

COMMITTEE REPORT
HOUSE

(11)

FURTHER:

2/22/84

Date: 3/15/84

The Committee on FINANCE has had HJR 53

Relating to the reapportionment of the legislature.

under consideration and recommends:

[] do pass [] do not pass

[] do pass with attached amendments(s)

[X] replace with CS for HJR 53 (Fin) [X] same title
[] new title
and recommends _____

[] AND attaches a "Letter of Intent" [X] New Fiscal Note 2/29/84

[] reports it back without recommendation [] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

W. F. ...
W. ...
J. ...
J. ...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

...
...
...
...
MILORITZ

...
CHAIRMAN

Original sponsor: Martin

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 53 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the reapportionment of the
6 legislature.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. Article VI, sec. 1, Constitution of the State of Alaska is
9 amended to read:

10 SECTION 1. ELECTION DISTRICTS. Members of the house of repre-
11 sentatives shall be elected by the qualified voters of the [RESPEC-
12 TIVE] election districts that are established in the most recent
13 reapportionment under this article. Each member of the house of
14 representatives shall be elected from a single member district.
15 [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENT-
16 TIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN
17 SECTION 1 OF ARTICLE XIV.]

18 * Sec. 2. Article VI, sec. 2, Constitution of the State of Alaska is
19 amended to read:

20 SECTION 2. SENATE DISTRICTS. Members of the senate shall be
21 elected by the qualified voters of the [RESPECTIVE] senate districts
22 that are established in the most recent reapportionment under this
23 article. Each senate district shall be composed of two election
24 districts established under sec. 1 of this article. [SENATE DISTRICTS
25 SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES
26 AUTHORIZED IN THIS ARTICLE.]

27 * Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is
28 amended to read:

29 SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The governor

1 shall reapportion the house of representatives and the senate immedi-
2 ately following the official reporting of each decennial census of the
3 United States. Reapportionment shall be based upon the best available
4 evidence of the resident [CIVILIAN] population within each election
5 district and senate district [AS REPORTED BY THE CENSUS].

6 * Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is
7 amended to read:

8 SECTION 6. REDISTRICTING. The governor may [FURTHER] redistrict
9 by changing the size and area of election districts and senate dis-
10 tricts, subject to the limitations of this article. Each [NEW] dis-
11 trict [SO] created shall be formed of contiguous and compact territory
12 containing as nearly as practicable a relatively integrated socio-eco-
13 nomic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE
14 QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY].
15 Consideration may be given to local government boundaries. Drainage
16 and other geographic features shall be used in describing boundaries
17 whenever possible.

18 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska is
19 amended by adding a new subsection to read:

20 (b) Each election district shall contain a population as nearly
21 equal as possible. Each senate district shall contain a population as
22 nearly equal as possible. In no case shall the absolute value of the
23 total percentage deviations of all districts of a house divided by the
24 number of districts exceed one percent. In no case shall a single
25 district have a population which varies from the average population of
26 all districts of that house by more than three percent.

27 * Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is
28 amended to read:

29 SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a
CSHJR 53(FIN)

1 reapportionment board to act in an advisory capacity to him. It shall
2 consist of five members, none of whom may be public employees or
3 officials. At least one member each shall be appointed from the
4 Southeastern, Southcentral, Central and Northwestern regions of the
5 state [SENATE DISTRICTS]. Appointments shall be made without regard
6 to political affiliation. Board members shall be compensated.

7 * Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

8 * Sec. 8. The amendments proposed by this resolution shall be placed
9 before the voters of the state at the next general election in conformity
10 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
11 tion laws of the state.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REVISED

Revision Date: 2/29/84

REQUEST

Bill/Resolution No.: CSHR 53 (7th)
Title: relating to reapportionment of the Legislature
Sponsor: Martin
Requestor: (H) Finance
Date of Request: 2/29/84

FISCAL DETAIL

Agency Affected: Elections
Program Category Affected: _____
BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-40-				
300 CONTRACTUAL		-2.0-				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		-2.0-				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Upon recent analysis, it was determined that the six proposed amendments to the Constitution can be described on two pages of the Election Pamphlet, at a cost of 1.0 per page.

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P. Thoma, Information Officer Phone: 4611
Division: Division of Elections Date: 2/29/84
Approved by Commissioner: [Signature] Date: 2/29/84
Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Original sponsor: Martin

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 53 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the reapportionment of the
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13 reapportionment under this article. Each member of the house of
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23 article. Each senate district shall be composed of two election
24 districts established under sec. 1 of this article. [SENATE DISTRICTS
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3 United States. Reapportionment shall be based upon the best available
4 evidence of the resident [CIVILIAN] population within each election
5 district and senate district [AS REPORTED BY THE CENSUS].

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9 by changing the size and area of election districts and senate dis-
10 tricts, subject to the limitations of this article. Each [NEW] dis-
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21 equal as possible. Each senate district shall contain a population as
22 nearly equal as possible. In no case shall the absolute value of the
23 total percentage deviations of all districts of a house divided by the
24 number of districts exceed ^[two] one percent. In no case shall a single
25 district have a population which varies from the average population of
26 all districts of that house by more than ^[five] three percent.

27 * Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is
28 amended to read:

29 SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a

1 reapportionment board to act in an advisory capacity to him. It shall
2 consist of five members, none of whom may be public employees or
3 officials. At least one member each shall be appointed from the
4 Southeastern, Southcentral, Central and Northwestern regions of the
5 state [SENATE DISTRICTS]. Appointments shall be made without regard
6 to political affiliation. Board members shall be compensated.

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11 tion laws of the state.
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MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

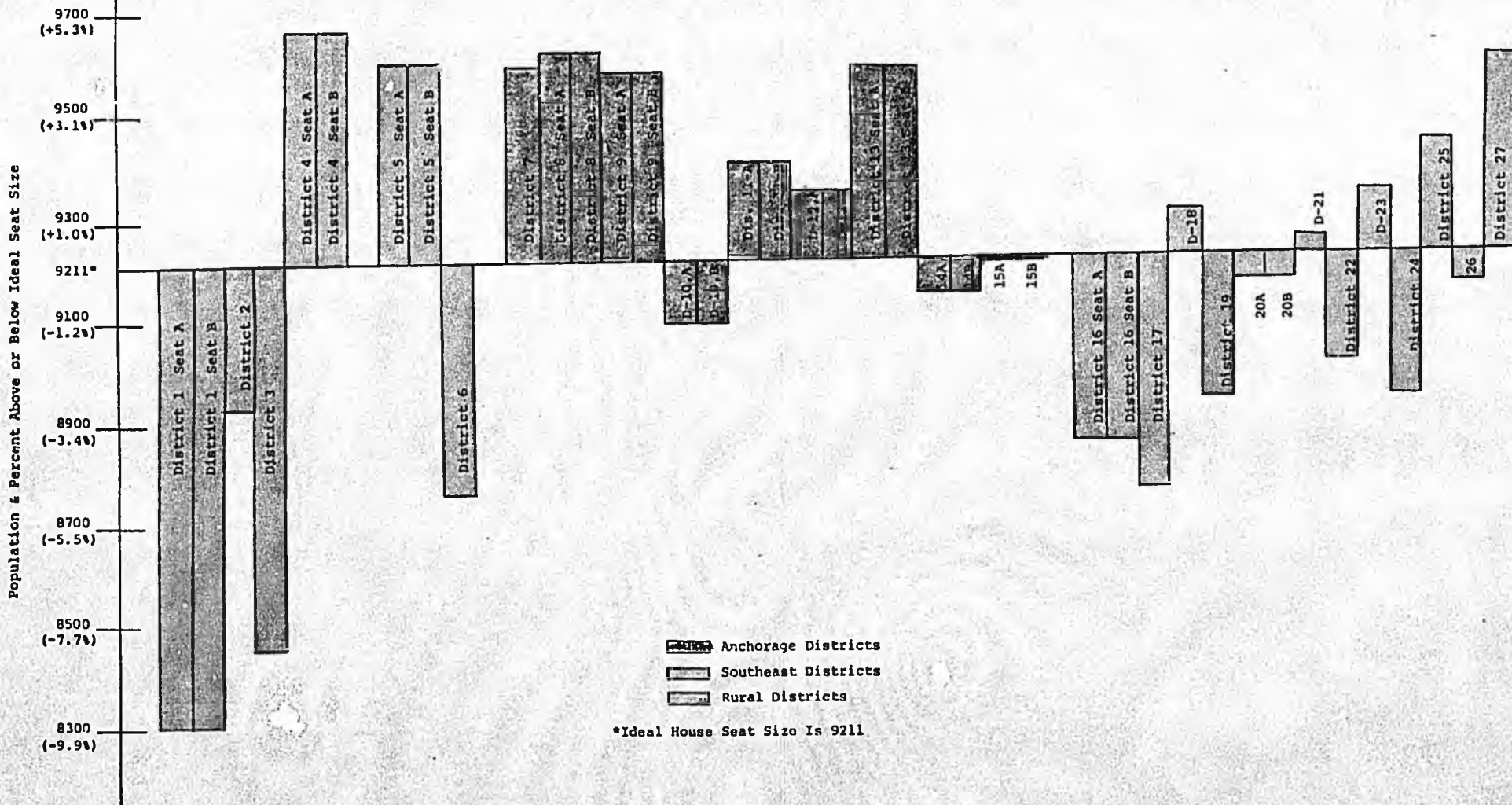
This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

DISPARITIES IN POPULATION REPRESENTED PER HOUSE SEAT
PROPOSED 1984 REAPPORTIONMENT PLAN



- Anchorage Districts
- Southeast Districts
- Rural Districts

*Ideal House Seat Size Is 9211

1980 Census Statistics

SOUTHEAST

Six House Seats
Population: 53,308
 $6 / 53,308 = 8,885/\text{seat}$
Ave S.E. Variance = -3.5%

ANCHORAGE

Seventeen House Seats
Population: 159,466
 $17 / 159,466 = 9,380/\text{seat}$
Ave Anch. Variance = +1.8%

RURAL

Seventeen House Seats
Population: 155,655
 $17 / 155,655 = 9,156/\text{seat}$
Ave Rural Variance = -0.6%

From The Last Frontier



Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

Offered: 2/8/84
Referred: Judiciary and Finance

Original sponsor: Martin

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 53 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 Relating to the reapportionment of the
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11 tion laws of the state.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 26, 1984

SUBJECT: Reapportionment of the legislature
(HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel *B*

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, I must advise you that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please address a specific request to this office.

To some extent, the amendments proposed in this resolution are unusual to the extent that the changes contained in the resolution may confirm existing understandings of the constitutionally required framework for the reapportionment of the Alaska legislature; the Alaska Supreme Court has been obliged to rewrite these provisions under the mandates received from the U.S. Supreme Court in a series of reapportionment decisions delivered by the Supreme Court. See, among other decisions, Baker v. Carr, 369 U.S. 186 and Reynolds v. Sims, 377 U.S. 533. To that extent, the language does not so much indicate a change in what may be expected after ratification of the proposed amendments but rather an affirmative confirmation of existing legal and constitutional reality. The Alaska Supreme Court has invited the legislature to propose conforming amendments several times in its reapportionment decisions. See Wade v. Nolan, 414 P.2d 689 (Alaska 1966), Egan v. Hammond, 502 P.2d 856 (Alaska 1972), Groh v. Egan, 526 P.2d 863 (Alaska 1974), and Carpenter v. Hammond, 667 P.2d 1204 (Alaska 1983).

Representative Mitch Abood
Page 2
January 26, 1984

In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi-member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

From The Last Frontier



Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

Representative Mitch Abood
Page 3
January 26, 1984

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas, that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 P.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

Representative Mitch Abood
Page 4
January 26, 1984

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Representative Mitch Abood
Page 5
January 26, 1984

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

From The Last Frontier



Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

[420 US 1]
DANIEL CHAPMAN AND JACQUE STOCKMAN, Appellants,

v

BEN MEIER, etc.

420 US 1, 42 L. Ed 2d 766, 95 S Ct 751

[No. 73-1406]

Argued November 13, 1974. Decided January 27, 1975.

SUMMARY

Upon the failure of the North Dakota Legislative Assembly to reapportion itself after the 1970 census, an action was instituted in the United States District Court for the Southeastern District of North Dakota for declaratory and injunctive relief, the plaintiffs alleging that the reapportionment plan then in effect, which plan had been fashioned by a federal court in 1965 and included multimember Senate districts, no longer complied with equal protection requirements. The relief sought included a request that the court fashion a new apportionment plan using single-member districts, based on the 1970 census figures. The District Court found that the 1965 apportionment plan was unconstitutional, and after considering several plans presented by a court-appointed commission, ultimately adopted a new plan which included multimember Senate districts, and which contained a population variance of 20.14 percent between the largest and smallest Senate districts (372 F Supp 371).

On direct appeal, the United States Supreme Court reversed and remanded. In an opinion by BLACKMUN, J., expressing the unanimous view of the court, it was held that (1) absent persuasive justification, a federal court's reapportionment plan for a state legislature should avoid use of multimember districts and should ordinarily achieve the goal of population equality with little more than de minimis variation, (2) when important and significant state considerations rationally mandated departure from such standards, the reapportioning court had the responsibility to articulate precisely why a plan of single-member districts with minimal population variance could not be adopted, (3) in the case at bar, the District Court had failed to articulate factors justifying multimember districting, and (4) the 20 percent population deviation involved could not be justified on the grounds

Briefs of Counsel, p 993, *infra*.

766

 From The Last Frontier

Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

a federal court or a state legislature has initiated the use. The
[420 US 18]

practical simultaneity of decision in *Connor v Johnson* and in *Whitcomb v Chavis*, supra, so demonstrates. When the plan is court ordered, there often is no state policy of multimember districting which might deserve respect or deference. Indeed, if the court is imposing multimember districts upon a State which always has employed single-member districts, there is special reason to follow the *Connor* rule favoring the latter type of districting.

