively stripped of the very right for which they fought. Their right to vote this year was taken from them not because the shift of their numbers was required to maintain a practical redistricting scheme but because the Legislature had to move the entire city of Lisbon out of Senator Joel Heitkamp's district to assure that Heitkamp's residence was moved into Senator Kelsh's district. It is that action that has set up the scenario Senator Kelsh now asks this Court to remedy.

The veterans are not the only voters who have been disenfranchised to achieve an inappropriate goal. For example, more than 6,600 persons were moved from District 26 and more than 5000 were moved from District 8 to achieve the political outcome desired by the legislature. The Legislature's goal was to maintain the status quo for Republican incumbents whose terms expire this year. That goal that has no protection in our constitution. That goal was achieved at the cost of disenfranchising thousands of North Dakotans.

Regrettably the reapportionment process, created to assure that voter's rights are protected, Baker v Carr, 369 U.S. 186 (1964) Reynolds v Sims, 377 US 1362 (1964) has become a process of assuring the continuation of the status quo for Republican legislators. Senator Kelsh is not the only victim of the partisanship that occurred during the special session in November of 2002. More than 25,000 voters were disenfranchised by the Legislature because of politics; not practicality. While the legislature's goal should have been to assure that voters have an equal opportunity to vote; instead the legislature manipulated

the numbers to achieve compliance with a mathematical formula strictly for partisan gain.

The Democrat NPL Party acknowledges that shifting of district lines to redistribute populations for political purposes is not in itself constitutionally objectionable. See, Davis v. Bandemer, 478 U.S. 109, 106 S. Ct. 2797 (1986) (Holding that both intentional discrimination against a political party and a corresponding impact on the party must be shown.) However weighed against the rights that are clearly provided for in the State Constitution, including the right to exercise your vote as frequently as other voters and the right to be represented by the individual elected to serve you for the full term, the right to move district lines just because you can, or to grant a power to an incumbent legislator to shorten the term of another, must fail.

Although direct evidence of hard-core political motivation is typically difficult to find, contemporaneous news reports confirm that the underlying theme of the reapportionment was politics. Despite warnings from their leaders, some Republican lawmakers couldn't resist a bit of gloating about a legislative redistricting plan that pits six Democratic senators against each other:

"We nailed them. We nailed them right between the eyes," Rep. Mike Timm, R-Minot, told a meeting of House Republicans before the Legislature began its special session on Monday. Timm was chairman of a legislative interim committee that was in charge of drafting a new district map for the Legislature.

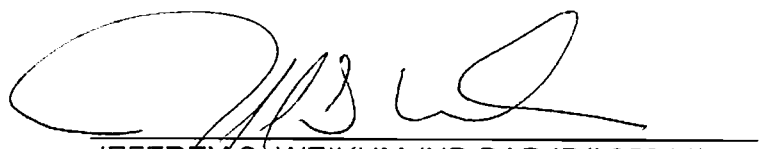
The Bismarck Tribune, Tuesday, November 27, 2001. The legislature pursued its political goals rather than its constitutional charge to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the

power to cast ballots for legislative candidates.” N.D. Const. Art. IV, § 2. Thus the objection arises when the voting rights of all voters are not equal to every other elector merely because the legislature seeks to obtain a political goal. In the special redistricting session it was not the voters who were the primary concern.

### CONCLUSION

The constitutional voting rights of North Dakota citizens should not be subordinated to partisan political interests or mathematical formulas. The Democratic NPL Party asks this Court to fashion a remedy recognizing that mathematical formulas are simply guidelines and not the sole measurement of constitutional legitimacy. The Democratic NPL Party asks this Court to direct the Legislature to enact a redistricting plan that puts the rights of the voters ahead of political partisanship and incumbency protection. The Democratic NPL Party asks this Court to give 1 in 11 voters back their right to elect their legislators.

Dated this 15<sup>th</sup> day of March, 2002.



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1715 Burnt Boat Drive, Madison Suite  
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**MAR 15 2002**

STATE OF NORTH DAKOTA )

STATE OF NORTH DAKOTA

: ss

COUNTY OF BURLEIGH )

Dianne M. McGarvey, being first duly sworn, deposes and says that on the 15<sup>th</sup> day of March, 2002, she served the attached:

**BRIEF OF RESPONDENT NORTH DAKOTA DEMOCRATIC – NPL PARTY**

upon the following person(s) by placing a copy of same in the US mails at Bismarck, ND, with sufficient postage attached, in envelope addressed as follows:

David R. Bliss  
Bliss Law Office  
316 N 5<sup>th</sup> Street, Suite 104  
P.O. Box 1854  
Bismarck, ND 58502-1854

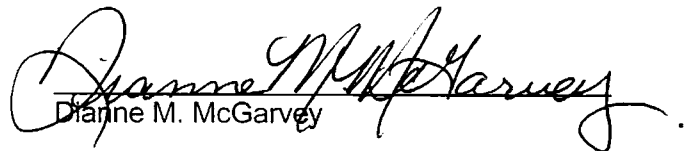
Senator Joel Heitkamp  
16543 95½ Street SE  
Hankinson, ND 58041

Jim Dotzenrod  
407 5<sup>th</sup> Street  
Wyndmere, ND 58081

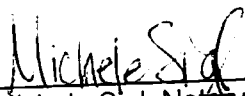
Mike Martinson  
8060 14<sup>th</sup> Avenue SE  
Milnor, ND 58060

Thomas D. Kelsch  
Attorney at Law  
103 Collins Avenue  
Mandan, ND 58554

Douglas A. Bahr  
Office of the Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501

  
Dianne M. McGarvey

Subscribed and sworn to before me this 15<sup>th</sup> day of March, 2002.

  
\_\_\_\_\_  
Michele Sigl, Notary Public  
State of North Dakota  
My Commission Expires: 9/22/04

(SEAL)

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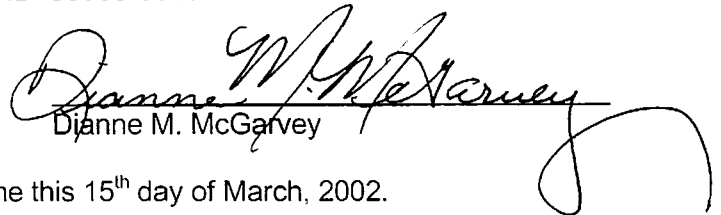
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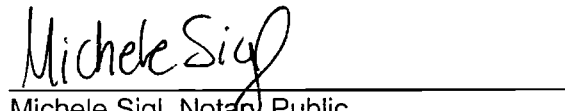
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Wayne K. Stenehjem  
Attorney General  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0040

  
Dianne M. McGarvey

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Michele Sigl, Notary Public  
State of North Dakota  
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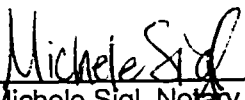
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