

HJR 45

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 2, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/9/92

The FINANCE Committee considered:

HJR 45

HOUSE JOINT RESOLUTION NO. 45

REAPPORTIONMENT BOARD & REAPPORTIONMENT

Proposing amendments to the Constitution of the State of Alaska relating to reapportionment of the legislature.

RECOMMENDATIONS:

be replaced with CS HJR 45 (Jud) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) Office of Gov 1/29/92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Mullen</u> Mullen	✓	<u>James Barnes</u> Barnes	X		
<u>Chick Savarese</u> Savarese	✓	<u>Bert Sharp</u> Sharp			X
<u>Mark Boyer</u> Boyer	X	<u>Roll E. Phillips</u> R. Phillips		✓	
<u>Tam Brown</u> Brown	✓				
<u>John Koponen</u> Koponen	✓				
<u>John Jacko</u> Jacko	✓				
<u>Ronald J. Hansen</u> Hansen	X				
<u>J. Ulmer</u> Ulmer	X				

Mike ... E.O. ... P.H.A. 1.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 45

Revision Date: _____
Title: Amendment to the Constitution-Reapportionment of
the legislature.
Sponsor: House Judiciary Committee
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: II - Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Election Pamphlet as required by AS 15.58, and programming for Datavote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing of an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/10/92

Approved by Commissioner: *W. H. ...*
Agency: Office of the Governor

Date: 01/10/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CS FOR HOUSE JOINT RESOLUTION NO. 45 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/2/92
Referred: Finance

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 reapportionment of the legislature.

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

4 * Section 1. Article II, sec. 2, Constitution of the State of Alaska, is amended to read:

5 SECTION 2. MEMBERS' QUALIFICATIONS. A member of the legislature shall be
6 a qualified voter who has been a resident of Alaska for at least three years and, except as
7 provided in Section 12 of Article VI, of the district from which elected for at least one year,
8 immediately preceding his filing for office. A senator shall be at least twenty-five years of age
9 and a representative at least twenty-one years of age.

10 * Sec. 2. Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

11 SECTION 1. ELECTION DISTRICTS. Members of the house of representatives shall
12 be elected by the qualified voters of the respective election districts. The boundaries of the
13 election districts shall be set under this article after each decennial census of the United
14 States [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF
15 REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET
16 FORTH IN SECTION 1 OF ARTICLE XIV].

1 * Sec. 3. Article VI, sec. 2, Constitution of the State of Alaska, is amended to read:

2 SECTION 2. SENATE DISTRICTS. Members of the senate shall be elected by the
3 qualified voters of the respective senate districts. The boundaries of the senate districts shall
4 be set under this article after each decennial census of the United States [SENATE
5 DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO
6 CHANGES AUTHORIZED IN THIS ARTICLE].

7 * Sec. 4. Article VI, sec. 3, Constitution of the State of Alaska, is amended to read:

8 SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The
9 Reapportionment Board [GOVERNOR] shall reapportion the house of representatives and the
10 senate immediately following the official reporting of each decennial census of the United
11 States. Reapportionment shall be based upon resident [CIVILIAN] population within each
12 election district as reported by the census.

13 * Sec. 5. Article VI, sec. 4, Constitution of the State of Alaska, is amended to read:

14 SECTION 4. METHOD. Reapportionment shall be by the method of equal proportions,
15 The Reapportionment Board shall establish single-member election districts unless, in the
16 judgment of the board, circumstances require the use of dual-member election districts or
17 a combination of single-member and dual-member election districts. A dual-member
18 election district may not elect more than two representatives. A senate district shall be
19 composed of one dual-member election district or two contiguous single-member election
20 districts, but each senate district shall elect only one senator [, EXCEPT THAT EACH
21 ELECTION DISTRICT HAVING THE MAJOR FRACTION OF THE QUOTIENT OBTAINED
22 BY DIVIDING TOTAL CIVILIAN POPULATION BY FORTY SHALL HAVE ONE
23 REPRESENTATIVE].

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

25 SECTION 6. DISTRICT BOUNDARIES. Election districts and senate districts
26 [REDISTRICTING. THE GOVERNOR MAY FURTHER REDISTRICT BY CHANGING THE
27 SIZE AND AREA OF ELECTION DISTRICTS, SUBJECT TO THE LIMITATIONS OF THIS
28 ARTICLE. EACH NEW DISTRICT SO CREATED] shall be formed of contiguous and compact
29 territory containing as nearly as practicable a relatively integrated socio-economic area. [EACH
30 SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE QUOTIENT OBTAINED
31 BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY.] Consideration may be
32 given to local government boundaries. Drainage and other geographic features shall be used in

1 describing boundaries wherever possible. Election district and senate district boundaries may
2 not be drawn with the intent of giving an advantage to a political party.

3 * Sec. 7. Article VI, sec. 8, Constitution of the State of Alaska, is amended to read:

4 SECTION 8. REAPPORTIONMENT BOARD. (a) There shall be a Reapportionment
5 Board [THE GOVERNOR SHALL APPOINT A REAPPORTIONMENT BOARD TO ACT IN
6 AN ADVISORY CAPACITY TO HIM]. It shall consist of nine [FIVE] members, all of whom
7 shall be residents of the state and none of whom may be public employees or officials. At
8 least one member [EACH] shall be appointed from each judicial district established by law
9 under Section 1 of Article IV and no more than five members shall be appointed from a
10 judicial district. Members shall be residents of the judicial district from which appointed
11 [THE SOUTHEASTERN, SOUTHCENTRAL, CENTRAL, AND NORTHWESTERN SENATE
12 DISTRICTS]. Appointments shall be made without regard to political affiliation, and no more
13 than five members may be members of the same political party. Board members shall be
14 compensated as provided by law.

15 (b) Board members shall be appointed during the first fifteen days of the first
16 regular session of the legislature that convenes in a year following a year in which the
17 census is taken. Board members shall be appointed as follows:

18 (1) one member shall be appointed by the governor;

19 (2) two members shall be appointed by a caucus of the members of the house
20 of representatives representing the political party with the largest number of members in
21 the house of representatives;

22 (3) two members shall be appointed by a caucus of the members of the house
23 of representatives representing the political party with the second largest number of
24 members in the house of representatives;

25 (4) two members shall be appointed by a caucus of the members of the senate
26 representing the political party with the largest number of members in the senate; and

27 (5) two members shall be appointed by a caucus of the members of the senate
28 representing the political party with the second largest number of members in the senate.

29 (c) The legislature shall provide by law for a random selection process to make the
30 appointments of board members under this section. If the legislature fails to make
31 provision by law, the governor may establish a random selection process to make the
32 appointments.

1 (d) A board member may be removed for misfeasance or nonfeasance in office by
2 the entity that appointed the member. A vacancy on the board shall be filled by the entity
3 that appointed the member whose seat is vacant.

4 (e) A member of the Reapportionment Board may not be a candidate for the
5 legislature in the two general elections following the adoption of a final reapportionment
6 plan under this article.

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

8 SECTION 9. ORGANIZATION. The board shall elect one of its members chairman and
9 may employ temporary assistants. Concurrence of five [THREE] members is required for a
10 ruling or determination, except for the adoption of a final reapportionment plan, but a lesser
11 number may conduct hearings or otherwise act for the board.

12 * Sec. 9. Article VI, sec. 10, Constitution of the State of Alaska, is amended to read:

13 SECTION 10. REAPPORTIONMENT PLAN [AND PROCLAMATION]. (a) Except
14 as provided under (c) of this section, no later than the date that is eighteen months before
15 the date of the first general election following the official reporting of each decennial census,
16 the Reapportionment Board shall adopt a proposed reapportionment plan. The board shall
17 hold public hearings on the proposed plan and shall hold at least one hearing in each
18 judicial district established by law under Section 1 of Article IV. No later than the date
19 that is fourteen months before the date of the first general election following the official
20 reporting of each decennial census, the board shall adopt a final reapportionment plan
21 [WITHIN NINETY DAYS FOLLOWING THE OFFICIAL REPORTING OF EACH
22 DECENNIAL CENSUS, THE BOARD SHALL SUBMIT TO THE GOVERNOR A PLAN FOR
23 REAPPORTIONMENT AND REDISTRICTING AS PROVIDED IN THIS ARTICLE. WITHIN
24 NINETY DAYS AFTER RECEIPT OF THE PLAN, THE GOVERNOR SHALL ISSUE A
25 PROCLAMATION OF REAPPORTIONMENT AND REDISTRICTING. AN
26 ACCOMPANYING STATEMENT SHALL EXPLAIN ANY CHANGE FROM THE PLAN OF
27 THE BOARD]. The final reapportionment plan adopted under this section shall set out
28 election district and senate district boundaries and [REDISTRICTING] shall be effective for
29 the election of members of the legislature until after the official reporting of the next decennial
30 census.

31 (b) Adoption of a final reapportionment plan shall require the affirmative votes of
32 six members of the board.

1 (c) If the board is unable to adopt a final plan by the date specified in (a) or (d)(3)
2 of this section, the supreme court shall appoint a panel of three superior court judges. The
3 board shall, within ten days, transmit to the panel the three proposed plans receiving the
4 greatest number of votes by the board. Within forty-five days of the transmittal, from
5 among the plans received from the board the panel shall adopt one of the proposed plans
6 without change as a final plan. The supreme court shall adopt rules for proceedings before
7 the three-judge panel under this subsection.

8 (d) If the data from a decennial census is not available to the board by the date that
9 is sixteen months before the date of the first general election following a decennial census
10 year,

11 (1) a plan adopted shall not take effect until the second general election
12 following the decennial census year;

13 (2) for the first general election following the decennial census year, members
14 of the legislature shall be elected from districts in existence as a result of the previous
15 reapportionment plan or proclamation; and

16 (3) the board shall adopt a proposed plan within four months of the receipt
17 of the census data and shall adopt a final plan within four months of the adoption of the
18 proposed plan.

19 * Sec. 10. Article VI, sec. 11, Constitution of the State of Alaska, is amended to read:

20 SECTION 11. ENFORCEMENT. Any qualified voter may apply to the superior court
21 to compel the governor, the members of the legislature, or the Reapportionment Board [BY
22 MANDAMUS OR OTHERWISE,] to perform their [HIS] reapportionment duties or to correct
23 any error in redistricting or reapportionment. Application to compel performance of [THE
24 GOVERNOR TO PERFORM HIS] reapportionment duties must be filed within thirty days of
25 the date that an act is required to be done under [EXPIRATION OF EITHER OF THE TWO
26 NINETY-DAY PERIODS SPECIFIED IN] this article. Application to compel correction of any
27 error in redistricting or reapportionment must be filed within thirty days following the adoption
28 of the final plan by the Reapportionment Board or by the three-judge superior court panel
29 appointed by the supreme court under Section 10 of this article [PROCLAMATION].
30 Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause
31 shall be reviewed by the supreme court upon the law and the facts. A disposition by the
32 superior court and an appeal before the supreme court under this section shall have priority

1 over all other matters pending before the respective court. The superior court shall render
2 a decision in a matter before it under this section not more than ninety days after
3 application is made to compel correction, and the supreme court shall render a decision in
4 a matter on appeal not more than forty-five days after submission of a complete record of
5 appeal.