[4a, 5] Appellants do not contend that any racial or political group¹³ has been discriminated against by the multimember districting ordered by the District Court. They only suggest that the District Court has not followed our mandate in *Connor v Johnson*, and that the court has failed to articulate any reasons for this departure. We agree. Absent particularly pressing features calling for multimember districts, a United States district court should refrain from imposing them upon a State.

The District Court cannot avoid the multimember issue by labeling it, see 372 F Supp, at 377, a political issue to be resolved by the State. The District Court itself created multimember districting in North Dakota, and it might be said to be disingenuous to suggest that the judicial creation became a political question simply by the passage of nine years. The District Court's treatment of this issue directly conflicts with its prior opinion in this case, where it allowed continuation of the multimember districts first established in the Paulson decision

in 1965 only as an interim remedy. 372 F Supp, at 367. The court there noted that in the largest multimember district, a voter would be asked to evaluate the qualifications of at least 30 candidates for the state
[420 US 20]

legislature, a "most formidable" task. *Id.*, at 366. Taking note of *Connor v Johnson*, the court held in 1972 that it would be improper to permit multimember districts to remain permanently, and allowed continued use only for the impending election because of the great confusion that otherwise would result. The court appears now to have abandoned that position, with no suggestion of reasons for the abrupt change. It is especially anomalous that the court would continue with the multimember districting plan, when the Special Master who initially proposed it has disavowed use of permanent multimember districts. Dobson, Reapportionment Problems, 48 ND L Rev 281, 289 (1972).

In contrast, the dissent in the District Court suggests a wide range of attributes of single-member districts. 372 F Supp, at 391. One advantage is obvious: confusion engendered by multiple offices will be removed. Other advantages perhaps are more speculative: single-member districts may prevent domination of an entire slate by a narrow majority, may ease direct communication with one's senator, may reduce campaign costs, and may avoid bloc voting. Of course, these are general virtues of single-member districts, and there is no guarantee that any particular feature will be found in a specific plan. Neither the District Court majority nor appellee, however, has

13. The only minority group of significant size in North Dakota are Indians, and the

court-ordered reapportionment plan affects them no differently from any other group.



provided us with any suggestion of a legitimate state interest supporting the abandonment of the general preference for single-member districts in court-ordered plans which we recognized in *Connor v Johnson*.¹⁴

The fact that no allegation of minority group discrimination is raised by appellants here does not make *Connor* inapplicable.

[420 US 21]

It is true that in 1973 the voters of North Dakota voted down a proposed constitutional amendment which would have re-established the State's tradition of single-member senatorial districts. At the same time the voters also rejected by referendum the Legislative Assembly's 1973 Act which would have continued the multimember format for five districts. We are unable to infer from these simultaneous actions of the electorate any particular attitude toward multimember districts. It simply appears that North Dakota's voters have not been satisfied with any reapportionment proposal, and that they are frustrated by the years of confusion since the obviously impermissible apportionment provisions of the State's Constitution were invalidated.

[4b, 6] We are confident that the District Court, with perhaps the aid of its Special Masters, will be able to reinstitute the use of single-member districts while also attaining the necessary goal of substantial population equality. Special Master Ostenson had indicated that it "would not be terribly difficult to adopt single-member districts." See 372 F Supp, at 392.¹⁵ Unless the District

Court can articulate such a "singular combination of unique factors" as was found to exist in *Mahan v Howell*, 410 US, at 333, 35 L Ed 2d 320, or unless the 1975 Legislative Assembly appropriately acts, the court should proceed expeditiously to reinstate single-member senate districts in North Dakota.

VI

The Population Variance

The second aspect of the court-ordered reapportionment plan that is challenged by the appellants is the population divergence in the various senate districts. Since the population of the State under the 1970 census

[420 US 22]

was 617,761, and the number of senators provided for by the court's plan was 51, each senate district would contain 12,112 persons if population equality were achieved. In fact, however, one district under the plan has 13,176 persons, and thus is underrepresented by 3.71%, while another district has 10,728 persons, and is overrepresented by 11.43%. The total variance between the largest and smallest districts consequently is 20.14%, and the ratio of the population of the largest to the smallest is 1.23 to 1.

[7] *Reynolds v Sims*, supra, established that both houses of a state legislature must be apportioned so that districts are "as nearly of equal population as is practicable." 377 US, at 577, 12 L Ed 2d 506. While "[m]athematical exactness or precision" is not required, there must be

14. For an example of a conceivable rationale supporting multimember districts, see *Carpeneti*, supra, n 11, at 695-696, where it is suggested that multimember districts may

insure that certain interests such as city- or region-wide views are represented.

15. See also the views of the late Special Master Smith, 372 F Supp, at 392.

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counsel acknowledged that reapportionment proposed by the Legislative Assembly broke county lines, 372 F Supp, at 393 n 22, and the District Court indicated as long as a decade ago that the legislature had abandoned the strict policy. Paulson v Meier, 246 F Supp, at 42-43. Furthermore, a plan devised by Special Master Ostenson demonstrates that neither the Missouri River nor the policy of maintaining township lines prevents attaining a significantly lower population variance.¹⁷ We do not imply that the

[420 US 26]

Ostenson

plan should be adopted by the District Court, or that its 5.95% population variance necessarily would be permissible in a court-ordered plan. What we intend by our reference to the Ostenson plan is to show that the factors cited by the District Court cannot be viewed as controlling and persuasive when other, less statistically offensive, plans already devised are feasible.¹⁸ The District Court has provided no rationale for its rejection of the Ostenson plan.

[12] Examination of the asserted justifications of the court-ordered plan thus plainly demonstrates that it fails to meet the standards established for evaluating variances in plans formulated by state legislatures or other state bodies. The plan, hence, would fail even under the criteria enunciated in Mahan v Ho-

well and Swann v Adams. A court-ordered plan, however, must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features. We have felt it necessary in this case to clarify the greater responsibility of the District Court, when devising its own reapportionment plan, because of the severe problems occasioned for the citizens of North Dakota during the several years of redistricting confusion.

VII

[13a] We hold today that unless there are persuasive justifications, a court-ordered reapportionment plan of a state

[420 US 27]

legislature must avoid use of multimember districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimis variation.¹⁹ Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted.

[14] We say once again what has

17. See Appendix B to memorandum opinion and order of June 30, 1972, by Judges Bright and Van Sickle (the Ostenson plan), App 12-22. The Ostenson plan would allow a total population deviation of only 5.95%.

18. Another plan appearing to be more acceptable with respect to population variance than that adopted by the District Court is the one suggested by the State's Special Committee on Reapportionment, referred to in Judge Bright's dissenting opinion, 372 F Supp, at 394 n 23.

19. [13b] This is not to say, however, that court-ordered reapportionment of a state legislature must attain the mathematical preciseness required for congressional redistricting under Wesberry v Sanders, 376 US 1, 11 L Ed 2d 481, 84 S Ct 526 (1964); Kirkpatrick v Preisler, 394 US 526, 22 L Ed 2d 519, 89 S Ct 1225 (1969); Wells v Rockefeller, 394 US 542, 22 L Ed 2d 535, 89 S Ct 1234 (1969); and White v Weiser, 412 US 783, 37 L Ed 2d 335, 93 S Ct 2348 (1973).

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the problem of revision or redrafting where initial plans are rejected has also rated some differences of approach. One option dictates that courts redraw themselves or appoint other apportioning authorities if they reject the first proposed. Others follow this course only when the initial apportioning authority fails twice; such a "second-try" approach is usually defended for plans which call for redistricting commissions. An underlying rationale reflects the concern that members of a nonpartisan commission, knowing that a court of political persuasion will take over the reapportionment process should the commission fail to act, might be inclined to force a deadlock. Moreover, the commission would likely have at its disposal staff, resources, and experience not readily available to the court, which it could employ in formulating a new plan. Although many of the accountability provisions remain subject to debate, particularly in their detailed content, most redistricting reformers agree that this is a vital component for improvement. Similarly, while influential groups may differ as to who should make redistricting decisions and how critical these decisions are, most seem to join forces in recognizing the importance of accountability factors to an equitable reapportionment process.

V. Concluding Observations

This monograph has attempted to identify problems associated with the current congressional redistricting system and to review the various proposals for improvement along with major arguments which have been advanced in favor of and against them. It is hoped that this analysis will enhance understanding of the important issues involved, and that it will motivate groups and individuals both inside and outside the legal profession to formulate their own views, consider alternative action and resist deterrence to change by traditional obstacles in this

area. Improvement proposals under consideration and debate fall into two categories—structural change (largely focused on the use of special commissions for developing reapportionment plans) and promulgation of standards to ensure fairness and equity in line-drawing (based on a handful of principles ranging from population equality through encouragement of minority inclusion). Concurrently, two levels of legislative initiative for such reforms are under consideration and debate—federal and state.

It is not the intent or function of this pamphlet to advocate specific reform proposals. However, redistricting equity remains a problem for the nation and solutions and conditions do not yet appear to have been devised, no less than are stated in existing processes. Thus, a measure of experimentation with the reform concepts seems desirable; the American Bar Association has formalized such a posture in relation to the 1980 census redistricting process. The nation's experience with redistricting commissions has not been sufficiently widespread or intensively evaluated to draw final conclusions as to universal or the most desirable subfeatures and characteristics. Thus, it would seem reasonable to call for state initiatives in jurisdictions so inclined, rather than for the hope that all states establish commissions, would offer the most promise for the best opportunity to evolve optimal structures for reapportionment.

Federal rules governing redistricting standards, rather than governing merely to apply these standards, however, may be beneficial, although existing uncertainties as to the best "mix" and order of priority among the most commonly cited standards (e.g., population equality, compactness, contiguity, avoidance of intentional political preference) suggest that such formulations might do well to leave some room for state flexibility and experimentation in detailed definition and ordering of any standards articulated.

Whatever the case, carefully studied and soundly conceived redistricting reform promises to aid many sectors of society:

- voters in general whose voice will be heard more clearly when election results are not predetermined by gerrymandering, when competition for congressional seats is maximized, and when representatives must focus their responsiveness on voters rather than on line-drawers;
- racial and ethnic minorities whose interests have often been subordinated in past redistricting practices;
- congressional candidates from minority parties and challenger groups who no longer need hurdle undue barriers of self-protection constructed by incumbent politicians;
- state legislators who will be liberated from political pressures which may influence them to manipulate the line-drawing process;
- courts which will have clearer guidelines concerning the acceptability of redistricting plans; and
- rural and suburban communities (when gerrymandering has been used to strengthen unduly the urban voice) and urban residents (when line-drawers have attempted to increase unduly rural representation).

Indeed, virtually all sectors of society can benefit from congressional redistricting improvement which aids the American electoral machinery in functioning according to our highest ideals of representative government. The time is right—for thought, for decision, and for new levels of achievement.

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Additional Publications of ABA Special
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Order from American Bar Association, Order/Billing Department 357,
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Control of Campaign Financing after Buckley v. Valeo. Proceedings of Symposium held June 1978, in
San Francisco, California.

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CONGRESSIONAL REDISTRICTING

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DIVISION OF PUBLIC SERVICE ACTIVITIES
AMERICAN BAR ASSOCIATION
WASHINGTON, D.C. JUNE 1981

[402 US 690]

PEGGY J. CONNOR et al.

v

PAUL B. JOHNSON et al.

402 US 690, 29 L Ed 2d 268, 91 S Ct 1760, reh den
403 US 924, 29 L Ed 2d 702, 91 S Ct 2220

June 3, 1971

SUMMARY

A three-judge United States District Court for the Southern District of Mississippi, having invalidated a Mississippi legislative reapportionment statute, issued its own reapportionment plan constituting Hinds County, Mississippi, as a multimember district.

On application for stay pending direct appeal, the United States Supreme Court stayed the District Court's decree for 11 days with instructions to devise and put into effect a single-member district plan for Hinds County by that date, absent insurmountable difficulties. In a per curiam opinion expressing the views of six members of the court, it was held that single-member districts are preferable and that, given the census information apparently available and the dispatch with which the appellants devised suggested apportionment plans, the District Court could have devised single-member districts for Hinds County in the 17 days then available, and could devise and put into effect such a plan in an 11-day period.

BLACK, J., joined by BURGER, Ch. J., and HARLAN, J., dissented on the ground that the time was insufficient to fairly administer the election process.

Briefs of Counsel, p 1005, infra.

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OPINION OF THE COURT

Per Curiam.

On May 14, 1971, a three-judge District Court, convened in the Southern District of Mississippi, invalidated the Mississippi Legislature's latest reapportionment statute as allowing impermissibly large variations among House and Senate districts. The parties were requested by the court to submit suggested plans, and the applicants did so on May 17. All four plans suggested by applicants utilized single-member districts exclusively

[102 US 691]

in Hinds County. The following day, May 18, the court issued its own plan, which included single- and multi-member districts in each House: Hinds County was constituted as a multi-member district electing five senators and 12 representatives. The court expressed

some reluctance over use of multi-member districts in counties electing four or more senators or representatives, saying: "[I]t would be ideal if [such counties] could be divided into districts, for the election of one member [from] the district."

However, in view of the June 4, 1971, deadline for filing notices of candidacy, the court concluded that: "[W]ith the time left available it is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc. so as fairly and correctly to divide these counties into districts for the election of single members of the Senate or the House in time for the elections of 1971." The court promised to appoint a special master in January 1972 to investigate the possibility of single-member districts for the general elections of 1975 and 1979.

Applicants moved the District Court to stay its order. The motion

was denied on May 24. Applicants have now applied to this Court for a stay of the District Court's order and for an extension of the June 4 filing deadline until the District Court shall have provided single-member districts in Hinds County or until the Attorney General or the District Court for the District of Columbia approves the District Court's apportionment plan under Section 5 of the Voting Rights Act of 1965, 79 Stat 429, 42 USC § 1973c (1964 ed., Supp V).

[1] Insofar as applicants ask relief under the Voting Rights Act the motion for stay is denied. A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act. However, other reasons lead us to grant the motion to the extent indicated below.

[102 US 692]

In failing to devise single-member districts, the court was under the belief that insufficient time remained until June 4, the deadline for the filing of notices of candidacy. Yet at that time June 4 was 17 days away and, according to an uncontradicted statement in the brief supporting this motion, the applicants were able to formulate and offer to the court four single-member district plans for Hinds County in the space of three days. Also according to uncontradicted statements, these plans were based on data which included county maps showing existing political subdivisions, the supervisory districts used by the Census Bureau for the taking of the 1970 census, official 1970 Census Bureau "final population counts," and "computer print-out from Census Bureau official computer tapes showing total and white Negro population by census enumeration dis-

tricts." Applicants also assert that no other population figures will subsequently become available.

[2.3] The District Court's judgment was that single-member districting would be "ideal" for Hinds County. We agree that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter. Furthermore, given the census information apparently available and the dispatch with which the applicants devised suggested plans for the District Court, it is our view that, on this record, the District Court had ample time to devise single-member districts for Hinds County prior to the June 4 filing deadline. While meeting the June 4 date is no longer possible, there is nothing before us to suggest any insurmountable barrier to

devising such a plan by June 14, 1971. Therefore the motion for stay is granted and the judgment below is stayed until June 14. The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date.

[402 US 693]

In light of this disposition, the District Court is directed to extend the June 4 filing date for legislative candidates from Hinds County to an appropriate date so that those candidates and the State of Mississippi may act in light of the new districts into which Hinds County will be divided.

It is so ordered.

The Chief Justice, Mr. Justice Black, and Mr. Justice Harlan dissent and reserve the right to file an opinion to that effect.

SEPARATE OPINION

June 4, 1971

Mr. Justice Black, with whom The Chief Justice and Mr. Justice Harlan join, dissenting.

I strongly dissent from the stay order of June 3, 1971, more particularly as it relates to a postponement of the Hinds County, Mississippi, election. Under Mississippi law and the decrees of the three-judge court, Hinds County candidates for the state legislature would be elected from the county at large. But this Court—at the eleventh hour—now commands the District Court to change its decree and divide Hinds County into single-member districts so that each voter there can vote for only one state representative and one state senator. Under Mississippi law, the final filing date for candidates is June 4. This Court's order now postpones

that deadline to "an appropriate date" after June 14. The order compels candidates who had expected to run countywide to change their plans completely and to campaign only in a particular district which is part of the county. The confusion is compounded because the candidates do not yet know where the district lines will be drawn. Any candidate would be dumbfounded by the thought that his old district had suddenly been abolished on the eve

[402 US 691]

of the filing date and he must now run in a new but unspecified district which is still only a dream in the eyes of the United States Supreme Court sitting a thousand miles from Hinds County.

This abrupt order by the Court is all the more astounding since this Court has consistently approved multi-member districts for state

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I have read the complete record in this case with care, and find no reasons advanced anywhere in that record for continuing multi-member senate districts as either furthering the art and science of politics or improving the conduct of state government. However, the record does disclose several arguments in favor of the more traditional single-member senate districts:

- (1) It gives a voter a chance to compare only two candidates, head to head in making a choice.
- (2) It prevents one political party with a heavy plurality in one or two potential districts from dominating other potential districts that might narrowly go for the candidate of the opposite party.
- (3) It prevents a city wide political organization from ostracizing or disciplining a legislator, who dares stray from the machine's line.
- (4) It permits a citizen to identify a legislator as his senator and makes direct communication easier.¹⁹
- (5) It makes each senator responsible for his actions and makes it difficult for a senator to fade into the ranks of "the team" to avoid being identified with specific actions taken.
- (6) It reduces campaign costs and "personalizes" a campaign.
- (7) It creates greater interest in the possibility of a citizen seeking a legislative seat without the political machine blessing.
- (8) It would diminish the animosity created in the legislature against

multi-senate districts because of the tendency of senators elected by one political party from a city to vote as a bloc.

- (9) It would tend to guarantee an individual point of view if all senators are not elected as a team.
- (10) It would equalize the power of people in single senate districts with the people in the broken down multi-senate districts to influence the election of only one senator.

From North Dakota's earliest days, the policy of single member senate districts was an integral part of its political tradition. Section 29 of the Constitution of 1389 required such districts and controlled all elections in the state until it was invalidated as an almost accidental by-product of the federal district court's decision in *Paulson II*. See State ex rel. Stockman v. Anderson, 184 N.W.2d 53, 57-58 (N.D.1971). When a panel of this court adopted with some hesitancy a truly unprecedented multi-member senate plan in *Paulson II*, the court said:

We have exhaustively considered the plan as set forth in Senate Bill 39 [which we hereby adopt]. We find it not perfect. Five "multi-member" districts are created; county lines are violated in twelve instances. * * * Insofar as the multi-member districts are concerned, if experience proves that practical difficulties or inequities result therefrom, appropriate remedial legislation may reasonably be expected. [246 F.Supp. at 44.]

In the nine years since the court in *Paulson II* first introduced multi-member senate districts to North Dakota,

19. For example, in the 21st District encompassing the cities of Fargo and West Fargo, four of the five senators live in the extreme south side of Fargo; only one resides in the northern section of Fargo. No state senator resides in West Fargo. I take judicial note

of these facts and that, generally speaking, the most affluent citizens in the 21st Legislative District are concentrated on Fargo's south side. See Fargo Forum, January 29, 1974, at 9, c. 1 (morning edition).

Arguments in Support of Single Member Districts

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the state supreme court as a backup authority. If members of a nonpartisan commission know that a partisan court of their political persuasion will take over the reapportionment task if the commission fails to act, they might force a deadlock.¹⁶⁵

Section (c). Reapportionment Criteria.

(1) State legislative districts in each house shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. In no case shall the absolute value of the total deviations of all districts of a house divided by the number of districts exceed one percent. In no case shall a district have a population which varies from the average population of all districts, unless a population variance is necessary to comply with one of the other criteria set forth in this Section. In no case shall a single district have a population which varies by more than five percent from the average population of all districts. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

COMMENT: The Model's provision that districts in each house "have population as nearly equal as is practicable" does not require mathematical equality.¹⁶⁶ It is based on the standard

has vested the power to act in cases of commission deadlock to its secretary of state. See text accompanying notes 63-68 *supra*.

¹⁶⁵ Maryland is an example of a state where judicial politics is said to have had an impact on reapportionment. In 1973, the Maryland Court of Appeals, the state's highest court, rejected the state's legislative reapportionment plan on a technicality. A special master was appointed. He found political favoritism in Baltimore and Montgomery counties and proposed a plan redrawing districts in the two counties. The Court of Appeals rejected the special master's plan and adopted its own, maintaining much of the gerrymandering that had been done in the two counties. In re Legislative Districting of State, 271 Md. 320, 317 A.2d 477 (1974), cert. denied 419 U.S. 840 (1974). The order was not accompanied with an explanation of the Court's method. It was pointed out at the time that the chief judge was running for re-election in Baltimore County and one of the associate judges was under challenge in a Montgomery County primary. See Ruscovot, *Court Adopts Mandel-Style Redistricting Plan*, Balt. Sun, Mar. 23, 1974, at B20; *Judicial Politics?*, Balt. Even. Sun, Mar. 26, 1974, at A10.

¹⁶⁶ Some state constitutions provide for a more rigorous population standard - the Missouri Constitution, for example, provides for districts with population "as nearly as possible" equal. Mo. Const. art. III, § 2. But, as Justice Fortas pointed out in a concurring opinion in *Kirkpatrick v. Preisler*:

Arithmetically, it is possible to achieve division of a State into districts of precisely equal size, as measured by the decennial census or any other population base. To carry out this theoretical possibility, however, a legislature might

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established by the Supreme Court in *Reynolds*, in which the Court held that a state must "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."¹⁶⁷

This subsection establishes two standards with which the plan must comply. The first standard is that of "average deviation". The second is the maximum allowable deviation from the average.

Most discussions of population deviation focus on the deviations from the least populous to the most populous district. The model recognizes that this is an important test of substantial population equality, but also recognizes that the average deviation - the absolute value of the total deviations of all districts in a house divided by the number of districts - is an even more significant test.¹⁶⁸ As illustration, consider two hypothetical plans for a state with fifty districts: Plan A has one district five percent greater in population than the average and another five percent lower than the average. The other 48 districts are exactly the average. Plan B has twenty-five districts at four percent greater than the average and twenty-five districts at four percent lower than the average. If maximum deviations were the only test, plan B would appear to be the preferred plan. However, in a state where one party controls the reapportioning authority, this could lead to significant malapportionment. The majority party would try to make most underpopulated districts majority party districts and most overpopulated districts minority party districts.¹⁶⁹

have to ignore the boundaries of common sense, running the congressional district line down the middle of the corridor of an apartment house or even dividing the residents of a single family house between two districts. 391 U.S. 526, 538 (1968) (emphasis added).

¹⁶⁷ 377 U.S. at 577 (1964). See also text accompanying notes 29-31 *supra*.

¹⁶⁸ In 1962, the Advisory Commission on Intergovernmental Relations discussed its model apportionment proposal's population standard. "the suggested amendment provides for specifying a maximum percentage deviation. To avoid having all the districts at the maximum deviation figure, an average deviation figure also could be included." *Reported in I ACIR STATE LEGISLATIVE PROGRAM 14* (1975) (hereinafter cited as ACIR).

¹⁶⁹ An example of this situation can be found in a New York plan drawn by the majority Republican party in the 1950's; the Republican 12th District had a population of 317,635 while the five Democratic districts which surround it had populations ranging from 367,000 to 382,000. International Ladies' Garment Workers' Union, *Legislative Representation in New York State* 9 (Oct. 1957).

Average Deviation Discussion

The Model establishes five percent as the maximum allowable deviation from the average.¹⁷⁰ Thus, the largest district may be ten percent greater than the smallest. This figure was selected to provide the flexibility necessary to allow the commission to comply with the other important reapportionment criteria of this Section while prohibiting the commission from undermining the requirement of substantial population equality. A ten percent deviation from the largest to the smallest district is within the limits tolerated by the Supreme Court.¹⁷¹

Unlike recent Supreme Court decisions,¹⁷² the Model Amendment requires justification for all deviations from the average. This requirement does not pose a difficult burden. Once the commission knows that it must justify variances, it will routinely record the necessary data.

170 The Ohio Constitution has a similar provision. Ohio Const. art. XI, §§ 3-4. The Colorado Constitution allows only a five percent deviation from the most populous to the least populous district. Colo. Const. art. V, § 46.

171 The Court upheld a Virginia legislative reapportionment plan with a maximum percentage deviation from the largest to the smallest district of 16.4 percent on grounds that it "may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions." *Mahan v. Howell*, 410 U.S. 315, 328 (1973). But the Court noted that 16.4 percent "may well approach tolerable limits." *Id.* at 329.

Moreover, according to the Council of State Governments, most state reapportionment plans presently in effect satisfy the Model's requirement by having no legislative district with a deviation of greater than five percent from the average.

The Special Masters appointed by the California Supreme Court in 1973 to prepare a reapportionment plan established the following standard: "The population of Senate and assembly districts should be within 1% of the ideal except in unusual circumstances, and in no event should a deviation greater than 2% be permitted." *Legislature v. Reinecke*, 10 Cal. 3d 396, 410, 516 P.2d 6, 15, 110 Cal. Rptr. 718, 727 (1973). The Special Masters pointed out that the U.S. Supreme Court had allowed greater deviations but that California's legislative districts are so large that "even a 1% or 2% variance in population affects a large number of persons." *Id.* at 16. While a one percent population deviation is large in California, a larger figure might be acceptable in a state with a large legislature and a small population.

172 In *White v. Regester*, the Court reversed a district court judgment that had found a population differential of 9.9 percent between the largest and smallest districts made out a *prima facie* equal protection violation under the 14th amendment, absent special justification. The Court pointed out, however, that: "Very likely, larger differences between districts would not be tolerable without justification." 412 U.S. 755, 763-64 (1973).

In *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), the Court rejected *de minimis* deviations for Congressional districts, noting that "to consider a certain range of variance *de minimis* would encourage legislators to strive for that range rather than for equality as nearly as practicable." 394 U.S. at 531.

In another case supporting this logic, the Iowa Supreme Court rejected an apportionment plan for the Iowa General Assembly after finding that a maximum deviation figure of 3.83 percent was used and that "[o]nce the highest and lowest acceptable figures were fixed by the legislative leaders all efforts to achieve voter equality ceased." *Noun v. Turner*, 193 N.W.2d 784, 788 (Iowa 1972).

(2) Congressional districts shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. No district for election of members to the United States House of Representatives shall have a population which varies by more than one percent from the average population of all congressional districts in the state. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

COMMENT: This subsection reflects the strict population equality standard established by the Court for congressional districts.¹⁷³ The Commission is required to use a stricter standard for congressional than for state legislative districts. No deviations in excess of one percent may be justified. Deviations of less than one percent may be permitted to stand if justified based on other criteria. The state carries the burden of justifying any variance from the average.

(3) To the extent consistent with subsections (1) and (2), district lines shall be drawn to coincide with the boundaries of local political subdivisions.

COMMENT: The Supreme Court has struck down state constitutional provisions that guarantee each county representation in the legislature,¹⁷⁴ but it has recognized the states' interests in respecting local subdivision boundaries for two reasons. First, use of political subdivision boundaries places limits on the reapportionment authority's discretion to gerrymander.¹⁷⁵

173 *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). 385 of the existing 435 congressional districts are within one percent of the average within their states. CONGRESSIONAL QUARTERLY *supra* note 6, at 1. See note 172 *supra*. As noted above, the Court has drawn the distinction between the population standard established in Article I, section 2 of the Constitution for congressional districts and the less demanding standard required of state legislative districts by the Fourteenth Amendment. See text accompanying notes 35-37 *supra*.