6 * Sec. 11. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
7 read:

8 SECTION 29. REAPPORTIONMENT OF LEGISLATURE FOLLOWING 1990
9 CENSUS. (a) A proclamation of reapportionment issued by the governor following the 1990
10 census shall remain in effect until the decennial census in the year 2000 if, on the effective date
11 of the 1992 amendments to Article VI,

12 (1) the proclamation has been in effect for over thirty days without judicial review
13 being sought;

14 (2) the proclamation has been upheld by the superior court under Section 11 of
15 Article VI and the time for appeal to the supreme court has run without an appeal being taken;

16 (3) the proclamation has been upheld by the supreme court and the time to request
17 reconsideration of the supreme court's ruling has run;

18 (4) the proclamation is still subject to a request for judicial review under Section
19 11 of Article VI and a request is not made in a timely fashion; or

20 (5) the proclamation is undergoing judicial review under Section 11 of Article VI
21 and the proclamation is upheld by the courts.

22 (b) Reapportionment of the legislature following the 1990 census shall be done by the
23 Reapportionment Board established in Section 8 of Article VI, as amended by the 1992
24 amendments, if, on the effective date of the 1992 amendments to Article VI,

25 (1) there is no valid proclamation of reapportionment in effect because of judicial
26 invalidation of a prior proclamation; or

27 (2) a proclamation of reapportionment is undergoing judicial review under Section
28 11 of Article VI and that judicial review results in the invalidation of that proclamation or results
29 in a court order making significant and substantial changes to that proclamation.

30 * Sec. 12. Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska, are
31 repealed.

32 * Sec. 13. The amendments proposed by this resolution shall be placed before the voters of the state

1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
2 the election laws of the state.

Alaska State Legislature



House of Representatives House Judiciary Committee Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

TO: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

FROM: Representative Dave Donley, Chair D
House Judiciary Committee

RE: Scheduling CSHJR 45 (JUD), "Proposing amendments to the Constitution of the State of Alaska relating to reapportionment of the legislature".

DATE: March 3, 1992

The House Judiciary Committee has completed its work on CSHJR 45 (Jud) and, on behalf of the committee, I am requesting an expeditious hearing on this important piece of legislation.

After more than three decades of contentious debate and litigation over every reapportionment effort, we felt that it was time to recognize that our constitution's reapportionment framework does not and cannot work in the manner envisioned by the framers.

Why amend the state constitution regarding reapportionment?

First

Much of the Alaska Constitution's language on reapportionment is in violation of the federal constitution or is obsolete. Because of this, it is impossible by reading our state constitution to obtain an accurate explanation of the reapportionment process in Alaska. The following sections or portions of sections of Article VI of the Alaska Constitution are either unconstitutional or are obsolete:

Section 2, Senate Districts, is not constitutional as written. In Wade v. Nolan, 414 P.2d 689 (Alaska 1966), the Alaska Supreme Court concluded that the state's senate districts did not comport with the U.S. Constitution.

Section 3, Reapportionment of House, is outmoded in part and unconstitutional in part. The constitution gives reapportionment authority to the governor and the board only as to the house. However, since Nolan, this authority has been interpreted to allow reapportionment of the senate as well as the house. The second sentence, requiring reapportionment to be based solely on civilian population, was declared unconstitutional in Egan v. Hammond, 502 P.2d 856 (Alaska 1972), because it disenfranchises the military.

Sections 4 and 5, Method of Reapportionment and Districts, are inconsistent with U.S. Supreme Court decisions and are no longer considered by the reapportionment boards or cited by the courts in their reapportionment decisions.

Section 6, Redistricting, insofar as it refers to the retaining or combining of election districts provided for in Sections 4 and 5 and refers to civilian population, is unconstitutional. Otherwise Section 6 is still viable.

Section 7, Modification of Senate Districts, is clearly unconstitutional and dead. Its intent was to preserve senate districts based on geographic area and not population.

Sections 8 - 11 retain their viability.

Second

Alaska is the only state which places exclusive power of reapportionment with the governor. The reason for this unique system no longer exists and Alaska should adopt a fairer system in conformity with other states.

The framers of the Alaska Constitution decided to provide for reapportionment of the legislature through a reapportionment board in the executive branch rather than allowing the legislature to reapportion itself, as is the case in a vast majority of the states.

The Alaska Supreme Court addressed this question in Wade v. Nolan, 414 P.2d 689, 694-695, which concerned reapportionment of the Alaska Senate after the U.S. Supreme Court's "one person, one vote" decisions: "... the Alaska Constitutional Convention purposely avoided placing any authority or responsibility for reapportionment in the legislature. The Convention was aware of the notorious and frequent failure or downright refusal of state legislatures to comply with their constitutional or statutory duty to reapportion."

At the time of the drafting of Alaska's Constitution, the U.S. Supreme Court had consistently held that suits challenging malapportionment of state legislatures were nonjusticiable. However, in 1962, in Baker v. Carr, 369 U.S. 186, the U.S. Supreme Court reversed several decades of precedent to the contrary and held that federal courts could indeed hear such suits on equal protection grounds. Then, in 1964 the court upheld the authority of a federal district court to impose its own interim reapportionment plan on a state legislature that had been unable to reapportion itself constitutionally. Reynolds v. Sims, 377 U.S. 533. Thus, if the legislature had the responsibility of reapportioning itself and it failed to do the job adequately, either federal or state courts could step in, as was definitely not the case when our constitution was written.

Changing circumstances have basically done away with the reasons for reapportionment being a function of the executive branch in Alaska. These circumstances, when combined with the fact that not a single gubernatorial reapportionment since Statehood has ever failed to be followed by a judicial challenge, should say to us that we need to get politics out of this process to as great an extent as we can and look for a new way of accomplishing redistricting and reapportionment.

That is why an independent board under the legislative branch was chosen for this task. Eighteen states use independent boards or commissions in some manner and half of these give the boards the absolute responsibility for developing those states' plans. We have combined what seemed like the best of those plans, with particular emphasis on Hawaii's framework, to come up with HJR 45.

What does this amendment do?

I. It provides for a reapportionment board to develop and establish a redistricting and reapportionment plan after each decennial census. In addition to most of the existing criteria for drawing boundaries, a new criterion of political fairness is added.

II. Makeup of board (nine members).

A. Appointed by:

1. governor - one member;
2. majority caucus in house - two members;
3. minority caucus in house (second largest number of representatives) - two members;
4. majority caucus in senate - two members;
5. minority caucus in senate (second largest number of senators) - two members.

B. Qualifications and disqualifications.

1. Can't be public official or public employee.
2. Can't run for legislative office in the next two elections after term of office on board expires.
3. No more than five members can be members of the same political party.*
4. No more than five can be from the same judicial district and there must be at least one member from each judicial district.

C. Chairperson - elected by the board from the members.

III. Reapportionment plan.

A. Public hearings must be held in each judicial district after issuance of draft plan and before issuance of

B. Draft plan must be completed 18 months before the date of the first general election following the official reporting of each decennial census.

C. Final plan must be completed 14 months before the general election.**

* Currently, there is no absolute restriction on party membership.

** This shortens the current time provisions to provide the greatest possible public notice of changes. This is possible largely because of computerization of the reapportionment process.

D. Adoption of final plan takes votes of 6 of the 9 members. If any one plan is unable to get 6 votes:

1. the Supreme Court shall appoint a three judge panel;
2. within 45 days, the three judge panel shall select one proposal from the three proposals receiving the most number of votes by the board; and
3. the proposal selected may not be changed and becomes the final plan.

IV. Provides for expedited hearings and appeals if the final plan is challenged in the state courts.

V. Repeals existing sections of the constitution which have been found unconstitutional by Alaska and federal courts.

In conclusion, Alaska needs a fairer and less political way of accomplishing reapportionment, recognizing that the process is political per se. However, the system proposed attempts to balance a variety of interests which will require compromise in order to craft a solution. We certainly don't have such a system now and desperately need one.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 5, 1991

SUBJECT: Constitutionality under U.S. Constitution of Article VI sections of Alaska constitution (Work Order No. 7LS0653)

TO: Representative Dave Donley
Attn: Laurie Otto

FROM: John B. Gaguine *JBG*
Legislative Counsel

Since the "one person, one vote" decisions of the U.S. Supreme Court in the early 1960s (Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663 (1962); Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506 (1964); and many others), it is obvious that many of the provisions of the reapportionment article of the Alaska Constitution, article six, are unconstitutional under the federal constitution. Some of these have been specifically held unconstitutional by the Alaska Supreme Court, and others have been simply ignored. You have asked for an analysis of the constitutionality of Article VI, sections 1 - 7.

Section 1 is still constitutional. That section provides that members of the house of representatives shall be elected by the qualified voters of the respective election districts. Under section 3, the election districts are to be reapportioned "immediately following the official reporting of each decennial census of the United States." This has been done by the governor and the Reapportionment Board (sections 8 - 10), and the most recent reapportionment of house districts (Article XIV, Sections 1 and 3, proclaimed by the governor in 1984) has been upheld by the Alaska Supreme Court. Kenai Peninsula Borough v. State, 743 P.2d 1352, 1358-61 (Alaska 1987).

Section 2 is not constitutional as written. It provides that members of the senate shall be elected by the qualified voters of the respective senate districts set forth in Article XIV, Section 2 of the original constitution, subject to changes authorized in Article VI. In Wade v. Nolan, 414 P.2d 689 (Alaska 1966), the Alaska Supreme Court reached the inescapable conclusion that those senate districts did not comport with the U.S. Constitution. The court also ruled that the governor and the Reapportionment Board could reapportion the senate on a constitutional basis, even though the

Representative Dave Donley
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Alaska Constitution only gave the governor and the board reapportionment authority as to the house.

Since Wade the Alaska constitution has been treated as though amended. The governor and the Reapportionment Board are now seen by all, including the courts, as having the power to reapportion the senate as well as the house. Thus, for instance, current Article XIV, Section 2, relating to senate districts, was promulgated by the governor, with the advice of the board, under Article VI, Section 10. Kenai Peninsula Borough, supra at 1364 (citing Egan v. Hammond, 502 P.2d 856, 874 (Alaska 1972)), notes that because the constitution has never been amended with regard to senate reapportionment, "the governor's implied power to reapportion senate districts therefore remains in force under Wade."

The first sentence of section 3 ("The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States") is still constitutional, although, as noted, it is now being interpreted as allowing reapportionment of the senate as well. The second sentence ("Reapportionment shall be based upon civilian population within each election district as reported by the census") was ruled unconstitutional by the Alaska Supreme Court in Egan v. Hammond, supra at 868-69, because it totally disenfranchised the military in Alaska, in violation of several decisions of the U.S. Supreme Court. Egan also ruled that the portion of the sentence requiring use of census data in reapportionment was also unconstitutional, because it could not be severed from the unconstitutional "civilian population" part. Id., at 870-71.

However, the Egan court ruled, id. at 869, that the state could legitimately exclude some (but not all) military personnel as a permissible device for limiting the impact of transients and non-residents; specific formulas for such exclusion were upheld by the court in Groh v. Egan, 526 P.2d 863, 869-74 (Alaska 1974), and in Carpenter v. Hammond, 607 P.2d 1204, 1210-13 (Alaska), appeal dismissed, 464 U.S. 801, 78 L.Ed.2d 67 (1983). And the Groh v. Egan court ruled that, although the Reapportionment Board was not constitutionally required to use 1970 census data when it reapportioned in 1973, it did not abuse its discretion in using this data, especially since it explained in its order why using more recent data would be impractical. 526 P.2d at 867-69. Thus, the second sentence of section 3 still has considerable validity.