174 *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

175 *Id.* at 578-79. The legal prohibitions and traditions against breaking political subdivision lines acted as a constraint against gerrymandering before the U.S. Supreme Court's one person, one vote mandate. *Baker*, *supra* note 90, at 201. Without such a constraint, legislatures can cut up subdivisions for political purposes under the guise of ensuring population equality. For instance, in Illinois in 1973, the General Assembly crossed the city line of Chicago nine times in drawing state legislative lines. The

Also the Model seeks to balance the requirements of subsections (1), (2), (3), and (4) with the aims of compactness. Thus, the Amendment requires that the aggregate length of boundary lines be "as short as practicable" consistent with other criteria. Significantly, the Model adopts a more flexible requirement than, for example, the Colorado "as short as possible" standard,¹⁸⁵ because in some circumstances it would be unjust to ignore legitimate considerations such as geography, political subdivision lines, and highways. But the flexibility built into the Act should not be an invitation for abuse. The concrete explanations of the factors in subsections (1), (2), (3), and (4) and the explicit definition of compactness in this subsection will provide the courts with the tools with which to enforce this Model. In order to ensure compactness in political subdivisions of high population density, the Model imposes a special requirement upon districts within these subdivisions.

(6) No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators. The commission shall not use the political affiliations of registered voters, previous election results, or demographic information other than population head counts for the purpose of favoring any political party, incumbent legislator, or other person or group.

COMMENT: This subsection expands upon the antigerrymandering

by the perimeter of a circle equal to the district in area or by dividing the area of the district by the area of the smallest possible circumscribing circle. *Political Gerrymandering*, supra note 39, at 413 (footnotes omitted). See also Edwards, *The Gerrymander and 'One-Man, One Vote'*, 46 N.Y.U. L. Rev. 879, 894 (1971) (hereinafter cited as Edwards). Generally, such formulas have had one of two faults. On the one hand, exact compactness definitions are difficult for the public and even those most affected to understand. This results in an unnecessary loss of political support without a commensurate gain in the substance of the proposal. On the other hand, rigid formulas do not contain the flexibility necessary to allow the use of other reapportionment criteria. Political subdivision boundaries, for example, are often far from compact. Attempts to follow these boundaries might violate a rigid compactness formula even though they serve another important public interest. See *Gaffney v. Cummings*, 412 U.S. 735, 752 n.18 (1973). Somewhat ragged districts often result from attempts to meet the requirement of substantial population equality. *Schneider v. Rockefeller*, 31 N.Y.2d 420, 340 N.Y.S.2d 889, 293 N.E.2d 67 (1972).

¹⁸⁵ Colo. Const. art. V, § 47(1). See *Political Gerrymandering*, supra note 39, at 411 n.68.

dering provisions in the Delaware Code and the Hawaii Constitution.¹⁸⁶

The Supreme Court has held that the use of political data in the formulation of district lines does not violate the Constitution.¹⁸⁷ Thus limitations on the use of political data in planning apportionment are a necessary addition to the other criteria in the Model Amendment. Without limitations on the use of political data, the Amendment would invite politically motivated gerrymandering. The explicit prohibition against the use of addresses of incumbent legislators eliminates a special threat to fair districting.

Under the Model Amendment a plan is not rendered voidable merely because it happens to favor a political party, incumbent legislator, or other person or group. All reapportionment plans favor some party, person, or group. Challengers must demonstrate that the districts were drawn for the purpose of favoring some party, person, or group. The limitations on the use of data traditionally used in political gerrymandering will be judicially enforceable.

(7) No district shall be drawn for the purpose of diluting the voting strength of any language or racial minority group.

COMMENT: The ability of the reapportionment authority to dilute the voting strength of minorities is limited by the opera-

¹⁸⁶ Delaware law provides that districts must "not be created so as to unduly favor any person or political party." DEL. CODE tit. 29, § 806 (1975). See also HAWAII CONST. art. III, § 4.

¹⁸⁷ See text accompanying notes 41-43 *supra*. But see *Noun v. Turner*, 193 N.W.2d 784 (Iowa 1972). In an exception to the general rule, the Iowa Supreme Court voided a legislative reapportionment plan upon a finding that population equality was improperly sacrificed to the General Assembly's goal of protection of incumbent legislators. *Id.* at 788. The court pointed out that superior apportionment plans could be developed without reliance on the political data:

The relevance of the League of Women Voters' plan is not its availability as an alternate plan but rather its demonstration of applicants' principal thesis; namely, that plans more equal in population can be developed. The same census information was used in both the legislature's plan and the L.W.V. plan. Both plans used contiguity and compactness as necessary and permissible criteria; both plans successfully avoid subdivision of townships; both plans cross county and city lines where necessary. The difference between the two plans is in the elimination of residence of incumbent legislators and other political considerations in formulation of the L.W.V. plan.

Id. at 790.



tion of two other elements of this Amendment. The Model requires the creation of single-member districts¹⁸⁸ and mandates the adherence to political subdivisions.¹⁸⁹ These two factors tend to ensure that geographically compact minority groups will not be gerrymandered. But, because minorities have been historically the special victims of gerrymandering,¹⁹⁰ this subsection establishes an explicit guarantee.¹⁹¹ The federal courts and Congress have recognized the problem of racial gerrymandering. In the few cases in which the courts have held reapportionment plans unconstitutional on grounds other than population inequality, the plans were found to dilute the voting strength of racial or ethnic minorities.¹⁹² Congress began to deal with this problem when it enacted the Voting Rights Act of 1965, which was designed to extend the voting guarantees of the Fourteenth and Fifteenth Amendments to state electors.¹⁹³ The "racial" and "language" minority classifications in the Model Amendment follow the Voting Rights Act of 1965, as amended.¹⁹⁴

188 Model Constitutional Amendment, subsection (c)(1) *infra*.

189 *Id.*, subsection (c)(3) *infra*. Unnecessary fragmentation of political subdivisions undermines the ability of constituencies to organize for political action in an effective manner. The special masters appointed by the California Supreme Court in 1973 to prepare a reapportionment plan pointed out:

It is clear that in many situations county and city boundaries define political, economic and social boundaries of population groups. Furthermore, organizations with legitimate political concerns are constituted along local political subdivision lines. Therefore, unnecessary division of counties and cities in reapportionment districting should be avoided.

Legislature v. Reinecke, 10 Cal. 3d 396, 516 P.2d 6, 110 Cal. Rptr. 718 (1973).

190 See text accompanying notes 72-74 *supra*.

191 The Advisory Commission on Intergovernmental Relations suggested that "[t]he aim of [a] reapportionment plan [should] be to provide fair and effective representation to avoid cancelling out the voting strength of racial or political elements of the voting population." ACIR, *supra* note 168.

192 *White v. Regester*, 412 U.S. 755 (1973); *Moore v. Leflore County Board of Election Commissioners*, 502 F.2d 621 (5th Cir. 1974); *Robinson v. Commissioners Court, Anderson County*, 505 F.2d 674 (5th Cir. 1974). In *Klehr v. Williams*, 339 F. Supp. 922 (D. Ariz. 1972), the court realigned several district boundaries in order to place an Indian reservation entirely within a single legislative district.

193 See 42 U.S.C.A. § 1971 (West Supp. 1977); CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, THE VOTING RIGHTS ACT OF 1965, AS AMENDED: HISTORY, EFFECTS, AND ALTERNATIVES (1975). In a recent case, the Supreme Court had the unenviable task of adjudicating conflicting claims between two minorities. A New York plan had deliberately established two legislative districts with non-white majorities of 65 percent. The closely knit Hassidic community protested that the plan split its strength and submerged it in a predominantly non-white district. Relying on the specific mandate of the Voting Rights Act of 1965, the Supreme Court upheld the plan. *United Jewish Organizations v. Carey*, 97 S.Ct. 996 (1977).

194 42 U.S.C.A. §§ 1971, 1973b(f)(1) (West Supp. 1977).

Four state constitutions have designed provisions to protect socio-economic communities of interest in the reapportionment process.¹⁹⁵ This protection of socio-economic communities defines the interests to be protected in much broader terms than the Model's formulation of "language or racial minority group". The states' broad socio-economic provisions represent an effort to achieve an admirable public policy goal.¹⁹⁶ But in striving to attain the desired ends, the broad formulation grants the reapportionment authority too much discretion. The notion of "socio-economic communities of interest" is so broad that a reapportionment authority could knowingly demark geographically overlapping communities. As a result, the reapportionment authority would have to favor some communities of interest over others. It is possible, therefore, that under the broad provision those communities of interest that have been the traditional victims of discrimination will gain no additional protection. Thus, in order to avoid the pitfalls of the broad socio-economic approach, this subsection focuses its constitutional safeguard on those specific communities of interest — linguistic and racial minorities — that are most in need of protection.

195 The Colorado Constitution provides that, consistent with other criteria, "communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible." Colo. CONST. art. V, § 47(3). The Hawaii Constitution provides: "Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided." HAWAII CONST. art. III, § 4. Alaska provides: "Each new district . . . shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socioeconomic area." ALASKA CONST. art. VI, § 6. See *Groh v. Egan*, 526 P.2d 863, 878-80 (Alaska 1974). The Oklahoma Constitution provides that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible." OKLA. CONST. art. 5, § 9A.

196 The 1973 Hawaii Legislative Reapportionment Commission interpreted its standard, *supra* note 195, as one of political fairness. In its final report, the Commission explained its method:

The Commission consciously pursued an effort to avoid clear cases of one socio-economic group being submerged and disadvantaged by reason of its placement in a district in which another socio-economic class heavily predominates. Where a socio-economic group of people (such as those living in the Papakolea or Waimanalo area) cannot, by reason of its number or otherwise, be a district by itself, the commission structured the district so that such a group would at least have a fighting chance to compete with other socio-economic groups in the same district in selecting a legislator.

Hawaii Legislative Reapportionment Commission Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission 17 (July 16, 1973) (on file at Common Cause, Washington, D.C.).



apportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts, but that some military personnel might be excluded as permissible device for limiting impact of transients and non-residents on legislative districting.

Objections overruled.

Decision of Superior Court affirmed in part and reversed in part and the case remanded with directions.

Boochever, J., dissented and filed opinion as to objections to interim plan.

1. States ⇨27

It is constitutionally impermissible to discriminate against a class of individuals in legislative reapportionment plan merely because of nature of their employment. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

2. States ⇨27

Census data was required to be employed in determining total population base for purposes of formulating an interim reapportionment plan for legislative elections. Const. art. 6, § 3; U.S.C.A. Const. Amend. 14.

3. States ⇨27

In fashioning interim apportionment plan for legislative elections, military personnel or civilians who were living in Alaska and enumerated in most recent census but who did not at time possess intent of making Alaska their home would not be excluded from total population. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

Opinion of Sept. 29, 1972

4. Constitutional Law ⇨225(1)

The equal protection clause requires that the states make an honest and good-faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable. U.S.C.A.Const. Amend. 14.

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5. States ⇨27

Two separate justifications for deviation from ideal population figures in the apportionment of state legislatures are: variance occurring because of uncontrollable factors, despite a good-faith effort to achieve mathematical precision, and factors incident to effectuation of a rational state policy, but the latter justification is greatly limited. U.S.C.A.Const. Amend. 14.

6. States ⇨27

Only after good-faith effort has been made to achieve precise mathematical equality in reapportionment of state legislatures may variances be permitted and then state has burden of justifying in detail each such variance. U.S.C.A.Const. Amend. 14.

7. States ⇨27

Need for numerical adjustment is very focus of mandate to reapportion state legislatures. U.S.C.A.Const. Amend. 14.

8. States ⇨27

Legislative reapportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts. U.S.C.A.Const. Amend. 14.

9. Elections ⇨18

States ⇨27

Military personnel as a class cannot be deprived of right to vote and cannot be arbitrarily eliminated in population base used to design legislative apportionment scheme. U.S.C.A.Const. Amend. 14.

10. Constitutional Law ⇨225(1)

States ⇨27

Alaska constitutional provision specifying that reapportionment shall be based upon civilian population within each election district violated Federal Constitution insofar as it sought to exclude military as a class. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

11. States ⇨27

Although it is unconstitutional to exclude military as a class in reapportioning state legislature upon basis of popula-

From The Last Frontier



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tion, some military personnel may be excluded as permissible device for limiting impact of transients and nonresidents on legislative districting. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

12. States ⇨27

If even one person is disenfranchised on any irrational ground, legislative districting scheme rendering that result is invalid. U.S.C.A.Const. Amend. 14.

13. States ⇨27

With respect to legislative districting, attempt must be made to arrive at best approximation of population without losing sight of fact that right of equal representation is also an individual and personal right. U.S.C.A.Const. Amend. 14.

14. Constitutional Law ⇨225(1)
States ⇨27

Upon adequate notice and opportunity to register before use of master voter registration list for legislative reapportionment purposes, plan based upon current voter registration would be permissible under Federal Constitution in attempt to give accurate assessment of military population present in state with intent to make Alaska their home and also plans based on accurate data of state citizenship or state residency could meet standards of federal equal protection clause. U.S.C.A.Const. Amend. 14.

15. Constitutional Law ⇨49

Unconstitutional provisions of Alaska Constitution requiring that reapportionment be based upon civilian population within each election district as reported by the census is not severable; thus the entire provision is invalid. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

16. Action ⇨6

Inasmuch as the apportionment plan was unconstitutional, question as to political affiliation of members composing advisory reapportionment board was moot and, since appointments to board were made many months before final plan was promulgated by governor and interested parties had ample time to appeal from mo-

ment appointments were made, judgment on the issue as to composition of board was not required. Const. art. 6, § 8.

17. States ⇨27

Inasmuch as governor in creating legislative reapportionment plan was not acting from political considerations and performed his function in good faith, any error in composition of advisory reapportionment board with respect to political affiliation of its members was rendered harmless error. Const. art. 6, § 8.

18. States ⇨27

Purpose of constitutional provision that appointment to advisory reapportionment board shall be made without regard to political affiliation is to prevent appointment of board whose efforts might result in politically motivated reapportionment plan. Const. art. 6, § 8.

19. States ⇨27

Constitutional requirement that appointments to advisory reapportionment board be made without regard to political affiliation was not equivalent of requiring a bipartisan board but, in reviewing validity of appointment, germane considerations include: the political affiliation of members of board, nature of their activities in partisan politics, particularly if from one political party only, and the expertise and general qualifications which members bring to the board. Const. art. 6, § 8.

20. States ⇨27

Creation of single-member legislative districts from multimember districts was within powers available to governor under constitutional provision authorizing him to redistrict by changing size and area of election districts. Const. art. 6, § 6.

21. States ⇨27

Governor's general power to reapportion legislature includes right to utilize tool of designated seats within multimember districts. Const. art. 6, § 6.

22. States ⇨27

A need to truncate terms of incumbents may arise when reapportionment results in permanent change in district lines which

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EGAN v. HAMMOND
Cite as, Alaska, 702 P.2d 859

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did not have voice in selection of that in-
cumbent. Const. art. 6, § 6.

23. States ⇐27

Governor has power to terminate state
senate terms as incidental to his general
reapportionment powers. Const. art. 6, §
6.

24. States ⇐27

Under Alaska Constitution, governor,
with assistance of reapportionment board,
has implied power to reapportion senate
on interim basis. Const. art. 6, § 6.

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W. Garnett, III, Asst. Atty. Gen., Juneau,
for petitioners.

Clifford J. Groh, of Groh, Benkert,
Greene & Walter, Anchorage, for respond-
ents.

OPINION IN RE OBJECTIONS TO
INTERIM REAPPORTIONMENT
PLAN

Before BONEY, C. J., and RABINO-
WITZ, CONNOR, ERWIN and BOOCH-
EVER, JJ.

RABINOWITZ, Justice.

In our Decision and Order of May 26,
1972,¹ this court declared the reapportion-
ment plan embodied in the December 30,
1971, Proclamation of Reapportionment and
Redistricting unconstitutional under the
equal protection and supremacy clauses of
the Constitution of the United States of
America. We reached this conclusion for
the reason that the proposed plan in its
overall reapportionment of the Senate and

1. This document is attached hereto as part
of an appendix to this opinion. Also in-
cluded in the appendix are the Reference
to Masters, Masters' Report, Order Estab-
lishing an Interim Reapportionment Plan,
and Order Denying Objections to Interim
Reapportionment Plan.

House of Representatives would have es-
tablished election districts which failed to
encompass "as nearly equal population pro-
portions as is practicable." To insure com-
pliance with the equal protection require-
ments of Reynolds v. Sims, 377 U.S. 533,
84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and
its progeny, it was further determined that
an interim reapportionment and re-district-
ing plan, designed to meet the imminent
1972 elections, required formulation. In
furtherance of this task, two Masters were
appointed to assist the court in fashioning
an appropriate interim reapportionment
plan.

On May 26, 1972, the appointed Masters
were given the following instructions in
pertinent part:²

1. By use of the official Census of
1970, you should establish a population
base for the State of Alaska. This popu-
lation base should include military per-
sonnel who were enumerated in the 1970
Census.

2. You should make an inquiry to de-
termine whether or not the number of
nonresident military personnel included
in the 1970 Census can be determined.
If a determination can be made, then
you should subtract the number from the
total which you have arrived at in para-
graph 1 above. You should also state the
methods in detail by which you arrived at
this determination.

After receipt of the Masters' Report,³ an
"Order Establishing an Interim Reappor-
tionment Plan for 1972 Legislative Elec-
tions" was entered on June 14, 1972.⁴ In
its relevant part this order stated:

By use of the Official Census of 1970,
the Court determines that the total popu-
lation base for the State of Alaska shall

- 2. The complete letter of instructions to the
masters is attached hereto as part of the
appendix.
- 3. The Report is included in the appendix
attached hereto.
- 4. This document is included in the appen-
dix attached hereto.

be 302,361. This figure includes the military population residing in the State of Alaska at the time of the Official Census of April, 1970. In the time available to the Court for the preparation of the interim plan, the Court could find no feasible method of excluding some or all of the military personnel from the total population base. Moreover, computations revealed that changes in representation under the interim plan due to the inclusion of military personnel were minimal.

[1-3] Subsequent to the entry of this court's order establishing an interim reapportionment plan, petitioners filed objections thereto on the stated grounds:

The Court erred in instructing the masters that the population base should include all military personnel who were enumerated in the 1970 census and in allowing nonresident military personnel enumerated by the census to be counted for the purpose of determining the population size and shape of particular districts.

Petitioners contended that the effect of the inclusion of all enumerated military personnel was to give greater political power to those communities which adjoin major military installations. In arguing for preservation of the civilian population concept,⁵ petitioners state that Alaska's legislature established a presumption against residency of military personnel except on affirmation of intent by the person involved that he chooses to be an Alaska resident.⁶ In overruling petitioners' objection to the inclusion in the interim plan's population base of all military personnel who

- 5. Alaska Const. art. VI, § 3 provides in part: "Reapportionment shall be based upon civilian population within each election district as reported by the census."
- 6. In support of this argument, petitioners cite A.S. 15.05.020. The 1971 Reapportionment Plan includes Coast Guard Personnel, 3,752 resident aliens, and all military dependents. These persons cannot be classified as citizens of the State of Alaska under the test urged by petitioners.

were enumerated in the 1970 Census, in our order of June 20, 1972,⁷ we said in part:

[We] could find no feasible basis for the exclusion of part or all of the military population from the population base required for interim reapportionment. Under the Alaska Constitution this base must include all residents of the State of Alaska as enumerated in the decennial census. The base is not limited to voter population. Neither the 1971 reapportionment plan nor the materials relied upon by the petitioners provide a legal basis for identifying nonresident military personnel in order to eliminate them from the population base.

In the absence of reliable data, the elimination of the military from the population base as a class of persons would be a denial of equal protection of the law, prohibited by the Fourteenth Amendment to the United States Constitution. (Footnotes omitted.)

Davis v. Mann, 377 U.S. 678, 84 S.Ct. 1441, 12 L.Ed.2d 609, 617 (1964), instructs that it is constitutionally impermissible to discriminate against a class of individuals merely because of the nature of their employment.

Given Davis v. Mann, this court is nevertheless under the duty, pursuant to article VI, section 3 of the Alaska constitution, to employ census data in determining the total population base for purposes of formulating an interim reapportionment plan.⁸ The census practice of enumeration is as follows:

In accordance with census practice dating back to 1790, each person enumerated in the 1970 census was counted as an in-

- 7. This order is included in the appendix attached hereto.
- 8. See note 1, *supra*. In reaching the conclusion that census data must be employed, we do no more than hold that for purposes of fashioning an interim reapportionment plan the unconstitutional limitation in art. VI, § 3 of the Alaska constitution is severable.

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suant to the mandate of article VI of the Alaska Constitution. The constitution provides for decennial reapportionment of the House of Representatives.¹ The authority to reapportion the House is vested in the Governor of the state, with the advice of a reapportionment board.² Since the adoption of the Alaska Constitution in 1956 the United States Supreme Court has ruled that both houses of a state legislature must be apportioned according to population.³

Because the Alaska Constitution made no provision for reapportionment of the Senate, we held in *Wade v. Nolan*⁴ that on an interim basis until amendment of the Alaska Constitution the Governor had the power to reapportion the Senate in the same manner as specified by the constitution for the reapportionment of the House.

In 1971, following the 1970 decennial census, no amendment having been made to the Alaska Constitution, the Governor reapportioned both houses of the Alaska legislature. Thirteen members of the Alaska legislature then challenged the validity of the 1971 plan.⁵ They argued that the percentage variations from the population norms for legislative districting violated the equal protection clauses of both the United States and the Alaska Constitutions; that the exclusion of the military from the population base was a denial of equal protection; that the Advisory Reapportionment Board was not constituted in the manner required by the Alaska Constitution; that the Governor lacked power to subdivide existing multi-member districts; that the Governor lacked power to create "designated seats" within multi-member districts; that the Governor was without authority to require incumbent Senators to stand for mid-term elections; and that the Governor exceeded his constitutional power by reapportioning the Senate.

The superior court held for the plaintiffs that the variances from population norms were so great as to render the plan invalid; that the Governor lacked the power to subdivide existing multi-member districts and to designate seats within such districts; and that the Governor could not prematurely terminate the terms of senators elected for four years.

The superior court held for the defendants that the military were properly excluded from the population base, that the Advisory Reapportionment Board was properly constituted; and that the Governor did possess the power to reapportion the Senate.

The trial court directed that the matter of reapportionment of the Alaska State Legislature be sent back to the Governor and the Advisory Reapportionment Board for further consideration in accordance with the decision. Both the plaintiffs and the defendants below filed petitions for review from the superior court holdings adverse to their respective positions.

This court was mindful of the need for a speedy decision to enable election officials to prepare registration lists and ballots, to disseminate information and to afford time for election campaigns in the impending primary elections.⁶ The petitions for review were filed on April 26, 1972. The time for filing briefs was accelerated and oral arguments were heard on May 23, 1972. During the course of those oral arguments, counsel were requested to recommend to this court procedures to be followed in the event that the 1971 plan was found to be constitutionally defective. It was suggested that the court fashion its own interim plan, and the Attorney General further recommended that Masters be appointed by the court.

1. Alaska Const. art. VI, § 3.
 2. Alaska Const. art. VI, § 8.
 3. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1272, 12 L.Ed.2d 506 (1964).
 4. 411 P.2d 689 (Alaska 1966).
 5. Alaska Const. art. VI, § 11.

6. The date of filing for candidacies was May 31, 1972. It was extended by this court in accordance with its powers over reapportionment matters first to June 15, 1972 and then to June 30, 1972. *Connor v. Johnson*, 492 U.S. 630, 91 S.Ct. 1760, 29 L.Ed.2d 298 (1971).



State of Alaska because of its differing climates, topography, ethnic composition, socio-economic interests and distribution of its relatively sparse population. However, under the mandate of various decisions of the United States Supreme Court, we make the following determinations and order:

1. The reapportionment plan proposed by the Governor of Alaska in his Proclamation of Reapportionment and Redistricting of December 30, 1971, is unconstitutional in that its overall reapportionment of the Senate and House of Representatives results in proposed election districts that do not contain as nearly equal population proportions as is practicable. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964); Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate

in order to effectuate this constitutionally protected right to vote, we are obliged to declare the reapportionment plan of December 30, 1971, invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. To insure compliance with the Equal Protection Clause in regard to the forthcoming 1972 primary and general elections for the State Legislature this court must formulate an interim reapportionment and redistricting plan. Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (1965); Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 675-676, 84 S.Ct. 1429, 12 L.Ed.2d 595, 607 (1964). The Lieutenant Governor is to conduct the 1972 primary and general elections for the State Legislature pursuant to the interim reapportionment and redistricting plan which this court will adopt.

3. In order to fashion an interim plan this court will appoint one or more masters to assist it.

4. Upon receipt of the report of the master or masters, this court will consider the manner in which the House and Senate districts shall be reapportioned. This court will then proceed to adopt an interim plan of reapportionment which, as nearly as practicable, considering the allotted time, reflects the standards which have been made binding upon the states by the United States Supreme Court. Ely v. Klar, 403 U.S. 108, 91 S.Ct. 1803, 29 L.Ed.2d 352 (1971); Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506, 541 (1964).

5. In the event this court determines that the exigencies of the situation preclude the fashioning of an interim constitutional reapportionment plan by June 15, 1972, this court will enter a further order specifying the plan under which the Lieutenant Governor shall conduct the 1972 primary and general elections for the State Legislature, together with the dates that such elections will be held. Connor v. Johnson, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268 (1971).

6. A full opinion discussing and determining the issues which were raised in the petition and cross-petition will be filed in due course.

Dated at Juneau, Alaska, this 26th day of May, 1972.

- George F. Boney
Chief Justice
- Jay A. Rabinowitz
Associate Justice
- Roger G. Connor
Associate Justice
- Robert C. Erwin
Associate Justice
- Robert Booschever
Associate Justice
- Associate Justice

ORDER ESTABLISHING AN INTERIM REAPPORTIONMENT PLAN FOR 1972 LEGISLATIVE ELECTIONS

This Court declared the Reapportionment and Redistricting Proclamation dated December 30, 1971, unconstitutional by its Decision and Order entered May 26, 1972. Pursuant to that Decision and Order, the Court appointed Dr. George W. Rogers and William H. Scott Masters to assist it in fashioning an interim reapportionment plan for the 1972 Alaska Legislative Elections.¹

The Court, on May 26, 1972 gave the Masters the following written instructions:

1. By use of the official census of 1970, you should establish a population base for the State of Alaska. This population base should include military personnel who were enumerated in the 1970 Census.

2. You should make an inquiry to determine whether or not the number of nonresident military personnel included in the 1970 Census can be determined. If a determination can be made, then you should subtract the number from the total which you have arrived at in paragraph 1 above. You should also state the methods in detail by which you arrived at this determination.

3. Once you have determined the population base, you should divide the same by 40. This will give you the ideal number of persons to be included in a single member House district. You should then divide the population base by 20 which will represent the ideal population for a single member Senate district.

4. You should then establish House and Senate election districts containing a number of persons as close to the formula as feasible.

1. We commend George W. Rogers, Professor of Economics at the University of Alaska, and Mr. William H. Scott, C.P.A., their legal assistant R. E. Hicks, and Mr.

5. In establishing House and Senate districts, an effort should be made to make the districts correspond, where feasible, with the approximate boundaries set out in the 1971 reapportionment plan. No designated seats will be established with a multi-member district if multi-member districts are established. In establishing House and Senate districts you should, wherever feasible, create a district of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

6. If there are any substantial deviations from the population norms, express, specific reasons should be set forth.

The Masters submitted a report on June 12, 1972. Thereafter, the Masters met with the Court on June 13, 1972, at which time the report was amended to reflect determinations made by the Court concerning the reapportionment plan.