Sections 4 and 5 are rather turgid. I believe that their intent is that the governor, in reapportioning, should adhere to the election districts set out in original Article XIV even if such adherence leads to districts with quite different populations. If my reading is correct, then these sections are inconsistent with the U.S. Supreme Court decisions, which have only tolerated very small variances. At any rate, sections 4 and 5 appear to be a dead letters, no longer considered by the reapportionment boards or cited by the courts in their reapportionment decisions.

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Insofar as section 6 refers to the retaining or combining election districts provided in sections 4 and 5, it too is unconstitutional and a dead letter. Its reference to the "civilian" population is also unconstitutional. Other than that, section 6 appears alive and well. No one has argued that the governor and the board may not or should not give consideration to local government boundaries, or that they may not or should not use drainage and other geographic features wherever possible in describing district boundaries. As to the requirement that house election districts contain "as nearly as practicable a relatively integrated socio-economic area," that was upheld in Carpenter, supra (where the court held that Cordova was improperly joined with House District 2, the Southeast "iceworm" district), even though the likely result would be to increase the population disparities between house districts. (The court in Kenai Peninsula Borough, supra at 1358-61, upheld a smaller "iceworm" district established by the Reapportionment Board as the result of Carpenter. Kenai Peninsula Borough also ruled, at 1364-65, that the "integrated socio-economic area" requirement did not apply to senate districts.)

Section 7 is clearly unconstitutional and dead. Like Section 2, its intent was to preserve senate districts based on geographic area and not population. Thus, although it allowed the governor to modify senate districts based on changes in election (house) districts, it required that each senate district retain its total number of senators and its approximate perimeter.

I hope that this memorandum has been of assistance to you. Please let me know if I can be of further assistance.

JBG:mi
91-020.mai

DIVISION OF LEGAL SERVICES

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MEMORANDUM

February 5, 1991

SUBJECT: Reason for reapportionment board (W.O. 7LS0652)

TO: Representative Dave Donley
Attn: Laurie Otto

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

You have asked why the framers of the Alaska constitution decided to provide for reapportionment of the legislature through a reapportionment board in the executive branch, rather than allowing the legislature to reapportion itself, as is the case in the vast majority of states. The Alaska Supreme Court addressed this question in Wade v. Nolan, 414 P.2d 689, 694-95 (Alaska 1966), which concerned reapportionment of the Alaska Senate after the U.S. Supreme Court's "one person, one vote" decisions: "Whereas, traditionally, reapportionment had been made the responsibility of state legislatures, the Alaska Constitutional Convention purposely avoided placing any authority or responsibility for reapportionment in the legislature. The Convention was aware of the notorious and frequent failure or downright refusal of state legislatures to comply with their constitutional or statutory duty to reapportion." I am attaching the relevant portion of the Wade opinion, where the court quotes at length from the comments of the Chairman of the Committee on Suffrage, Elections and Apportionment of the Alaska Constitutional Convention.

You have also asked whether the concerns that led to the establishment of the Reapportionment Board still exist. They do not. In 1962, in Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663, the U.S. Supreme Court overruled several decades of precedent and held that federal courts could hear suits challenging on equal protection grounds the malapportionment of state legislatures. (Such suits had previously been held non-justiciable.) Two years later the Court upheld the authority of a federal district court to impose its own interim reapportionment plan on a state legislature that had been unable to reapportion itself constitutionally. Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506 (1964). Thus, if the legislature had the responsibility of reapportioning

Representative Dave Donley
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Page 2

itself, and it failed to do the job adequately, the courts, either federal or state, could step in, as was decidedly not the case when the Alaska constitution was written and adopted.

If I may be of further assistance, please advise.

JBG:pl
91-067.plm

Enclosure

than according to population, the Convention was following the pattern established by the United States Constitution and later followed by many of the states of the Union with respect to one or the other of their legislative bodies. The Convention obviously did not want the Senate apportioned on a population basis; it had practical reasons for not doing so and had no reason to anticipate that it would ever be necessary to reapportion the Senate on a population or on any other basis, hence no specific provision was made for its reapportionment.

The question which is squarely presented is whether the acts of the Governor and his advisory Reapportionment Board in reapportioning the Senate were authorized by the Alaska Constitution.

Before attempting to discuss this question it is well to explain the origin of a unique feature of the reapportionment provisions of the Alaska Constitution. Whereas, traditionally, reapportionment had been made the responsibility of state legislatures, the Alaska Constitutional Convention purposely avoided placing any authority or responsibility for reapportionment in the legislature. The Convention was aware of the notorious and frequent failure or downright refusal of state legislatures to comply with their constitutional or statutory duty to reapportion. The Alaska Convention's reason for placing reapportionment responsibility in the Governor was well stated by its Chairman of the Committee on Suffrage, Elections and Apportionment, John S. Helleenthal, as follows:

HELLEENTHAL: * * * Now on the method of the composition of the reapportionment and redistricting board, because redistricting, as we have explained would be necessary, the Committee recommends that the stress be placed on the executive in determining which of these election districts and where redistricting shall take place, or reapportionment, and it recommends the creation of

a five-man advisory board to advise the governor with regard to the redistricting and reapportionment. * * * The reason that this plan was adopted is that the students and writers seem generally in accord that reapportionment, for some reason or other, I don't know why, but it has been neglected where it has been left to the legislators. Maybe it's that human element I spoke of earlier, but anyway the experience of the nation shows that the thing is delayed—procrastination; that in the State of Washington they waited for years and years and years, and finally, only by resorting to the courts and the initiative were they able to reapportion Washington. It was costly, the people suffered. And based on that experience and the recommendations, and it's almost universal of the advisors, and by advisors I don't mean the men that were here necessarily—but the writers throughout the country, the executive board was chosen, an advisory board. (Minutes of the Alaska Constitutional Convention, January 11, 1956, at 1839).

* * * * *

Now there are other plans. There is no end of variations of plans that can be devised for the reapportionment with the mandamus feature, and you could have variance where a board can be picked—three from the legislature, three nominated by the judicial council, if you want, three of them nominated by some other group of civilians, some appointed by the governor, and get a good cross-section, and they could have the authority themselves to make the redistricting and reapportionment. There is no end to it, but the best thought seemed to indicate that the people would be best helped if it [reapportionment] were an executive function. * * * But it is the inaction of the legislature, as testified to by the universal history of the 48 states, that we're trying to overcome. [Id. at 1859.]

HELLEENTHAL: It was felt that it [reapportionment] was a proper executive

function as contrasted to the legislative.

* * * [Id. at 1863.]

In its "Report to the People of Alaska" issued in February of 1956 the Constitutional Convention stated:

Representation [in the legislature] will be kept up to date every ten years by an automatic reapportionment carried out by the governor on the advice of a board representing each of the four major districts and subject to review by the courts. Thus, the constitution guards against what has become a great evil in many states: a legislature that becomes more and more unrepresentative and loses public confidence because it refuses to reapportion itself. Alaska Legislative Council, Legislative Apportionment in Alaska, 1912-1961, p. 4 (1962).

A reading of the Convention minutes, in relation to the reapportionment provisions makes it abundantly clear that it was the specific intent of the Convention to grant no authority to and to place no responsibility in the legislature with respect to reapportionment. In a clear and clean-cut departure from tradition, all of the authority and responsibility for reapportionment granted or assigned was placed in the Governor, assisted by a Reapportionment Board, including the authority to make minor changes in Senate districts. In an effort to make the reapportionment provisions as nearly self executing as possible, the Convention provided that the Reapportionment Board should automatically commence to function after the decennial census, without any direction from the Governor; that it must submit its plan within ninety days and that the Governor must proclaim a plan within ninety days of receipt from the Board, explaining any deviation from the Board's plan. Any qualified voter was empowered to resort

to the courts to force the Governor to perform his reapportionment duties or to correct any error in redistricting or reapportionment.

Baker v. Carr and Reynolds v. Sims resulted in court declarations in many states that one or both of the legislative bodies was malapportioned. In almost every instance the state constitution had made no provision for reapportioning the "frozen" body on an interim basis until the constitution could be amended. Because of the wide variations in factual situations, most of the court decisions dealing with the question of where the authority lay to reapportion a frozen legislative body on an interim basis are not of great assistance.

It is significant, however, that in some states where reapportionment was a legislative responsibility, the courts have approved reapportionment by those state legislatures on an interim basis even though the respective state constitutions gave no specific authority to reapportion the particular frozen legislative body. Illustrative is Buckley v. Hoff¹² decided by the United States District Court in Vermont. In a previous decision, that court had declared both the House and the Senate malapportioned. The constitution required the legislature to reapportion the Senate after each United States census, but the House was frozen to provide one representative for each inhabited town, forever. The General Assembly, consisting of the members of the Senate and House, was only empowered by the constitution to regulate the mode of filling vacancies in House seats. Without any specific constitutional authority, the General Assembly provided reapportionment plans for the Senate and the House which were approved by the court. The authority of the General Assembly to reapportion was not questioned.¹³

12. 243 F.Supp. 573 (D.Vt.1964).

13. See: Robert B. McKay, Reapportionment: The Law and Politics of Equal Representation where reapportionment of "frozen" legislative bodies by the legisla-

tures of New Jersey, Connecticut and North Dakota, was accomplished even though the constitutions gave no such specific authority. Pages 205-207, 374-375 and 304-300.



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LEGISLATIVE RESEARCH COUNCIL
SOUTH DAKOTA
STATE CHAIR, NCSL

WILLIAM FOUNO
EXECUTIVE DIRECTOR

MEMORANDUM

To: Hayden Kaden
From: Tim Storey
Date: February 4, 1992
Re: Proposed House Joint Resolution No. 45

As you requested, I have reviewed the proposed amendments to the Alaska Constitution regarding the establishment of a reapportionment commission. Currently, nine states have some type of commission with original authority for producing a state legislative redistricting map. The enclosed parts, which I think you may already have, describe the commissions in those states.

I strongly encourage you to contact some legislative staff colleagues in a sample of the states that presently utilize commissions. They will be able to give you insight into the advantages and disadvantages of a commission system as compared with redistricting within the traditional legislative process. I have attached a list of contacts to assist you.

I realize that Alaska is unique in this area since the governor actually has the authority to issue the final plan. In no other state does the governor have such powers in relation to redistricting. Of course in most states, the governor has veto power over any plan enacted by the legislature. In Maryland, the governor drafts the initial legislative maps, but they must then be approved by the legislature. Arkansas's governor also has considerable influence by virtue of his seat on their redistricting commission with only the attorney general and the secretary of state as the other members.

Having read through your proposal, I note that it incorporates aspects of various commissions in other states. For example, three states preclude commissioners from running for the legislature under the lines that they draw. Your proposal also is commendable for establishing specific deadlines for action. And, your attention to public input is important to the process. A notable change in the 1990's round of redistricting has been the emphasis placed on the issue of public access, so it is good that your proposal addresses this issue. You may even want to consider public hearings after the proposed plan has been issued by the commission. It is also noteworthy that you have provided a mechanism in the event that the commission is unable to come up with a plan. In many states there is no formal backup, so it requires parties to file suit in either state or federal court.

Please feel free to contact me if you have further questions. I am eager to assist in any way I possibly can.