The Court, now being fully advised in the premises, hereby makes and orders the following interim reapportionment plan for the 1972 legislative elections:

(1) By use of the Official Census of 1970, the Court determines that the total population base for the State of Alaska shall be 302,361. This figure includes the military population residing in the State of Alaska at the time of the Official Census of April, 1970. In the time available to the Court for the preparation of the interim plan, the Court could find no feasible method of excluding some or all of the military personnel from the total population base. Moreover, computations revealed that changes in representation under the interim plan due to the inclusion of military personnel were minimal.

Richard Listowski, cartographic and statistical assistant, for the excellence of their performance in executing the Court's instructions.



1970 Census of
States, Alaska,
USGPO, 1970).

this right. In urging the people to adopt the Constitution, Madison said in No. 57 of *The Federalist*:

"Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. . . ."

Readers surely could have fairly taken this to mean, "one person, one vote." Cf. *Gray v. Sanders*, 372 U.S. 368, 381.

While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives.

That is the high standard of justice and common sense which the Founders set for us.

Reversed and remanded.

MR. JUSTICE CLARK, concurring in part and dissenting in part.

Unfortunately I can join neither the opinion of the Court nor the dissent of my Brother HARLAN. It is true that the opening sentence of Art. I, § 2, of the Constitution provides that Representatives are to be chosen "by the People of the several States" However, in my view, Brother HARLAN has clearly demonstrated that both the historical background and language preclude a finding that Art. I, § 2, lays down the *ipse dixit* "one person, one vote" in congressional elections.

On the other hand, I agree with the majority that congressional districting is subject to judicial scrutiny. This

¹ The Federalist, No. 57 (Cooke ed. 1001), at 385.

Court has so held ever since *Smiley v. Holm*, 285 U.S. 355 (1932), which is buttressed by two companion cases, *Koenig v. Flynn*, 285 U.S. 375 (1932), and *Carroll v. Becker*, 285 U.S. 380 (1932). A majority of the Court in *Colegrove v. Green* felt, upon the authority of *Smiley*, that the complaint presented a justiciable controversy not reserved exclusively to Congress. *Colegrove v. Green*, 328 U.S. 549, 564, and 568, n. 3 (1946). Again, in *Baker v. Carr*, 369 U.S. 186, 232 (1962), the opinion of the Court recognized that *Smiley* "settled the issue in favor of justiciability of questions of congressional redistricting." I therefore cannot agree with Brother HARLAN that the supervisory power granted to Congress under Art. I, § 4, is the exclusive remedy.

I would examine the Georgia congressional districts against the requirements of the Equal Protection Clause of the Fourteenth Amendment. As my Brother BLACK said in his dissent in *Colegrove v. Green*, *supra*, the "equal protection clause of the Fourteenth Amendment forbids . . . discrimination. It does not permit the States to pick out certain qualified citizens or groups of citizens and deny them the right to vote at all. . . . No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. . . . Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit." At 569.

The trial court, however, did not pass upon the merits of the case, although it does appear that it did make a finding that the Fifth District of Georgia was "grossly out of balance" with other congressional districts of the State. Instead of proceeding on the merits, the court dismissed the case for lack of equity. I believe that the court erred in so doing. In my view we should therefore vacate this judgment and remand the case for a hearing

Opinion of the Court. 377 U. S.

~~But neither history alone nor economic or other sorts of~~
group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local

Ordinance of 1787, in explicitly providing for population-based representation of those living in the Northwest Territory in their territorial legislatures, clearly implied that, as early as the year of the birth of our federal system, the proper basis of legislative representation was regarded as being population.

377 U.S. 533 (1964)

legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body.¹² This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties.¹³ Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired.

¹² See McKay, Political Thickets and Crazy Quilts: Reapportionment and Equal Protection, 61 Mich. L. Rev. 645, 698-699 (1963).

¹³ Determining the size of its legislative bodies is of course a matter within the discretion of each individual State. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies.

ter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in *Fick Wo v. Hopkins*, 118 U. S. 356, the Court referred to "the political franchise of voting" as "a fundamental political right, because preservative of all rights." 118 U. S., at 370.

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of

state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical.⁴⁰ Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." *Lane v. Wilson*, 307 U. S. 268, 275; *Gomillion v. Lightfoot*, 364 U. S. 339, 342. As we stated in *Wesberry v. Sanders*, *supra*:

"We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth

⁴⁰ As stated by Mr. Justice Black, dissenting, in *Colegrove v. Green*, 328 U. S. 549, 569-571:

"No one would deny that the equal protection clause would . . . prohibit a law that would expressly give certain citizens a half-vote and others a full vote. . . . [T]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast. . . . [A] state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted. It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of 'apportionment' than under any other name."

more in one district than in another would . . . run counter to our fundamental ideas of democratic government"⁴¹

State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal

⁴¹ 376 U. S., at 8. See also *id.*, at 17, quoting from James Wilson, a delegate to the Constitutional Convention and later an Associate Justice of this Court, who stated:

"[A]ll elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same." 2 *The Works of James Wilson* (Andrews ed. 1896) 15.

And, as stated by Mr. JUSTICE DOUGLAS, dissenting, in *MacDougall v. Green*, 335 U. S., at 288, 290:

"[A] regulation . . . [which] discriminates against the residents of the populous counties of the state in favor of rural sections . . . lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

"Free and honest elections are the very foundation of our republican form of government. . . . Discrimination against any group or class of citizens in the exercise of these constitutionally protected rights of citizenship deprives the electoral process of integrity. . . .

"None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees. . . . The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government."

Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them.

Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will. And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citi-

Alaska State Legislature

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December 29, 1983

Mr. Willie Hensley
c/o Reapportionment Board
Pouch A
Juneau, AK 99811

Attention: Karen Rehfeld

Dear Mr. Hensley:

A copy of the Board's most recent reapportionment plan (Dec.19) was most appreciated and I take this opportunity to express my concerns.

Because of past actions of the 1981 Reapportionment Board, Judge Souter's very restrictive directions, Governor Sheffield's concerns that all persons be counted, outdated constitution wording and fast growing, population, your Board faces an impossible task and is severely hampered in doing a responsible and constitutionally sound job of reapportionment. The previous Board's action seriously discriminated against the majority of Alaska's true population. All plans thus far proposed by your Board only exasperate the problem of meeting the superior requirement of one person equals one vote.

In order to save excessive court costs in the immediate future, I believe it imperative that the Board request Gov. Sheffield to ask Judge Souter and/or the Alaska Supreme Court to lift the current restrictions imposed and allow a statewide reapportionment that will properly use Federal census figures of 1980 (if we must be limited to this) and insure equal and fair representation for all Alaskans.

Admittedly this may delay reapportionment taking place until after the 1984 election but in the long run, without broader direction for the Board and considering the court's previous recommended changes in Alaska's constitution, all your current efforts seem futile.

Please also consider the following points of views on the past and present reapportionment plans.

Yours very truly,

A handwritten signature in cursive script that reads "Terry Martin".

Rep. Terry Martin

cc: Board Members
Executive Director
Gov. Wm. Sheffield
Speaker of House

Senate President
Media
Attorney General's Office

In the wake of the Carpenter v. Hammond decision it seems that the current Board has strayed from the controlling consideration in reapportionment - one man, one vote. The 1980 Board strove to keep combined variances between any two districts below ten per cent. This ten per cent total population variance (from highest to lowest) seems to be the rule of thumb. In Carpenter v. Hammond, Judge Moore required the adjustment of district boundaries in Southwest Alaska to reduce the combined population variance between Districts 25 and 26 (11.5%).

The current Board appointed by Governor Sheffield, seems to weigh the socio-economic guideline (brought out in the Carpenter Case) equal to if not more important than equally populated districts. In the original reapportionment plan (June 10, 1981) there was only one variance between districts greater than ten per cent and Judge Moore required adjustment of those districts. In the plan adopted by the current Board on Dec. 19, 1983 (Plan 2) there are 28 cases where combined variances between districts exceed ten per cent. (TABLE X) Granted, there may be uncontrollable factors involved, but to leap from 1 to 28 seems excessive.

In examining past Supreme Court decisions the basis for apportionment is clearly stated. The opinion of the U.S. Supreme Court in Wesberry v. Sanders 376 U.S. 1 at 180 was: "While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." And although the previous quote refers specifically to Federal Representatives, the same applies to state legislatures as noted in the opinion of the Alaska Supreme Court in Egan v. Hammond, Alaska 502P2d 856 at 875: "Under the Equal Protection & Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate."

Some would argue that the Alaska State Constitution provides guidelines other than population alone to be used for reapportionment. While contiguity, compactness, and socio-economic integration can be considered, they are not to be the controlling factors. This point is in the U.S. Supreme Courts opinion in Reynolds v. Sims 377 U.S. 533 at 579-580: "But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population - based representation." In the same opinion on page 581 the Justices noted, "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired."

In utilizing the variance concept to achieve equitable representation, there must be an underlying assumption of randomness in those variances. If one region is biased with non-random variations then the cumulative effect of those variations can be substantial. Southeast Alaska is a good example of these non-random variances and their effect. With 5 of 6 S.E. districts having significant negative variations, the average negative variation for all 6 seats is 3.5%.

While statistics are useful aids for comparison, they can also be quite misleading. In Reapportionment Plan 2 (Dec 19, 1983) the average population variance in Southeast from the ideal House seat size is -3.5%. The variance for the 17 Anchorage seats from the ideal is +1.8%. (TABLE I)

Neither variance sounds excessive, but when actual numbers from Southeast and Anchorage are compared, the problem becomes apparent. The total population for six Southeast House seats is 53308 or 8885 per seat. Likewise, Anchorage's population is 159,466 for 17 seats or 9380 per seat. Direct comparison shows a difference of 495 people per average seat size. (TABLE I)

While individual variances may seem reasonable, the cumulative effect is not. Essentially, Anchorage is under represented by 495 people per seat. For 17 Anchorage seats that works out to 8415 people, which is a significant number when compared with the Southeast seat size of 8885 and the ideal seat size of 9211. Anchorage is under represented by one seat. (TABLE II)

When comparing the rest of Alaska (excluding Anchorage) with Southeast similar problems occur. There is a 271 person per seat difference between Southeast and the rest of Alaska. This works out to a cumulative inequity of 4607 people between the two regions. The total overpopulation for the whole state vs. Southeast is 8415 (Anchorage) + 4607 (Remaining Alaska) or 13022. This emphasizes that not only is most of Alaska under represented, but that Southeast Alaska is over represented when compared with the rest of the state. (TABLE III)

As noted in the order of the Alaska Supreme Court in Egan vs. Hammond, Alaska, 502P2d 856 at 875: "Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate."

While there have been instances where Courts have upheld reapportionment plans with variances greater than ten per cent, there are usually specific reasons for this. In Abate v. Mundt, 403 U.S. 182, the U.S. Supreme Court upheld an 11.9% total variance due to historical considerations and the fact that there were no built in bases which favored a certain area or interest. Just the opposite is true in Alaska. The variances in the reapportionment plan are strongly biased in favor of Southeast Alaska and against the Anchorage area.

In Kilgarlin v. Hill, 386 U.S. 120, the U.S. Supreme Court set a precedent in allowing a combined variance of 26.48%. They reasoned that the under populated area had a high growth rate and would soon have the population to eliminate the variance. In examining Alaska's reapportionment under this growth principle, inequities surface once again. Those areas growing fastest, which would soon justify more representation are the regions with the highest variances above the average. North Kenai - South Anchorage (+4.0%), Campbell-Hillside (+4.4%), Turnagain-Sandlake (+4.0%), Kenai-Cook Inlet (+4.2%) are all rapidly expanding, yet they all have large positive variances. It seems the Board could at least consider growth areas and rather than becoming more under represented, a region could grow into fair representation.

The major problem with all the reapportionment plans is the unequal representation afforded certain regions of the state. The 1981 Board made some mistakes which when coupled with mandates from the Carpenter v Hammond case further exacerbate the problem.

Throughout the reapportionment process the Anchorage area has been allocated more people and the Southeast region has been allocated less. This is specifically due to three things; the movement of Cordova out of Southeast, the alternative treatment of the military, and the 1980 census revisions. All of these further the inequity of representation between the two regions.

The 1981 Board received its official census data on March 12, 1981. The first Draft of the reapportionment plan, issued May 5, 1981, did not include an April Census revision which added 1414 people to Eagle River, 50 to the Mat Su Borough and subtracted 94 from the S.E. Fairbanks area. The Board still did not consider the corrections when it made revisions and issued its final plan on May 22, 1981.

Reasons for not using the updated census data are unknown. Fortunately, the current board appointed by Gov. Sheffield has utilized these corrections in at least one of its reapportionment plans (2). The reasons for still considering Plan I, which doesn't use corrected data, are unclear. The 1414 people in Eagle River need to be represented. They can't be just overlooked.

The 1981 Board utilized a plan to consider a certain proportion of military personnel as residents for reapportionment purposes. In the original reapportionment plan (June 10, 1981, resident military personnel were determined at only 7 major military installations (Elmendorf, Eilson, Ft. Wainwright, Ft. Richardson, Ft. Greeley, Adak Naval Base, and the Kodiak Coast Guard Station). This resulted in 31,363.8 non-resident military personnel. Since all military were included in Alaska's population during the 1980 Federal census, these 31,363.8 were subtracted from the census figures to arrive at Alaska's resident population for reapportionment ($400,481 - 31,353.7 = 369,117.2$).

Problems arise in the application of the plan. Why did the 1981 Board only consider the seven major military installations? They didn't include approximately 2491 other military personnel throughout the state. Of the 2491 only 424 were considered residents. Therefore 2067 more people should be subtracted from the total state population to arrive at the base figure for reapportionment.

Fortunately, the current Board has considered these additional personnel in formulating both of their reapportionment plans (Plan 1 and Plan 2). The only criticism to be levied upon the current Board is their lack of public disclosure. No where do they explain this exclusion of the additional 2067 non-resident military personnel in the current plans (Plan 1 & 2). The population figures change in many districts without any explanations or indications of change.