Contacts from other states with redistricting commissions:

Colorado:

Becky Lennahan
Deputy Director
Office of Legislative Legal Services
(303) 866-2045

*** Becky is the lead staff person for the Colorado commission.

Hawaii:

Anne Lee
League of Women Voters
(808) 395-0115

*** She is very knowledgeable on the Hawaii system and was an active participant in their process.

New Jersey

Donald Stokes
Dean of the Woodrow Wilson School
Princeton University
(609) 258-4800

*** Stokes was the "public member" of New Jersey's commission in both 1980 and 1990. He believes strongly that the commission model is the best way to go.

Ohio

Jim Tilling
Chief of Staff
Ohio Senate President's Office
(614) 466-2510

*** Jim was the key staff person to Ohio's commission from the Ohio Senate and is a long time observer of redistricting. He is currently the Vice-Chair of NCSL's Reapportionment Task Force.

Pennsylvania:

Barbara Brown
(215) 875-7038

*** She was the independent counsel to Pennsylvania's commission.

Mark McKillop
(717) 783-5193

*** Mark works for the Pennsylvania House Democrats and has some strong opinions about the role of politics in redistricting whether by commission or not.

Washington:

Jennifer Helget
(206) 786-7935

*** Jennifer staffs Washington's rather unique public redistricting commission.

Iowa:

Gary Kaufman
Legal Counsel
Legislative Service Bureau
(315) 281-3994

*** Although Iowa does not have a commission system per se, their method is very unique and eliminates much of the political discord that often accompanies redistricting.

To:

Leg. Ref. 3808
A.G. 206-753-6804

CC:

Subject:

Mass. Wins Redistricting Fight

BOSTON (AP) - Massachusetts on Thursday won the right to keep its 11 congressional seats in a court ruling that could set the stage for a Supreme Court battle with Washington state over representation in Congress.

Massachusetts was to lose one seat this year, due to population shifts calculated in the 1990 U.S. Census, while Washington gained a seat.

But a special panel of three federal judges agreed with Massachusetts that ~~it was improper to include people living overseas, such as military personnel, in apportioning congressional seats.~~ State officials claimed the census undercounted the number of overseas residents from Massachusetts, leading to the loss of a seat.

Washington officials said they would appeal the decision to the U.S. Supreme Court, which on March 4 is hearing a congressional apportionment case filed by Montana. It, also, is challenging the apportionment of the 435 House seats.

If Massachusetts wins, Washington state would lose a ninth seat it gained.

Officials in both Massachusetts and Washington expressed confidence their states would win a Supreme Court showdown.

Washington officials say they already have certification from the chief clerk of the U.S. House of Representatives saying Washington is entitled to a ninth congressional seat.

"We feel we're on fairly firm ground in claiming that there's no way to alter that," said David Brine, spokesman for Washington's Secretary of State.

The federal court gave Massachusetts until March 30 to come up with an 11-district plan. Failure to do so would cost the state the seat.

~~In its lawsuit, Massachusetts argued that overseas federal employees should not be included in the population count because census figures for them were faulty.~~

The three judges agreed in a unanimous decision, saying the Census Bureau relied on "precisely the same data that it had consistently found to be too unreliable" in the past.

All states must redraw their congressional districts after the federal census, which takes place every 10 years. The apportionment of seats is based on the census numbers as well as a complex formula that assures that the U.S. House of Representatives remains at 435 members.

The panel included U.S. Circuit Judge Hugh Bownes of New Hampshire, U.S.

District Judge Francis Boyle of Rhode Island and U.S. District Judge Douglas Woodlock of Massachusetts.

Assistant Attorney General James Johnson of Washington said he didn't believe the three-judge panel had jurisdiction.

Joseph Krovisky, a spokesman for the U.S. Department of Justice, which represented the federal government in the case, had no comment on any future action.

AP-NY-02-21-92 0933EST

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defendants in the certification of state entitlements to seats in the House of Representatives was improper;

3. That the Executive Branch Defendants shall submit to defendant Anderson on or before March 31, 1992, a statement showing the number of Representatives to which each state would be entitled as a result of the 1990 decennial census under 2 U.S.C. §2(a)(4), without inclusion of the overseas census counts in the apportionment count;

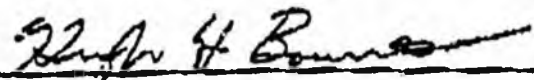
4. That defendant Anderson, as he is the Clerk of the United States House of Representatives, shall on or before April 10, 1992, send the executive of each state a recertification of the number of Representatives to which such state is entitled in accordance with paragraph 3 of this Order;

5. That the plaintiff Commonwealth of Massachusetts shall, on or before March 30, 1992, submit a certification to be docketed in this action affirming that there has been prepared a plan--adopted by the General Court of the Commonwealth and approved by the Governor--for the redistricting of eleven Congressional seats in Massachusetts, in accordance with the 1990 decennial census, without inclusion of the overseas census counts;

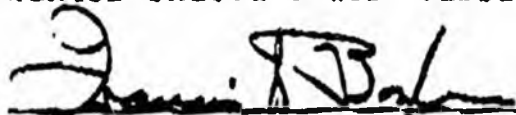
6. That the failure of the Commonwealth of Massachusetts to certify the adoption and approval of the plan called for by

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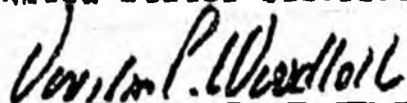
paragraph 5 of this Order on or before March 30, 1992 will
relieve the defendants of their obligations under paragraphs 3
and 4 of this Order.



Hugh H. Bownes
Senior United States Circuit Judge



Francis J. Boyle
United States District Judge



Douglas P. Woodlock
United States District Judge

Dickering Over the Districts

You can take redistricting out of the legislature but the politics remain.

Tim Storey

Most states now have new state legislative district maps in place for the upcoming fall elections, but at least 23 of them are being challenged in court.

Every 10 years the U.S. Census Bureau counts Americans, and then states begin the arduous and often agonizing task of redrawing political boundaries for state legislative and congressional seats. In most states, it's the lawmakers who do the map drawing, and routinely they do it in a politically charged, contentious atmosphere. Inevitably, passing a redistricting plan comes down

to the closing days of the session and is adopted in a cloud of partisanship. Not long after, disgruntled members, editorialists and public interest groups call for reform. "There must be a better way," they declare.

But is there?

Donald Stokes, dean of Princeton's Woodrow Wilson School, points out that the United States is the only nation with representative districts that leaves remapping to the normal legislative process. As a two-time member of New Jersey's redistricting commission, he argues that the public interest—not political interests—is served best when law-

makers are removed from redistricting. And indeed, nine states rely on commissions to redraw district lines, contending that lawmakers' priorities are to maximize partisan control and entrench incumbents rather than develop fair plans that can stand up in court.

But others argue that politics will never be absent from a process inherently political. For after all, commission members are appointed by politicians and bring their own agendas to the table. Some in Pennsylvania have called for an overhaul of their commission system and suggested that redistricting be brought back into the legislative process because they believe that the commission system invests too much power in the hands of too few people. Pennsylvania has a five-person commission for legislative redistricting.

Nevertheless, the appeal of removing redistricting from the legislative environment can be particularly tantalizing at least once every 10 years.

Following a contentious redistricting battle in Virginia in 1991, Delegate Steven Agee announced that he would introduce a bill during Virginia's next regular session calling for the creation of a redistricting commission. In Louisiana, several prominent public figures such as former governor Buddy Roemer and Senator Dennis Bagneris, who chairs the committee that handled redistricting, have been joined by various newspaper editorial writers in calling for the creation of some sort of entity to draw Bayou State districts that will take the process out of the hands of the Legislature.

Currently, redistricting of legislative seats is the responsibility of the legislature in 39 states. (In Alaska the governor is charged with redistricting, and Maryland's governor submits legislative maps to the legislature.) Reformers contend that redistricting done within the normal legislative process creates a clear conflict of interest since the outcome will have so many political ramifications.

Nine states have lifted the task of redistricting out of the legislature and given an independent commission the

Tim Storey is NCSL's expert on redistricting.

Redistricting Via Commission

State	Members	Selection Requirements
Ark.	3	Governor, secretary of state and the attorney general serve.
Colo.	11	Legislature selects 4, governor 3, judiciary 4. Maximum of 4 from legislature; 6 from the same party. Each congressional district must have at least 1 but no more than 4 representatives; at least 1 member must live west of the Continental Divide.
Hawaii	9	Senate president selects 2, speaker 2, minority Senate 2, minority House 2. These 8 select 9th member to chair. No member may run for legislature in the two elections following redistricting.
Mo.	House—18 Senate—10	There are two committees. Governor picks 1 person from 2 lists submitted by the main political parties in each Congressional district to form the House committee. Governor picks 5 from lists of 10 submitted by the two parties to form the Senate committee. No member may hold legislative office for next 4 years.
Mont.	5	Majority and minority leaders of both houses each select a member. Those 4 select a 5th chair. If the 4 cannot select a 5th within 20 days, then a majority of the Supreme Court selects the chair. Public officials may not serve. Members may not run for office for 2 years.
N.J.	10	The chairs of the two major parties select 5 members each. If they cannot develop a plan in the allotted time, the chief justice of the Supreme Court appoints an 11th member.
Ohio	5	Board is the governor, auditor, secretary of state and 2 members selected by the legislative leaders of each major party.
Pa.	5	Majority and minority leaders of both houses each select 1 member. These 4 select a 5th to chair. If they fail to do so within 45 days, a majority of the Supreme Court will select the 5th. Chair may not be a public official.
Wash.	4	Majority and minority leaders of both houses each select 1. These 4 select a non-voting chair. If they fail to do so by a specific date, the Supreme Court selects the 5th. No commission member may be a public official.

Todd Rosenkranz, NCSL

done properties or construct new apartments for poor families. The tenants of these properties actually use their own labor in lieu of the more traditional down payment—a process called “sweat equity”—to prepare the apartments for residence; eventually the tenants own and manage the properties themselves.

El Hogar del Futuro, Spanish for “home of the future,” is a non-profit community development corporation in Hartford that makes good use of the state’s limited equity cooperative program. Started by the Catholic Church in the 1970s, El Hogar has built or rehabilitated 130 housing units in poor neighborhoods in Hartford. “We carefully select families for these projects while they are being built,” explains Dennis Cunningham, director of El Hogar. The families must meet income eligibility criteria and agree to put 300 hours of sweat equity into the project.

A recent project called “La Esquina Brillante” (brilliant corner) was built in the Clay Hill neighborhood with funding from the state as well as Phoenix Mutual, a local insurance company. Cunningham always makes an effort to supplement the state’s funds with those of private companies. In the case of Phoenix Mutual, “they realized the benefits to be gained from community involvement. The combined energy from the state, private and non-profit organizations and housing recipients is the key to our program’s success,” says Cunningham.

What has precipitated this new wave of state-level activity in housing? Without hesitation, housing specialists across the country say the impetus is a problem shared by communities urban and rural, wealthy and poor—a lack of *affordable* housing. Federal guidelines define housing as affordable if it consumes no more than 30 percent of a household’s adjusted monthly income. The American Housing Survey of the U.S. Census found that in 1985, four of every five households living below the poverty line lived in housing that cost more than this standard. From 1978 to 1985, the number of low-rent housing units declined by 500,000 na-

tionwide while the number of low-income renters rose by 3.6 million.

Exacerbating the problem, according to the Congressional Budget Office, is the reduction in appropriations for the subsidized housing programs of the Department of Housing and Urban Development (HUD), which fell from a peak of \$32.2 billion in FY 1978 to \$9.8 billion in FY 1988, a decline in inflation-adjust-



Eight families invested 2,750 hours of “sweat equity” to renovate this building in Hartford, Conn., where they are now proud first-time homeowners in La Esquina Brillante.

ed funding of more than 80 percent.

Passage of the National Affordable Housing Act (NAHA) in 1990 demonstrated a renewed federal commitment to housing in the form of the new HOME block grant. But the act also requires a new level of state involvement and commitment to housing rehabilitation and construction. Each state is now required to produce a Comprehensive Housing Affordability Strategy (CHAS) in order to qualify for federal HOME and homelessness program funds. As they draft their housing plans, states must identify their housing needs and what they must do to meet them.

In Connecticut, the CHAS strategy is to scatter low-cost housing throughout the state and give highest priority for new construction funds to those wealthy and suburban communities that currently lack inexpensive housing. Sandy Bergin, CHAS task force coordinator from the Department of Housing says, “Our CHAS strives to promote housing choice and diminish the exclusionary practices that have perpetuated housing segregation in Connecticut.”


State contracts for housing construction or renovation have traditionally been with for-profit homebuilders or local housing authorities. In recent years, however, non-profit community-based

organizations, including community development corporations like El Hogar del Futuro, have become important participants in low-cost construction and rehabilitation. These organizations, when they have acquired the necessary experience in housing construction, are able to attract funds because they are non-profit and build or renovate housing for minimal cost.

NAHA requires that 15 percent of the funds from the new HOME block grant go to these community-based development organizations. States also are recognizing the value of working with these non-profit organizations to carry out housing construction and rehab programs. Connecticut, for example, goes beyond the federal guidelines by requiring that 30 percent of HOME funds be channeled to non-profit groups.

The CHAS process, the HOME block grant and the increased importance of non-profit community-based development organizations have brought new emphasis to the state role in construction and rehabilitation of affordable housing. And future efforts to turn the tide of homelessness will hinge on the ability of state governments to make use of every available resource.

“The states play a role that is hard to understate,” said Benson Roberts at NCSL’s 1991 Annual Meeting. “You guys provide the leadership that is really necessary to be responsive to local communities—a job that, quite frankly, the federal government will never be able to do.”

The road ahead holds obstacles. Many of the successful state programs do require at least some commitment of state general fund money—and the fiscal woes of most states make even a minimal increase in housing allocations difficult. Furthermore, state mandates for local practices, such as Connecticut’s new emphasis on affordable housing in high-rent communities, will face severe local challenges. Ultimately, however, states and localities will have to hammer out their differences in order to qualify for federal funds and to keep the numbers of homeless or near-homeless from increasing. 

initial responsibility for redrawing the lines. The states are Arkansas, Colorado, Hawaii, Missouri, Montana, New Jersey, Ohio, Pennsylvania and Washington. The makeup of these commissions varies. Arkansas has a three-member commission composed of the governor, secretary of state and attorney general. In Washington, the redistricting commission comprises four members, one each appointed by the minority and majority leaders in each house of the Legislature. None of the commissioners may hold public office while serving on the commission. The four appointed members select a fifth non-voting chairman. Several states have specific restrictions barring commission members from running for the legislature in subsequent elections.

Of the states that completed redistricting in 1991, several used the commission system successfully. New Jersey held legislative elections in November under districts drawn by an 11-member commission earlier in the year. The New Jersey commission adopted plans that have not been challenged in court, and no challenge is expected. Each of the two state party chairmen appoints five members to the commission, and the 10 commissioners have 30 days to produce new district maps. If they are unable to do so, an 11th commissioner is appointed by the chief justice of the state Supreme Court to break the tie and ensure the adoption of a fair plan with the public's interest as its top priority.

In 1991, as in 1981, Princeton's Donald Stokes was tapped by the chief justice as New Jersey's 11th member. Stokes lauds the New Jersey system as a model because it infuses the process with the wisdom of politics yet eliminates the conflict of interest that he believes is inherent when the legislature redistricts itself. Stokes says that the conflict of interest is so clear that "legislatures have been catching hell for the mischief that results (since) the early 19th century period in which Elbridge Gerry gave us the term *gerrymander*."

In 1981, Stokes was joined by the commission's five Democrats to pass a plan, and in 1991, the five Republicans voted with Stokes.

Iowa's method of redistricting is the most radical of the states. The Iowa approach seeks to eliminate political con-

cerns as the main force behind the line drawing. During the '60s and '70s, the courts repeatedly threw out redistricting proposals from the Iowa legislature; and in 1972, the Iowa Supreme Court imposed its own plan. With the frustrations of the past clear in their minds, Iowa lawmakers enacted the current redistricting statute in 1979.

Under Iowa law, the non-partisan Legislative Service Bureau submits a set of proposed redistricting maps to the legislature, which must approve or censure the plans without amending them. If the legislature rejects the first set of plans, the bureau supplies a second set also to be voted up or down without amendments. If the legislature rejects the second set, it gets a third set that it may amend. Only by stretching out the process to the third round can the legislature retake control of the line drawing.

Iowa's redistricting statute prohibits the Legislative Service Bureau from using any political data such as voter registration or past election results when drawing up the plans. Neither may the bureau take into consideration the residences of incumbent legislators. The bureau may use only population figures provided by the Census Bureau and apply criteria such as creating compact districts and preserving communities of interest.

Using this unusual system, Iowa became the first state in 1991 to adopt both state legislative and congressional districts, and no court challenges have been filed. Wyoming was actually the first state to complete redistricting using a process of apportioning seats out to counties, but their plans were thrown out by a federal court for violating the one person, one vote rule.

The Iowa experience was not without its anxious moments. One local television station declared the plans dead on arrival once the political results of the plans were revealed. The Iowa plans paired 20 of 50 incumbent senators and 40 of 100 incumbent representatives in the same districts; the Senate majority and minority leaders and the House speaker and majority leader were not spared. Nevertheless, the Iowa General Assembly accepted the first plans.


Iowa's ability to remove politics from redistricting is unusual. Even states with a commission or board admit that

politics still play a key role. Mark McKillop, who was the supervisor of the Senate Democratic reapportionment project in Pennsylvania, responds to those wanting to strip the process of politics by saying, "They're kidding themselves if they think they can take politics out of it." He does endorse a commission system like the one used in Pennsylvania on the grounds of efficiency. "If this were done in the legislature, we would still be doing it," McKillop said.

Anne Lee, the reapportionment chair for the League of Women Voters in Hawaii, agreed that politics were still very evident in the commission process used in her state. She did point out that the commission lifted the contentious process from the Legislature, thus allowing them to focus on substantive issues rather than being consumed by redistricting. She also noted that each political party had an equal voice on the Hawaii commission instead of one party dominating the process, which might occur if it were done within the Legislature.

Many states successfully adopt each decade redistricting plans that stand up in court and are produced within the crucible of the normal legislative process. Virginia Delegate Ford Quillen pointed out that his state "produced a good product using the typical legislative committee system." He also said that it would be very difficult "to design a pure commission system where the commission members don't have their own agendas." One of the principal criticisms of commissions is that the members invariably have political motives, and it merely concentrates substantial power in the hands of a smaller group than the legislature.

Using a commission system does not guarantee that new district plans will not be challenged. The Hawaii commission had its plans thrown out in 1982 and replaced by temporary court-drawn plans. Missouri, Ohio and Pennsylvania are currently in court defending plans drawn by commissions.

It is certain that redistricting will continue to be a divisive and time-consuming chore for legislatures every 10 years. Redistricting plans, whether drawn by the legislature or an independent commission, will always have dramatic political results. Whether you are a winner or loser in the redistricting sweepstakes may determine which system you advocate. 

Statement Submitted for the Record
of the Hearing on H.R. 2661 before
The Subcommittee on Census and Population
House Post Office and Civil Service Committee
August 1, 1989

Michael R. Darby
Under Secretary of Commerce for Economic Affairs

The United States Department of Commerce stands by our existing policy of counting all persons in the 1990 Decennial Census. The Department of Justice has advised previous Congresses based on constitutional considerations that illegal aliens must be included within the census counts for purposes of apportioning congressional representation. Moreover, based on practical considerations, the Department has determined that changing our procedures to exclude illegal aliens would be both infeasible and undesirable.

We believe there are compelling legal and public policy grounds for counting all persons irrespective of their citizenship. The Census Bureau's enumeration procedure has been guided by the requirement in the 14th amendment to count "the whole number of persons in each State." The Census Bureau has interpreted its constitutional charge and its statutory mandate to require counting every person who has a usual residence in any State. The concept of 'usual residence' dates back to the Census Act of 1790 and, while the wording of various Census Acts has changed over the decades, the concept has remained the same -- to enumerate all inhabitants.

The Department of Commerce strongly believes that to change existing policy would be entirely infeasible and would considerably undermine critical efforts being undertaken by the Bureau to assure an effective and complete count in 1990.

First, we have no way of effectively determining the legal status of individual respondents. Any attempt to reduce the "whole number of persons" of particular ethnic groups by some statistical allowance for an estimated number of illegal aliens is clearly objectionable in counting observed whole persons as fractions.

Second, adoption of this policy would undermine far-reaching progress in the area of outreach directed at the minority community. Given the importance of these programs to achieve a full and accurate count, we oppose undertaking policies which are likely to disrupt our cooperation with community organizations which provide assistance to our efforts.

Finally, the Bureau is reluctant to undertake actions which would undermine the general public's perception of the confidentiality of census data. The absolute prohibition on any disclosure of confidential census data and the public's acceptance of these assurances are essential to the accuracy of census results.

Given that a decision to exclude undocumented aliens from the census apportionment counts would be neither feasible nor desirable, we strongly oppose the enactment of H.R. 2661.

Enumeration and Residence Rules of the 1990 Census

Prepared for the Alaska Reapportionment Board

by Kathryn Lizik
Alaska Department of Labor
February 28, 1991

The purpose of this report is to provide information on how the enumeration and residence rules for the 1990 Census affected the population count.

Enumeration Rule

Traditionally, the Census Bureau has interpreted the U.S. Constitution to mean "count all persons who are inhabitants of the U.S." as of Census day, rather than just citizens, property owners, or adults. This enumeration rule addresses "who to count". As the rule implies, all persons residing within Alaska were counted during the 1990 Census. However, this does not mean that they were all included in the state count.

Residence Rules

The Census Act of 1790 established the concept of usual residence as the guiding principle for determining where to count a person. The usual residence concept requires the Census Bureau to count a person where he or she lives and sleeps most of the time or where he or she considers their usual residence. Clear, well-communicated residence rules are needed to minimize both over- and under-counting. With few exceptions, it is this residence concept that the Bureau used in 1990. These residence rules address "where to count".

There are, however, situations where a need exists to establish special rules for those persons whose usual residence is not the place where they are on Census day or whose usual residence is ambiguous. In many cases, these individuals fill out an individual census report (ICR) which collects, among other information, the address of the housing unit they consider to be their usual place of residence. This address allows the eventual matching of the ICR to the original census questionnaire assigned to the housing unit and adds the person to that location. This address matching takes place nationwide and allows the individual to be counted back to any state.

The following list identifies those situations where special rules are utilized.

- 1) Persons away from their usual residence on census day. This category includes persons traveling, living temporarily in hotels and motels, or maintaining a usual home elsewhere. These people are not counted at the temporary location but are allocated back to their usual residence.