In the Carpenter v Hammond case the Alaska Supreme Court decided that Cordova was not similar enough in socio-economic terms to be included in the Iceworm District. Their mandate was to take Cordova out of the Southeast district and move it elsewhere. This shift reduced Southeast's population base by 2241.

Also, in *Carpenter v Hammond*, Judge Souter,, who has jurisdiction in the case, ordered that the reapportionment be done consistent with federal and state constitutional requirements of equal representation, but with the fewest possible changes to the original plan (June 10,1981). All of these guidelines make the current Boards reapportionment job extremely difficult.

To tie in all three problem areas it must be noted again that throughout the reapportionment process, Anchorage has been gaining people and S.E. has been losing them, resulting in an unacceptable imbalance of representation. Due to the census correction, Anchorage area gained 1414 people. As a result of considering additional non-resident military, rural Alaska lost 2067 people, and specifically Southeast lost 484. Most significant of all is moving Cordova, thus reducing Southeast's population by another 2241 people. So, as a result of the reapportionment the disparity between Anchorage and Southeast has grown by 4139 people (1414 + 2241 + 484).

Since the *Carpenter v. Hammond* case which required removal of Cordova from the Iceworm District, the current Board seems to be picking and choosing when to apply the socio-economic test and when not to. In Plan 2 (Dec. 19,1983) Port Graham and English Bay were reincluded in District 5 because of the feeling from public testimony that their ties were with Seldovia and Homer. This move increased the variances of both Districts 5 and 6, but the Board made the move because of the economic ties and they felt it was reaching a long way from Prince William Sound just to include these two communities.

The same socio-economic and distance arguments can be made for Metlakatla in Southeast, yet no changes were made. The people of Metlakatla have strongly voiced their desire to be politically attached to Ketchikan only a few miles away and not be forced to vote for a representative that lives four or five hundred miles away. All of their ties are with Ketchikan - social, economic, transportation, communication, yet Metlakatla is included with Yakutat, Haines and Skagway who are far away and have few if any direct ties. It seems the Board is reaching as far in this Southeast District as it did with Port Graham and English Bay, yet no changes have been made.

Including Nikishki (North Kenai) in one district with South Anchorage seems as bad as the above cases. People from North Kenai and South Anchorage have expressed their displeasure at being combined into one district. All of Nikishki's ties are with Kenai. Travel must be through Kenai to get to Anchorage. Nikishki belongs to the Kenai school district not Anchorage. Again, despite few ties between two areas and public opposition the Board has placed them in the same district.

Why are a few blocks from Muldoon placed in District 15 which is primarily Eagle River-Chugiak? Why is Tyonek, an area in the Kenai School District and with all its ties to Anchorage or Kenai, the only coastal village in a huge district stretching far into the Interior? It seems that the current Board lacks a consistent set of guidelines to apply during the reapportionment process.

One guideline which would improve representation would be to fashion all single member House and Senate seats. The history of Alaska since the Statehood convention of 1955-56 has shown a continuous effort to move toward single member elected House and Senate seats. Catering to this principle that insures and enhances one person one vote will readily decrease the problems of equal representation and drawing of election boundary lines.

Single member seats would guarantee that your representative would live in your District. One strong block of voters, such as Eagle River or downtown wouldn't be able to elect both representatives for the whole election area.

Single seat districts further guarantee representation for neighborhoods in large urban areas. In the future Fairview and Mountain View will always be sure of a Representative that truly lives in their area. Chugiak-Eagle River can easily support its own single Senate seat and two House seats. Under the current districts (1981) there are no Senators living in District 13. If Plan 2 (Dec. 19, 1983) were adopted and the current Senators were re-elected, Districts 13 and 14 (all of east Anchorage) would lack senators living in their district.

Multi-member districts also discriminate against the political candidates in them. It costs a lot more to run a campaign focused at 18,500 people (multi-member district size) than one for 9250 people. Single member districts make it more feasible (less money) for the average person to run for office. And once in office it costs less for mailouts to smaller districts. Fewer people to represent would hopefully result in better representation. In large districts (area wise) single seats cut down the distance a representative must travel to physically meet constituents.

It must be noted again that many of the problems mentioned in this report are unsurmountable when working within the constraints given the current Board. The Board's current plans (1 and 2) which discriminate against a large number of people and many regions of the state, will no doubt face expensive and time consuming litigation. Rather than end up with a patch-work reapportionment that must be lived with until 1990, why not take the necessary time and use specific guidelines to fashion a fair and equitable state reapportionment plan.

TABLE I
Anchorage vs Southeast

Plan 2
Dec. 19, 1983

Southeast 6 House Seats

<u>District</u>	<u>Population</u>	<u>Variance</u>
D1	16602	-9.9
D2	8924	-3.1
D3	8449	-8.3
D4	19333	+4.9
6/53308 =		8885/seat
Ave. S.E. variance) 3.5%		
Ave. Anchorage Variance +1.8%		
State Total 368,420 ÷ 40 = 9210.5		

Anchorage

<u>District</u>	<u>Population</u>	<u>Variance</u>
D7	9580	+4.0
D8	19231	+4.4
D9	19156	+4.0
D10	18184	-1.3
D11	18804	+2.1
D12	18678	+1.4
D13	19173	+4.1
D14	18265	- .1
17/159466 =		9380/seat

Difference per average seat Anchorage vs S.E. 9380 - 8885 = 495

Total people not represented in Anchorage 495 x 17 = 8415



TABLE II

Southeast vs Anchorage

Plan 2
Dec 19, 1983

Total Population 53308 + 159466 = 212774
 Southeast Anchorage

Ave Juneau Seat Size 8885 212774 ÷ 8885 = 23.95

23.95 - 6 = 17.95

Should be 6 seats in Juneau and 18 in Anchorage

S.E.

Anchorage

6/ $\overline{53308} = 8885/\text{seat}$

17/ $\overline{159466} = 9380/\text{seat}$

Ave S.E. variance - 3.5%

Ave Anch variance + 1.8%

9380 - 8885 = 495/seat

495 x 6 = 2970

495 x 17 = 8415

From The Last Frontier

Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

TABLE III

Remaining AK (excluding Anch) vs Southeast

Plan 2
Dec. 19, 1983

Remaining Alaska (excluding Anch)

Southeast 6 seats

<u>District</u>	<u>Population</u>	<u>Variance</u>		<u>District</u>	<u>Population</u>
D5	19190	+4.2		D1	16602
D6	8598	-6.7		D2	8924
D16	17692	-3.9		D3	8449
D17	8918	-3.2		D4	19333
D18	9300	+ .9		6/ 53308 = 8885/seat	
D19	8934	-3.0			
D20	18320	- .5			
D21	9247	+ .4			
D22	8999	-2.3			
D23	9339	+1.4			
D24	8936	-3.0	9210	9210	
D25	9432	+2.4	-9156	-8885	
D26	9158	- .6	54	325	
D27	9592	+4.1	54	325	
17/ 155655 = 9156/seat			9210 = -0.6%	9210 = 3.5%	

9156	271
-8885	x17
<u>271/</u>	<u>4607</u>
seat	

Anchorage vs Remain Alaska (excluding S.E.)

Plan 2
Dec. 19, 1983

Anch	17 seats	159466	9380	+1.8%
Alaska	17 seats	<u>-155656</u>	9156	-0.6%
		<u>3820</u>	<u>224/seat</u>	

Anchorage vs Rest of Alaska (including S.E.)

Anch	17 seats	159466	9380/seat	+1.8%
Alaska	23 seats	208954	9085/seat	-1.4%
			<u>295/seat</u>	

295
x17
5015

Plan 1

S.E. 6 seats

Anchorage 17 seats

<u>District</u>	<u>Population</u>
D1	16602
D2	8924
D3	8449
D4	19333
	$6 / \overline{53308} = 8885/\text{seat}$

Ave S.E. Variance = -3.2%
Ave S.E. Seat size - 8885

<u>District</u>	<u>Population</u>
D7	9110
D8	18269
D9	18005
D10	19083
D11	18960
D12	18170
D13	18908
D14	19032
D15	18561

$17 / \overline{158053} = 9297/\text{seat}$

Ave Anch Variance = +1.3%
Ave Anch Seat size = 9297

$9297 - 8885 = 412/\text{seat}$

6 S.E. seats vs 6 Ave Anch seats $53308 - 55782 = 2474$

6 S.E. seats vs 6 most populated Anch seats $57030 - 53308 = 3722$

Total Anch under represented vs. S.E. = $17 \times 412 - 7004$

Total Alaska under represented vs. S.E. = $7004 + 4641 = 11645$

From The Last Frontier




Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

TABLE X
 Districts With Combined Variances
 Greater Than Ten Percent

<u>Districts</u>	<u>Variances</u>	<u>Districts</u>	<u>Variances</u>
1 v. 4	9.9 + 4.9 = 14.8	3 v. 4	8.3 + 4.9 = 13.2
1 v. 5	9.9 + 4.2 = 14.1	3 v. 5	8.3 + 4.2 = 12.5
1 v. 7	9.9 + 4.0 = 13.9	3 v. 7	8.3 + 4.0 = 12.3
1 v. 8	9.9 + 4.4 = 14.3	3 v. 8	8.3 + 4.4 = 12.7
1 v. 9	9.9 + 4.0 = 13.9	3 v. 9	8.3 + 4.0 = 12.3
1 v. 11	9.9 + 2.1 = 12.0	3 v. 11	8.3 + 2.1 = 10.4
1 v. 12	9.9 + 1.4 = 11.3	3 v. 13	8.3 + 4.1 = 12.4
1 v. 13	9.9 + 4.1 = 14.0	3 v. 25	8.3 + 2.4 = 10.7
1 v. 18	9.9 + 0.9 = 10.8	3 v. 27	8.3 + 4.1 = 12.4
1 v. 21	9.9 + 0.4 = 10.3		
1 v. 23	9.9 + 1.4 = 11.3	6 v. 4	6.7 + 4.9 = 11.6
1 v. 25	9.9 + 2.4 = 12.3	6 v. 5	6.7 + 4.2 = 10.9
1 v. 27	9.9 + 4.1 = 14.0	6 v. 8	6.7 + 4.4 = 11.1
		6 v. 9	6.7 + 4.0 = 10.7
		6 v. 13	6.7 + 4.1 = 10.8
		6 v. 27	6.7 + 4.1 = 10.8

From The Last Frontier

 Rep. Terry Martin
 State Capitol, Pouch V
 Juneau, AK 99811

Continuing analysis of Plan 2 (1983-84)
By Rep. Terry Martin 1/31/84

As previously expressed, numerous problems exist in Plan 2. Particularly disconcerting is the Board's decision to combine House Districts 6, 7, and 16 to form a two member senate district (Jan. 12, 1984 Plan). This action seems most inconsistent with the current Board's desire to work within the constraints provided by Judge Souter, the courts, and the Constitution. It is hard to follow the Board's logic when the formation of this "donut district" is contrary to its own reistricting guidelines.

In adhering to Judge Souter's order to make as few changes as possible, one would expect House District 16 (seats A & B) to be a single member senate district as it was under the original 1981 Reapportionment Plan. In fact, the Dec. 19, 1983 Plan does leave Mat-Su in a single member senate district. House Districts 6 and 7 are then combined in a separate single member senate district. On page 4 of the Dec. 19, 1983 news release, the Board explained their senate districting decisions: "In an effort to make as few changes as possible the Board decided to retain the two-member senate districts in Anchorage as utilized in the 1981 Plan." (emphasis added) So why, in the Jan. 12, 1984 Plan, does the Board ignore Judge Souter's order, as well as its own previous decisions, and change the senate district from what it was in 1981, into a two member district?

There are numerous arguments against creating a multi-member senate district. Specifically, it would seem to violate article VI, Section 6, of the Alaska Constitution, which calls for contiguous, compact, and integrated socio-economic districts. While technically contiguous, proposed Senate District E verges on gerrymandering, as it completely encircles Anchorage, thus creating the so called "donut district" (Appendix A). The compactness criterion is difficult to meet with a hole in the middle of the district and an area encompassing thousands of square miles. Hardest of all is showing that District E is relatively integrated socio-economically. In actuality, one would be hard pressed to form a more diverse district. The proposed district includes urban South Anchorage, rural Nikishka with its ties to Kenai, Cooper Landing, Moose Pass and Seward; the fishing communities of Prince William Sound - Whittier, Cordova and Valdez; stretches to Cape Yakataga, then north to include the interior areas of Chitina and McCarthy, as well as the entire Mat-Su Borough with Palmer, Wasilla, Big Lake, Sutton, Chickaloon, Talkeetna and Chulitna. Quite a variety of economies, social interests and backgrounds.

The fact that the Matanuska-Susitna Borough is the fastest growing area in the state must also be considered. The large influx of people into the area creates a corresponding increase in the voting population. Since the Board is limited to using the 1980 census data, a situation arises where the large number of new Mat-Su voters could dominate an election. Because this large population growth isn't considered in the data used for reistricting, Mat-Su could elect both District E

senators, effectively leaving South Anchorage, North Kenai and Prince William Sound without local senate representation. The single member district, as it was in 1981, assures Mat-Su (House District 16, Seats A & B) of its senator and also guarantees that Districts 6 & 7 have a senator from their area. Nothing is gained and serious inequities surface when forming a huge two member senate district.

The history of Alaska since the Statehood Convention of 1955-56 has shown a continuous effort to move toward single member House and Senate districts. The 1981 Board was heading in that direction as the following statement from page 19 of the June 10, 1981 Reapportionment Plan indicates: "This plan is, in effect, a step toward single member districts, which goal may be reached in the 1991 reapportionment plan if the intervening decade of experience recommends the concept." Public testimony to the 1981 Board favored single member districts in all areas, except in Fairbanks, where the sentiment was evenly divided.

Support of single member districts has been advanced in numerous Federal Court cases. In Conner v. Johnson, 402 U.S. 690 (1971), six of the U.S. Supreme Court Justices expressed a preference for single member districts. Specifically, they said, "We agree that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter." (supra, p. 692) The Court's opinion in Chapman v. Meier, 420 U.S. 1 (Jan. 27, 1975) ¶26, articulated the same preference for single member districts: "We hold today that unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimus variation. Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted."