On Census day, these persons are asked to provide the address of their usual residence. This address is then matched to the census form for that address, and they are added to the count for that location. If these people cannot be matched to a specific residence, the bureau assumes that a neighbor or family member already reported these persons at the usual residence.

- 2) Persons with multiple residences. The 1990 questionnaire allows these persons to self identify one residence as their usual residence.

- 3) Persons with no permanent residence. All persons who do not claim a usual home elsewhere (the homeless, those in transient quarters, or those living temporarily with

friends or relatives) will be counted in the area they are contacted. A special enumeration of pre-identified transient locations was conducted about one week prior to Census day to capture this transient population.

4) **Persons away at college.** The residence of college students is identified as the location of the college they are attending.

5) **Persons away at boarding school.** Students below the college level, away attending boarding school, are counted at their parental home, due to their age and dependency on their parents.

6) **Crews of merchant vessels.** Some crew members have no home other than the ship on which they work, others maintain a home on shore that they consider to be their usual residence. For those crew with a shore based residence, their SCR or Shipboard Census Report will be matched to the census form for the residence they report and they will be added to that location.

For crew who consider the ship their residence, the following rules guide where they are counted:

a) For ships berthed in a U.S. port on Census day, the crew will be counted at that port.

b) For ships not berthed at a U.S. port but in territorial waters, the crew is counted at the port of destination, provided it is within the U.S. or its territories.

c) For ships in territorial waters headed for a non U.S. port, the ships port of departure will be used.

d) Crew of merchant ships not within territorial waters or that are not American flag vessels, will not be counted.

The above rules also apply to crew of canneries, freezer ships, and tuna ships.

7) **Land based military personnel.** Members of the armed forces, including the U.S. Coast Guard, are counted at the area where they are permanently stationed, subject to the conditions as described below (see Residency of Military Personnel Based on the Census Bureau Guidelines).

8) **Crews of military ships.** If the person's usual residence is the ship, the person will be counted at the homeport location where the ship is actually docked. Crew members will also be able to identify a usual residence ashore and be matched to their home address.

9) **Movers.** If an individual is in the process of moving to a new location he or she will be counted at their Census day address.

10) Migrant workers. Residents of migrant worker camps may designate the camp as their residence. If they have a usual residence other than the camp, the ICR will cross match them to that address.

11) Institutionalized residents. This category includes all residents living under formally authorized, supervised care or custody. The facilities housing this population include correctional schools, penitentiaries, wards for juveniles, specialized hospitals, nursing homes for the elderly, and homes for the physically and mentally handicapped.

The Census Bureau differentiates between long-term and short-term facilities. Persons residing in long-term facilities (for example, penitentiaries, and mental hospitals) will be counted as residents of the institution. Persons residing in short-term facilities (such as county jails and general hospitals) will be given the opportunity to identify a usual place of residence if they have one.

RESIDENCY OF MILITARY PERSONNEL BASED ON CENSUS BUREAU GUIDELINES

For purposes of census enumeration all active duty military personnel were distributed a MCR (military census report) on-base, whether or not they lived in on-base barracks and housing units, or off-base housing units. For barracks based personnel, this was the only census form they filled out.

If the MCR listed that the address where the individual usually stayed at least 4 nights a week was the barracks, the individual was counted as an on-base resident.

All on and off-base personnel living in housing units, however, also received and filled out regular census questionnaires just like the rest of the civilian population.

If the MCR listed that the residence address was either an on- or off-base housing unit, the MCR was search/matched to the census questionnaires collected from the housing units, to verify the non-barracks location. When a match occurred, the count was assigned to the housing unit. If it was on-base, the count became part of the total on-base count. If it was off-base, the count became part of the regular off-base block count.

If the MCR listed that the residence address was out of state, the search/match would look for the listed address for the out of state residence. These search/matches were limited, however, to the three states (AK, CA, WA) served by the Census Bureau's processing office in San Diego. If a match occurred, the individual was added to that out of state address. If an address for any other state than the 3 listed above was filled in on the MCR, a match did not occur and the count by default was added to the base count.

It is my opinion that based on the above procedures, most on-base barracks personnel would have been counted at their base location due to two factors:

- 1) Matches were limited to only two other states than Alaska. Since tours of duty

originate from bases nationwide and the service is made up of individuals from 50 states, it is highly unlikely all non-state matches would have by chance been exclusively from California or Washington State.

2) The MCR form is constructed to generally elicit an on-base residence response. The address information block lies within Question 2 which sets the respondent up to automatically write in his or her on-base residence. The instructional guidelines do not provide extensive definitions of how one determines ones residency. "Where you usually stay at least 4 nights a week" is only one of many considerations.

I have requested from the Census Bureau a report which would show how many MCR's were matched to out of state locations. To date, that report has not been generated, and may not become available during the scope of the redistricting time frame.

For the on-base and off-base housing unit respondents, the regular census questionnaire also provided the opportunity to list a usual residence location. In this case, however, if an out of state address were given, the address matching would be conducted nationwide and the individual adjusted back to the out of state residence reported. In order for this match to be successful, a specific out of state street address is required.

DRAFT

AFTER COMPLETING THIS FORM

- Please check it to be sure you have answered all the required questions completely.
- To return your form, please follow the instructions on the envelope that the form came in.

THANK YOU FOR YOUR COOPERATION.

The Census Bureau estimates that, on average, each respondent will take 7 minutes to complete this form, including the time for reviewing instructions and answers. Comments about this estimate should be directed to the Associate Director for Management Services, Bureau of the Census, Washington, DC 20233, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

DRAFT

1990 INDIVIDUAL CENSUS REPORT

1. Please print your name —
 Last name First name Middle Initial

- 2a. Are you — Mark (X) the box that applies.
- (1) A person WHO USUALLY LIVES HERE or who stays here most of the week while working? } Please continue with question 3, on page 2
- (2) A person with NO USUAL PLACE OF RESIDENCE?
- (3) A person AWAY FROM YOUR USUAL HOME FOR A SHORT TIME, such as on a vacation or business trip?
- Is there someone at your usual address who will include you on the census form there?
- Yes } Print your home address in b, and
 No } continue with question 3, on page 2.

b. House number, street name, apartment number

Rural route number	Box number
City	
County or foreign country	
State	ZIP Code
Telephone number — Include area code	
Names of nearest intersecting streets or roads	

FOR CENSUS USE

DO	ID	ARA	Block	PN
Add Y N	DO	ID	ARA	Block PN

FOR CENSUS USE

Person with _____ children under 15 years present with him/her

← FOLD LINE

FORM D-21
 (6-13-88)

U.S. DEPARTMENT OF COMMERCE
 BUREAU OF THE CENSUS

1990 MILITARY CENSUS REPORT

This is your official Census form. Your cooperation in carefully filling out the form will help make the census successful. If you do not know the exact answer to any question, please give your best estimate.

This census is authorized by Title 13, United States Code, and you are required by law to answer the questions to the best of your knowledge.

The same law protects the confidentiality of your answers. Census employees are subject to fine and/or imprisonment for any disclosure of your answers. The person on base collecting your information is sworn in as a census employee and is subject to these same penalties.

Thank you for your cooperation.

1. Please print your name —
 Last name First name Middle Initial

.....

2a. What is the name of your unit?

b. What is the address where you usually stay at least 4 nights a week?

Building or barracks number or identification (if applicable)

House No. Street name Apt. No.

City County or foreign country

State ZIP Code

Names of nearest intersecting streets or roads

c. Is the above address on a military installation or base?
 Yes — Give name No

d. Is the place where you usually stay family-type housing (house, apartment, etc.) or group quarters (barracks, BOQ, hospital, etc.)?

Family-type housing — How many persons, including yourself, were living at the above address on April 1, 1990?

..... Persons — Please complete questions 3 through 7 on page 2. Then return your form to the person in charge of distributing these reports.

Group quarters — Continue with question 3 and follow the instructions at the bottom of page 2.

AFTER COMPLETING THIS FORM

1. Please check it to be sure you have answered all the required questions completely.
2. Then return your form to the person in charge of distributing these reports.
3. Military personnel living away from this installation, but within the census area, will also receive a census form at home. To ensure that such personnel are assigned to the correct jurisdiction, it is important that **YOU MAKE SURE YOU ARE INCLUDED ON BOTH FORMS** — this report and the census form sent to your home.

THANK YOU FOR YOUR COOPERATION.

The Census Bureau estimates that, on average, each respondent will take either 2 minutes (100-percent items only) or 7 minutes (sample items as well) to complete this form, including the time for reviewing the instructions and answers. Comments about these estimates should be directed to the Associate Director for Management Services, Bureau of the Census, Washington, DC 20233, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This form may be reproduced before distribution if additional copies are needed.

FOR CENSUS USE					FOR CENSUS USE				
DO	ID	ARA	Block	PN	DO	ID	ARA	Block	PN

FOLD ALONG THIS BROKEN LINE FOR SEALING

2a. Do you have a residence (house, apartment) where you usually stay when off duty?

1 Yes -- Go to 2b 2 No -- Skip to 3

b. What is the address of that residence? Include house number, street name, city, State, and ZIP Code.

House number Street name
Base name (if on-base)
City State ZIP Code

3. Sex -- Mark (X) ONE box.

1 Male 2 Female

4. Race -- Mark (X) ONE box for the race you consider yourself to be.

1 White
2 Black or Negro
3 Indian (Amer.) (Print the name of the enrolled or principal tribe.)
4 Eskimo
5 Aleut
Asian or Pacific Islander (API)
6 Chinese 11 Japanese
7 Filipino 12 Asian Indian
8 Hawaiian 13 Samoan
9 Korean 14 Guamanian
10 Vietnamese 15 Other API
16 Other race (Print race)

5. Age and year of birth

a. Age b. Year of birth
[][][] [1][][][]

b. Marital status -- Mark (X) ONE box.

1 Now married 3 Divorced 5 Never married
2 Widowed 4 Separated

7. Are you of Spanish/Hispanic origin?

Mark (X) ONE box.
1 No (not Spanish/Hispanic)
2 Yes, Mexican, Mexican-Am., Chicano
3 Yes, Puerto Rican
4 Yes, Cuban
5 Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)

What are the last 4 digits of your Social Security Number?

[X][X][X] - [X][X] - [][][][]

If the last four digits are 8333 or more, please continue with question 8. Persons who continue with question 8 represent a sample randomly selected on the basis of these digits. If the digits are less than 8333, stop here and return the form.

8. In what U.S. State or foreign country were you born?

(Name of State or foreign country; or Puerto Rico, Guam, etc.)

9. Are you a CITIZEN of the United States?

1 Yes, born in the United States -- Skip to 11
2 Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas
3 Yes, born abroad of American parent or parents
4 Yes, U.S. citizen by naturalization
5 No, not a citizen of the United States

10. When did you come to the United States to stay?

0 1987 to 1990 5 1970 to 1974
1 1985 or 1986 6 1965 to 1969
2 1982 to 1984 7 1960 to 1964
3 1980 or 1981 8 1950 to 1959
4 1975 to 1979 9 Before 1950

11. At any time since February 1, 1990, have you attended regular school or college? Include only schooling which leads to a high school diploma or a college degree.

1 No, have not attended since February 1
2 Yes, public school, public college
3 Yes, private school, private college

12. How much school have you COMPLETED?

Mark (X) ONE box for the highest level COMPLETED or degree RECEIVED. If currently enrolled, mark the level of previous grade attended or highest degree received.