Circuit Judge Bright does an excellent job of explaining specific reasons for supporting single member districts. His opinion in Chapman v. Meier, 372 F. Supp. 371 (1974) ¶391, states:

"I have read the complete record in this case with care and find no reasons advanced anywhere in that record for continuing multi-member senate districts as either furthering the art and science of politics or improving the conduct of state government. However, the record does disclose several arguments in favor of the more traditional single-member senate districts:

- (1) It gives a voter a chance to compare only two candidates, head to head in making a choice.
- (2) It prevents one political party with a heavy plurality in one or two potential districts from

dominating other potential districts that might narrowly go for the candidate of the opposite party.

- (3) It prevents a city wide political organization from ostracizing or disciplining a legislator, who dares stray from the machine's line.
- (4) It permits a citizen to identify a legislator as his senator and makes direct communication easier.
- (5) It makes each senator responsible for his actions and makes it difficult for a senator to fade into the ranks of "the team" to avoid being identified with specific actions taken.
- (6) It reduces campaign costs and "personalizes" a campaign.
- (7) It creates greater interest in the possibility of a citizen seeking a legislative seat without the political machine blessing.
- (8) It would diminish the animosity created in the legislature against multi-senate districts because of the tendency of senators elected by one political party from a city to vote as a bloc.
- (9) It would tend to guarantee an individual point of view if all senators are not elected as a team.
- (10) It would equalize the power of people in single senate districts with the people in the broken down multi-senate districts to influence the election of only one senator."

Numerous arguments oppose the creation of proposed Senate District E. While multi-member districts are not unconstitutional per se, the courts have indicated their preference for single member districts. This, combined with Judge Soutar's order to make as few changes as possible, suggests that the Matanuska-Susitna area should remain a single member senate district.

The proposed multi-member senate district should be rejected. One would hope it will be.

Offered: 2/8/84
Referred: Judiciary and Finance
Original sponsor: Martin

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 53 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the reapportionment of the
6 legislature.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. Article VI, sec. 1, Constitution of the State of Alaska is
9 amended to read:

10 SECTION 1. ELECTION DISTRICTS. Members of the house of repre-
11 sentatives shall be elected by the qualified voters of the [RESPEC-
12 TIVE] election districts that are established in the most recent
13 reapportionment under this article. Each member of the house of
14 representatives shall be elected from a single member district.
15 [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESEN-
16 TATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN
17 SECTION 1 OF ARTICLE XIV.]

18 * Sec. 2. Article VI, sec. 2, Constitution of the State of Alaska is
19 amended to read:

20 SECTION 2. SENATE DISTRICTS. Members of the senate shall be
21 elected by the qualified voters of the [RESPECTIVE] senate districts
22 that are established in the most recent reapportionment under this
23 article. Each senate district shall be composed of two election
24 districts established under sec. 1 of this article. [SENATE DISTRICTS
25 SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES
26 AUTHORIZED IN THIS ARTICLE.]

27 * Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is
28 amended to read:

29 SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The governor

1 shall reapportion the house of representatives and the senate immedi-
2 ately following the official reporting of each decennial census of the
3 United States. Reapportionment shall be based upon the best available
4 evidence of the resident [CIVILIAN] population within each election
5 district and senate district [AS REPORTED BY THE CENSUS].

6 * Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is
7 amended to read:

8 SECTION 6. REDISTRICTING. The governor may [FURTHER] redistrict
9 by changing the size and area of election districts and senate dis-
10 tricts, subject to the limitations of this article. Each [NEW] dis-
11 trict [SO] created shall be formed of contiguous and compact territory
12 containing as nearly as practicable a relatively integrated socio-eco-
13 nomic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE
14 QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY].
15 Consideration may be given to local government boundaries. Drainage
16 and other geographic features shall be used in describing boundaries
17 whenever possible.

18 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska is
19 amended by adding a new subsection to read:

20 (b) Each election district shall contain a population as nearly
21 equal as possible. Each senate district shall contain a population as
22 nearly equal as possible. In no case shall the absolute value of the
23 total percentage deviations of all districts of a house divided by the
24 number of districts exceed two percent. In no case shall a single
25 district have a population which varies from the average population of
26 all districts of that house by more than five percent.

27 * Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is
28 amended to read:

29 SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a

1 reapportionment board to act in an advisory capacity to him. It shall
2 consist of five members, none of whom may be public employees or
3 officials. At least one member each shall be appointed from the
4 Southeastern, Southcentral, Central and Northwestern regions of the
5 state [SENATE DISTRICTS]. Appointments shall be made without regard
6 to political affiliation. Board members shall be compensated.

7 * Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

8 * Sec. 8. The amendments proposed by this resolution shall be placed
9 before the voters of the state at the next general election in conformity
10 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
11 tion laws of the state.

Introduced: 1/9/84
Referred: Judiciary

1 IN THE HOUSE

BY MARTIN

2

HOUSE JOINT RESOLUTION NO. 53

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

Relating to the reapportionment of the

6

legislature.

7

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amended to read:

10

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12

TIVE] election districts that are established in the most recent

13

reapportionment under this article. Each member of the house of

14

representatives shall be elected from a single member district.

15

[UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENT-

16

TATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN

17

SECTION 1 OF ARTICLE XIV.]

18

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20

SECTION 2. SENATE DISTRICTS. Members of the senate shall be

21

elected by the qualified voters of the [RESPECTIVE] senate districts

22

that are established in the most recent reapportionment under this

23

article. Each senate district shall be composed of two election

24

districts established under sec. 1 of this article. [SENATE DISTRICTS

25

SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES

26

AUTHORIZED IN THIS ARTICLE.]

27

* Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is

28

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29

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1 shall reapportion the house of representatives and the senate immedi-
2 ately following the official reporting of each decennial census of the
3 United States. Reapportionment shall be based upon the best available
4 evidence of the resident [CIVILIAN] population within each election
5 district and senate district [AS REPORTED BY THE CENSUS].

6 * Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is
7 amended to read:

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9 by changing the size and area of election districts and senate dis-
10 tricts, subject to the limitations of this article. Each [NEW] dis-
11 trict [SO] created shall be formed of contiguous and compact territory
12 containing as nearly as practicable a relatively integrated socio-eco-
13 nomic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE
14 QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY].
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16 and other geographic features shall be used in describing boundaries
17 whenever possible.

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19 amended by adding a new subsection to read:

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22 nearly equal as possible. In no district may the absolute value of
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24 the number of districts exceed two percent. In no district may a
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5 state [SENATE DISTRICTS]. Appointments shall be made without regard
6 to political affiliation. Board members shall be compensated.

7 * Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

8 * Sec. 8. The amendments proposed by this resolution shall be placed
9 before the voters of the state at the next general election in conformity
10 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
11 tion laws of the state.



Official Business

Alaska State Legislature
House of Representatives

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

January 13, 1984

Mr. Jay Hogan, Associate Director
Division of Budget Review
Office of Management & Budget
Office of the Governor

Dear Mr. Hogan:

Yesterday I received a copy of Assistant Attorney General James Baldwin's opinion of January 12, 1984 regarding interest income from investments made by the University of Alaska. It appears to me that in addition to calling into question current practices of the University, the opinion also raises serious questions regarding the treatment of program receipts in the state budget. Specifically, it appears that in the opinion of the Department of Law, many program receipts are, in fact, general funds.

I would like you and your staff to reevaluate the Governor's FY 85 budget in light of this opinion for the purpose of segregating those program receipts which are truly general funds from those program receipts which meet the criteria for program receipts set out by the Department of Law. In so doing, I would imagine that it will be necessary to refine the definition of program receipts contained in Mr. Baldwin's opinion. Please attach your definition of program receipts to your breakdown of funds when you reply to this request.

Your attention to this matter will be appreciated.

Sincerely,

Al Adams
Chairman
House Finance Committee

APA/el

cc: Senator John Sackett
Mr. Mike Greany

MEMORANDUM

State of Alaska

TO: Jay Hogan, Associate Director
Division of Budget Review
Office of Management & Budget
Office of the Governor

DATE: January 12, 1984

FILE NO: 366-588-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: University of Alaska
investment power re
interest income

James L. Baldwin

By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

This memorandum responds to a request for opinion made by your predecessor dated April 19, 1983. Our advice was requested concerning the status of receipts earned by the University of Alaska, and the treatment of interest income earned by the University of Alaska through the deposit of those receipts in an interest bearing account. We believe that certain funds held by the university may be invested and the legislature may appropriate interest as a source of funding separate from the state general fund. However, the investment power of the university does not extend to money which represents unrestricted state revenue appropriated to the university.

Specifically, you have asked "what authority is there to treat interest income as a program receipt?" The term "program receipts" is not defined by law. That term has been used to describe a source for certain appropriations included in the executive budget. Generally, the money is paid to a state agency by a third party in trust, for a specific purpose, or as a custodian, or as a consequence of authorized activities of the agency. For most executive branch agencies, receipts are paid monthly into a program receipts account within the state treasury (also referred to as the "general fund"). Each fiscal year the legislature appropriates money based on estimates contained in the governor's budget. If program receipts exceed the estimates, the agency may expend the money only after it submits a revised program for approval by the office of management and budget. AS 37.07.080(h). These appropriations are considered made from a funding source other than the general fund. However, the designation of program receipts as a separate source of funding in the executive budget is not appropriate for all of that revenue. Rather, some of the revenue can properly be considered separate because it is held in trust or as a custodian. The remainder must be considered unrestricted revenue: that is, the money is not held by the state as custodian nor held in trust for a specific purpose but is available for appropriation for any purpose.

Generally, program receipts are accounted for as a separate funding source for either of the following two reasons:

Jay Hogan, Associate Director
Office of Management & Budget
366-588-83

January 12, 1983
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(1) by doing so the amount of general fund expenditures appears to be reduced without reducing spending; and (2) an agency can be encouraged to capture program receipts which it might otherwise lose for lack of a proper incentive. Unrestricted revenue in the form of program receipts should not be considered to be a separate funding source from other unrestricted revenue because to do so creates the same conditions for which the dedicated fund prohibition (Alaska Const. art. IX, § 7) was adopted to prevent.

You next ask whether certain sources of cash payments to the university are "property of the university or under state control." The university apparently retains all receipts from tuition, dormitory fees, rental income earned on university land and private endowments given to the university. The university deposits these receipts without segregation in an investment account established by the university. The university considers all receipts generated by the operation of its programs to be property which may be segregated from the state treasury.

Generally, the dedication of state revenue is prohibited by article IX, section 7 of the Alaska Constitution. In State v. Alex, 646 P.2d 203 (Alaska 1982), the Alaska Supreme Court interpreted article IX, section 7 so that the dedication of any source of public revenue is prohibited. Certain exceptions to this prohibition are recognized, including pledges of revenue made to secure revenue bond financing. This type of dedication is enforceable because it is made by bond covenants which create a contractual relationship between the parties. For similar reasons, certain receipts from property held in trust may be segregated and expended only in accordance with terms of the trust. All other receipts of the university raised by operation of some general law become state public funds. Navajo Tribe v. Arizona Dept of Administration, 528 P.2d 623 (Ariz. 1974). Unless provided otherwise, these public funds should be promptly remitted to the state treasury where they are in the custody and under the control of the commissioner of revenue. AS 37.10.050; see also Opinion of the Justices, 134 N.E.2d 892 (Mass. 1956) (interpreting a state constitutional provision identical to the provisions of AS 37.10.050(a)).

Interest income earned from investment of university trust property may be appropriated as program receipts from a separate fund. Clearly, the university has the power to "invest ... money ... received from sources other than the state legislature or federal appropriations for the purpose of the University of Alaska, its adornment, or the aid or advantage of students or faculty" AS 14.40.250 (emphasis added). While the wording of the statute is ambiguous, we believe that the words "for the

Jay Hogan, Associate Director
Office of Management & Budget
366-588-83

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purpose of the University of Alaska, its adornment, or the aid or advantage of students or faculty" defines and limits the investment authority of the board of regents as to trust property. The exclusion of money received from the state legislature or federal appropriations probably applies to unrestricted revenue sources and is consistent with the provisions of AS 37.07 and AS 37.10. Investment of program receipts which are the source of appropriations made by the legislature is the responsibility of the Department of Revenue. AS 37.10.070.

The university may not deposit program receipts, which represent unrestricted revenues of the state, in interest bearing, federally insured accounts for safekeeping unless a statute is enacted which specifically provides for that power. The power of the university to manage its finances and property is subject to control by the legislature through the enactment of statutes. Alaska Const. art. VII, § 2; see also University of Utah v. Board of Examiners, 295 P.2d 348 (Utah 1956). The public finance laws of the state contemplate centralization of the investment of surplus state money in the Department of Revenue. AS 37.10.070(a). The legislature has specified by law certain institutions or instruments in which state money may be invested. In its defense, the university maintains that it is conservatively investing the cash "float" from various funding sources. However, nothing in law prevents this investment strategy from changing. A further expansion of the power to invest surplus state money without adequate provisions to govern this activity will increase the opportunity for diversion or mismanagement.

Unless AS 14.40.250 is amended to allow the university to retain and invest unrestricted revenues appropriated as program receipts, it must pay all cash earned by operation of general law directly to the Department of Revenue. The university must draw on appropriations of program receipts from the Department of Revenue in the same manner as other executive branch agencies. The request to expend interest income derived from receipts which are attributed to income earned from the investment of appropriated money should be denied. These receipts must be paid into the state treasury.

Finally, you have asked if provisions which set the rules for the lapse of appropriations apply to the university. We believe that AS 37.25.010 and 37.25.020 apply to the university in the same manner as other state agencies with one exception. Appropriations from segregated trust or custodial property of the university expire as provided by law but lapse into the separate funds of the university rather than the state treasury.

JLB/pjg