35 Less than 9th grade
36 9th grade
37 10th grade
38 11th grade
39 12th grade, NO DIPLOMA
40 HIGH SCHOOL GRADUATE -- high school DIPLOMA or the equivalent (For example: GED)
41 Some college but no degree
42 Associate degree in college -- Occupational program
43 Associate degree in college -- Academic program
44 Bachelor's degree (For example: BA, AB, BS)
45 Master's degree (For example: MA, MS, MEng, MEd, MSW, MBA)
46 Professional school degree (For example: MD, DDS, DVM, LLB, JD)
47 Doctorate degree (For example: PhD, EdD)

13. What is your ancestry or ethnic origin?

(For example: German, Italian, Afro-Amer., Croatian, Cape Verdean, Dominican, Ecuadoran, Haitian, Cajun, French Canadian, Jamaican, Korean, Lebanese, Mexican, Nigerian, Irish, Polish, Slovak, Taiwanese, Thai, Ukrainian, etc.)

14a. Did you live at the address reported in question 2b 5 years ago (on April 1, 1985)?

- 1 Yes — Skip to 15a
 2 No or no address in 2b

b. Where did you live 5 years ago? If you had no residence except on a ship, report the home port of that ship on April 1, 1985.

- (1) Name of U.S. State or foreign country 7
 (If outside U.S., print answer above and skip to 15a.)
 (2) Name of county in the U.S. 7
 (3) Name of city or town in the U.S. 7
 (4) Did you live inside the city or town limits?
 1 Yes 2 No, lived outside the city/town limits

15a. Do you speak a language other than English at home?

- 1 Yes 2 No — Skip to 17a

b. What is this language? 7
 (For example: Chinese, Italian, Spanish, Vietnamese)

c. How well do you speak English?
 1 Very well 2 Well 3 Not well 4 Not at all

16.

17a. Have you ever been on active-duty military service in the Armed Forces of the United States or ever been in the United States military Reserves or the National Guard? Active duty does not include training in the Reserves or National Guard.

- 1 Yes, now on active duty
 2 Yes, on active duty in past, but not now
 3 Yes, service in Reserves or National Guard only
 4 No } Skip to 20

b. Was active-duty military service during — Mark (X) a box for each period in which you served.

- | | |
|--|---|
| 1 <input type="checkbox"/> September 1980 or later | 6 <input type="checkbox"/> World War II (September 1940— July 1947) |
| 2 <input type="checkbox"/> May 1975 to August 1980 | 7 <input type="checkbox"/> World War I (April 1917— November 1918) |
| 3 <input type="checkbox"/> Vietnam era (August 1964— April 1975) | 8 <input type="checkbox"/> Any other time |
| 4 <input type="checkbox"/> February 1955—July 1964 | |
| 5 <input type="checkbox"/> Korean conflict (June 1950— January 1955) | |

c. In total, how many years of active-duty military service have you had? Years

18.

19.

20. If you are female — How many babies have you ever had, not counting stillbirths? Do not count stepchildren or children you have adopted.

- | | | | | |
|---------------------------------|------------------------------|------------------------------|------------------------------|--|
| 0 <input type="checkbox"/> None | 1 <input type="checkbox"/> 1 | 4 <input type="checkbox"/> 4 | 7 <input type="checkbox"/> 7 | 10 <input type="checkbox"/> 10 |
| | 2 <input type="checkbox"/> 2 | 5 <input type="checkbox"/> 5 | 8 <input type="checkbox"/> 8 | 11 <input type="checkbox"/> 11 |
| | 3 <input type="checkbox"/> 3 | 6 <input type="checkbox"/> 6 | 9 <input type="checkbox"/> 9 | 12 <input type="checkbox"/> 12 or more |

21a.

21b. How many hours did you work LAST WEEK (at all jobs)? Subtract any time off; add overtime or extra hours worked.
 Hours OR 0 Did not work last week — Skip to 28

22. Did you work on this ship LAST WEEK?

- 1 Yes } Skip to 28
 2 No, different ship }
 3 No 7

At what location did you work LAST WEEK? If you worked at more than one location, print where you worked most last week.

a. Address (Number and street) 7
 (If the exact address is not known, give a description of the location such as the name of the building or the nearest street or intersection, etc.)

b. Name of city, town, or post office 7

c. Is the work location inside the limits of that city or town?
 1 Yes 2 No, outside the city/town limits

d. County 7

e. State 7 f. ZIP Code 7

23a. How did you usually get to work LAST WEEK? If you usually used more than one method of transportation during the trip, mark (X) the box of the one used for most of the distance.

- | | |
|---|---|
| 1 <input type="checkbox"/> Car, truck, or van | 8 <input type="checkbox"/> Motorcycle |
| 2 <input type="checkbox"/> Bus or trolley bus | 9 <input type="checkbox"/> Bicycle |
| 3 <input type="checkbox"/> Streetcar or trolley car | 10 <input type="checkbox"/> Walked |
| 4 <input type="checkbox"/> Subway or elevated | 11 <input type="checkbox"/> Worked at home — Skip to 28 |
| 5 <input type="checkbox"/> Railroad | 12 <input type="checkbox"/> Other method |
| 6 <input type="checkbox"/> Ferryboat | |
| 7 <input type="checkbox"/> Taxicab | |

If "car, truck, or van" is marked in 23a, go to 23b. Otherwise, skip to 24a.

b. How many people, including yourself, usually rode to work in the car, truck, or van LAST WEEK?

- | | | |
|--|-------------------------------------|--|
| 1 <input type="checkbox"/> Drove alone | 4 <input type="checkbox"/> 4 people | 7 <input type="checkbox"/> 7 to 9 people |
| 2 <input type="checkbox"/> 2 people | 5 <input type="checkbox"/> 5 people | 8 <input type="checkbox"/> 10 or more people |
| 3 <input type="checkbox"/> 3 people | 6 <input type="checkbox"/> 6 people | |

24a. What time did you usually leave home to go to work LAST WEEK? 1 a.m. 2 p.m.

b. How many minutes did it usually take you to get from home to work LAST WEEK? Minutes — Skip to 28

25.

26.

27.

FOLD ALONG THIS BROKEN LINE FOR SEALING.

28. Are you now on active duty in the U.S. Armed Forces?

1 Yes, Navy
 2 Yes, Marine Corps
 3 Yes, Coast Guard
 4 Yes, Army
 5 Yes, Air Force
 6 No — Describe the kind of business of your employer 7

29. Occupation

a. What kind of work are you doing?

(For example: aircraft engine mechanic, electronic technician, able seaman, sonar technician, tactical intelligence officer)

b. What are your most important activities or duties?

(For example: repair seaplanes, research on electronic components, maintain ship's gear, repair sonar equipment, edit intelligence manuals)

c. If Armed Forces:

(1) What is your primary job specialty? If you have more than one specialty, list the one at which you spend the most time.
 MOS/Rating/Designator/AFSC 7

(2) What is your paygrade? Enter two-character code.
 (For example: E-4, O-3)

 Paygrade

30.

31a. Last year (1989), did you work, even for a few days, at a paid job, business, farm or on active-duty military service?

1 Yes 2 No — Skip to 32

b. How many weeks did you work in 1989? Count paid vacation, paid sick leave, and military service.

 Weeks

c. During the weeks WORKED in 1989, how many hours did you usually work each week?

 Hours

32. Income in 1989 —
 Mark (X) the "Yes" box below for each income source you received during 1989. Otherwise, mark (X) the "No" box.
 If "Yes," enter the total amount received during 1989.
 If exact amount is not known, please give best estimate.
 If net income in 32b, c, or d was a loss, write "Loss" above the dollar amount.

a. Pay as a member of the ARMED FORCES including special, incentive, and bonus pay. Also wages, salaries, tips, and commissions from CIVILIAN JOBS — Report total amount from all jobs BEFORE DEDUCTIONS for taxes, bonds, dues, or other items.

1 Yes ——— \$ ----- .00
 2 No
 Annual amount — Dollars

b. Self-employment income from own nonfarm business, including proprietorship and partnership — Report NET income after business expenses.

1 Yes ——— \$ ----- .00
 2 No
 Annual amount — Dollars

c. Farm self-employment income — Report NET income after operating expenses. Include earnings as a tenant farmer or sharecropper.

1 Yes ——— \$ ----- .00
 2 No
 Annual amount — Dollars

d. Interest, dividends, net rental income or royalty income, or income from estates and trusts — Report even small amounts credited to an account.

1 Yes ——— \$ ----- .00
 2 No
 Annual amount — Dollars

e. Any other income received regularly, such as social security, public assistance or welfare payments, child support, or unemployment compensation — Do NOT include lump-sum payments such as money from an inheritance or the sale of a home.

1 Yes ——— \$ ----- .00
 2 No
 Annual amount — Dollars

33. What was your total income in 1989?
 Add entries in questions 32a through 32e; subtract any losses. If total amount was a loss, write "Loss" above amount.

\$ ----- .00
 Annual amount — Dollars

OR 0 None

AFTER COMPLETING THIS FORM

1. Please check it to be sure you have answered all the required questions completely.
2. Then return your form to the person in charge of distributing these reports.
3. Military personnel living away from this installation, but within the census area, also will receive a census form at home. To ensure that such personnel are assigned to the correct jurisdiction, it is important that **YOU MAKE SURE YOU ARE INCLUDED ON BOTH FORMS** — this report and the census form sent to your home.

THANK YOU FOR YOUR COOPERATION.

The Census Bureau estimates that, on average, each respondent will take either 2 minutes (first seven questions) or 7 minutes (all thirty-three questions) to complete this form, including the time for reviewing instructions and answers. Comments about these estimates should be directed to the Associate Director for Management Services, Bureau of the Census, Washington, DC 20233, Attn: CEN-90, and to the Office of Management and Budget, Paperwork Reduction Project CEN-90, Washington, DC 20503.

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CENSUS '90



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FORM D-23

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

INFORMATIONAL COPY

1990 SHIPBOARD CENSUS REPORT

This is your official Census form. Your cooperation in carefully filling out the form will help make the census successful. Estimates may be made where exact answers are not known.

This census is authorized by Title 13, United States Code, and you are required by law to answer the questions to the best of your knowledge.

The same law protects the confidentiality of your answers. Census employees are subject to fine and/or imprisonment for any disclosure of your answers.

Thank you for your cooperation.

1a. Please print your name —
 Last name First name Middle Initial

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b. What is the name of the ship where you are assigned?

c. What is the name of the operator of the ship?
 If U.S. Government, specify Navy, Coast Guard, etc.

Please continue →

FOR CENSUS USE					FOR CENSUS USE				
DO	ID	ARA	Block	PN	DO	ID	ARA	Block	PN

right) to determine the number of Representatives each State receives.

"... as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

— *Wesberry v. Sanders*

But our job doesn't end there. Court decisions and legislation have given the Census Bureau a major role in redistricting, the process by which State

it is only in the last two decades that the Census Bureau has played a role in the redistricting process.

U.S. Supreme Court decisions handed down during the 1960's clarified the Constitution's intention to provide equality of representation for all Americans. In 1964, the *Wesberry v. Sanders* decision held that, "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." That same year, in *Reynolds v. Sims*, the Court ruled that State legislative districts must be "as nearly of equal population as is practicable."

Both U.S. Congressional Districts and State legislative districts must be

Who Is Counted?

The U.S. Constitution (Amendment 14, Section 2) states, "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State. . . ." Consequently, the Census Bureau counts *all* persons — the "whole number" — who are residents of the United States.

Specifically excluded are persons living on the grounds of a foreign embassy, ministry, legation, chancellery, or consulate. Since these locations are legally considered foreign soil, people living there are not considered U.S. residents. Also, citizens of foreign countries temporarily visiting or traveling in the United States are not counted because they have not established a residence.

Americans temporarily abroad on vacations or business trips are counted at their usual place of residence within the United States. For the second time in history, Defense Department employees overseas, both military and civilian, and their families are included in the census count.

Proportions Guides Apportionment

How does the method of equal proportions work?

Adopted in 1941 (title 2, Section 2a, United States Code), the method of equal proportions helps us compile a priority list of the States. Priority value is determined by dividing a State's population by the geometric mean of its current and next seats.

Following the 1980 census, each of the 50 States was awarded one seat out of the current 435 total. Then, the 51st seat went to the State that had the highest priority value for its second seat.

In computing the apportionment from the 1980 State totals, seat 51 went to California, whose priority value under the method of equal proportions was 16,736,300. The next seat, number 52, went to New York, with a second-seat priority value of 12,414,877, and Texas received seat number 53, with a priority value of 10,060,986.

Once the number of seats assigned to the individual States is determined, the task of drawing the new congressional districts is generally that of each State legislature.

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where we microfilm them and use optical scanning devices to extract data. We compile preliminary housing unit counts for each block and then send them to officials of the appropriate county, county subdivision, and incorporated place. Called "local review," this process gives officials the opportunity to examine our counts and to identify blocks where they believe there are discrepancies.

Once we have completed the collection and processing, we begin to compile final counts in the Census Bureau's Washington office.

Census Day may be our most conspicuous deadline, but it's not our only one. Now we face several deadlines in processing the final census counts.

Off to the President

Next, the Census Bureau must prepare the final, official State population counts required for the apportionment of the U.S. House of Representatives. These official counts are reported to the President on or before December 31, 1990, a brief 9 months after Census Day.

According to the U.S. Code, the President must then report these figures to the Congress. He does this in early January 1991, during the first week of the 102nd Congress. This report will show —

- the population of each State
- the total number of Representatives (435)
- the number of Representatives each State may have

The apportionment section of the U.S. Code also tells the steps that are to be followed after the Congress receives the President's report. Within 15 calendar days, the Clerk of the House of Representatives must send to each State's Governor a certificate showing how many Representatives the State may send to the next Congress.

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- D 2E*
- D 3D
- D 4D

STRENGTH IN NUMBERS



**Your Guide to 1990 Census
Redistricting Data From the
U.S. Bureau of the Census**



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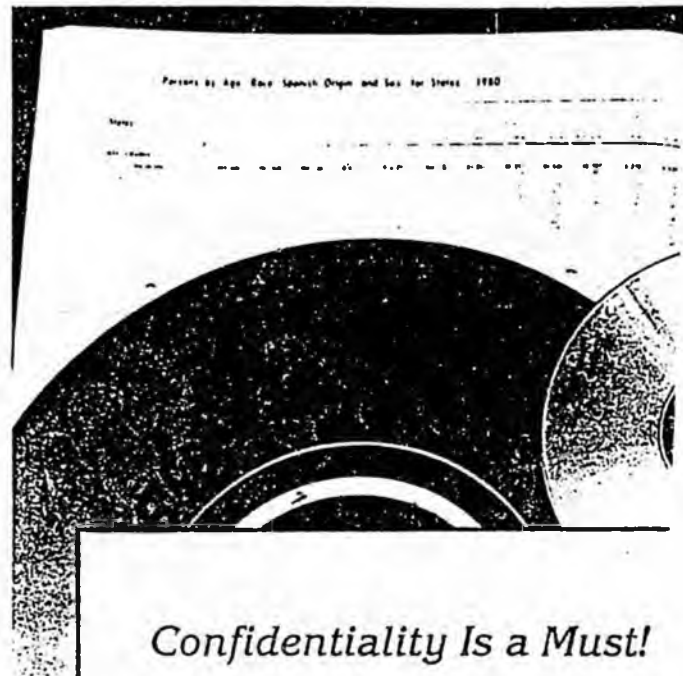
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Confidentiality Is a Must!

Title 13 of the United States Code Census Bureau. Section 9 of Title 13 of information gathered by the Census Bureau neither the Secretary of Commerce nor any employee of the Department of Commerce may use the information furnished under this title for any purpose other than the statistical purposes for which it was supplied.

It states that no Census Bureau official, employee, or sworn officer of any particular establishment or individual may use the information supplied in response to a request for information, however, the law specifies that, after the information is opened to public inspection and

DRAFT

INTRODUCTION

This report focuses on the role that independent redistricting commissions play in the state legislative redistricting process. It does not deal with reapportionment. Redistricting and reapportionment, while often used interchangeably, are two different things. Reapportionment is the process of allotting the seats of a legislative body among a given number of units. Redistricting is the redrawing of the boundary lines after the number of seats has been allotted through reapportionment.

Goals

While independent commissions are a relatively new phenomena, this report describes what caused their creation, their roles in redistricting today, and the advantages and disadvantages of using an independent redistricting commission.

HISTORY/BACKGROUND

The history of legislative redistricting has been one of the legislature itself doing the redistricting.¹ Since the formation of the nation, legislatures have redistricted themselves based on a variety of criteria and they had free reign to do so in whatever manner they pleased.

As a result, prior to thirty years ago, there were several examples of districting plans based on malapportionment. The most common was where a small minority of the population could elect a majority of the lawmakers based on districting plans that held an overwhelming rural bias.

Such a case existed in Missouri. Before the courts stepped into the redistricting arena, the Missouri Constitution guaranteed every county, regardless of population, at least one seat in the House of Representatives. The result was that in 1965, 82 rural counties, which contained less than one-fifth of the state's total population, controlled a majority of seats in the house.² The vote of the rural voter carried more clout than that of the urban dweller.

Redistricting Changes

In the early 1960s, the United States Supreme Court intervened in the redistricting process to change the rules of how a legislature could redistrict. Starting with the case of Baker v. Carr (1962), where the Supreme Court held that

1. "Independent Commissions: The Next Step in the Reapportionment Revolution?" McGehee, John Michael. p. 2.
2. Reapportionment Politics: The History of Redistricting in the 50 States. p. 181.

redistricting plans could be challenged in court, the methods of legislative redistricting began to change drastically. Later cases include Gray v. Sanders (1963), which established the "one man, one vote" rule, and Reynolds v. Sims (1964), which declared that the constitutional standard of equal protection required that both houses of a bicameral state legislature had to be reapportioned, and therefore redistricted, on a population basis. The Supreme Court ruled that the equal protection clause of the Fourteenth Amendment to the Constitution meant that every person's vote had to have equal weight. Chief Justice Warren wrote, "An individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state."³ Therefore, the only practical way to have equality in voting strength was to have population equality between districts.

With the major changes brought about by the court decisions mandating population equality as the dominant factor in redistricting, gerrymandering was brought to the forefront of the redistricting process. A gerrymander is defined as the process of drawing districts with odd shapes to create an unfair partisan advantage.⁴ The party in power, seeking to maintain its majority in the legislature, creates districts that favor the election of a candidate from its party. While the political gerrymander enrages the opposing party and disturbs the proponents of "good government," the plans have withstood legal challenges, with the courts saying that redistricting is a political decision that should be handled in the political arena. (However, this may change with the recent Supreme Court decision, Davis v. Bandemer (1986), which held that a redistricting plan resulting from a partisan gerrymander is now a justiciable issue).

The result of these changes is that legislative redistricting has been turned on its head. All plans now must consider equality of population as the major factor in any redistricting plan and the court has demonstrated that it is willing to step in and take part in the redistricting process. In addition, legislatures have the ability to gerrymander districts, which gives them a powerful, and many would say unfair, tool in the redistricting process. These changes have resulted in the opening up of a brave new world of redistricting which bares little resemblance to the redistricting of prior years.

Independent Commissions

A new option coming out of the redistricting upheaval of the 1960s was the use of an independent redistricting commission. While a few states used one before the 1960s, their existence expanded after the redistricting revolution. Many states saw the

3. Reynolds v. Sims

4. Wattson, Peter S. "How To Draw Redistricting Plans That Will Stand Up In Court." p. 2.

new problems that existed with the legislatures developing redistricting plans and decided that it was impossible for a legislature to draw a fair plan. These states opted to remove redistricting from the hands of the legislature and place it in the care of an independent redistricting commission. The commission was free of the legislature and it had the sole responsibility for redistricting. The hope was that the establishment of an independent commission would fix the perceived problems of the redistricting process.

Commission creation developed with the intention of having a disinterested body draw up the redistricting plan. One of the major causes of a gerrymander is that the legislators drawing up the plan have a direct interest in its operation. They create the districts that regulate upcoming elections. The worry is that incumbents will sculpt districts that best suit their desires to be re-elected, rather than develop districts that will be fair and competitive. The general feeling is that the gerrymander subverts the democratic process. It is hoped that independent commissions will make redistricting a technical and scientific exercise and eliminate the partisanship and gerrymandering that exist when the legislature is in charge of promulgating the redistricting plan.

While the independent commission is the more popular name for this redistricting body, some states have chosen to form an independent redistricting board. Despite the difference in the name, both have the same function: to redistrict the state independent of the legislature.

REDISTRICTING COMMISSIONS IN THE STATES

Today, eighteen states use independent redistricting boards or commissions in some manner. Of those eighteen, nine have given the commission the responsibility for developing the redistricting plan, thereby totally removing the legislature from the redistricting process; four states use commissions to advise the redistricting authority; and five states use them as backups in case the redistricting authority fails to act by a certain deadline. Here are some charts that briefly describe their composition and deadlines.

INITIAL REDISTRICTING COMMISSIONS: STATE LEGISLATIVE PLANS

<u>STATE</u>	<u>ROLE</u>	<u>NUMBER OF MEMBERS</u>	<u>SELECTION REQUIREMENTS</u>	<u>FORMATION DATE</u>	<u>INITIAL DEADLINE</u>	<u>FINAL DEADLINE</u>
Arkansas	Develop a plan	3	Commission is the governor, secretary of state, and the attorney general	none listed	by February 1, 1991	plan becomes official 30 days after it is filed
Colorado	Develop a plan	11	<ul style="list-style-type: none"> -Legislature selects 4 (speaker of the house, house minority leader, senate majority and minority leaders, or their delegates) -Governor selects 3 -Judiciary selects 4 -Maximum of 4 from the legislature -Maximum of 6 from the same political party -Each congressional district must have at least 1 person, but no more than 4 people representing it on the commission -At least 1 member must live west of the continental divide 	by August 1, 1991	90 days after the availability of the census data, or after the formation of the committee, whichever is later	March 15, 1992
Hawaii	Develop a plan	8	<ul style="list-style-type: none"> -President of the senate selects 2 -Speaker of the house selects 2 -Minority senate party selects 2 -Minority house party selects 2 -These 8 select the 8th member, who is the chair -No commission member may run for the legislature in the two elections following redistricting 	by March 1, 1991	90 days after the commission forms	150 days after commission formation
Missouri	Develop a plan	House - 18 Senate - 10	<ul style="list-style-type: none"> -There are two separate redistricting committees -Governor picks one person from each list of two submitted by the two main political parties in each congressional district to form the house committee -Governor picks 5 people from two lists of 10 submitted by the two major political parties in the state to form the senate committee -No commission member may hold office in the legislature for 4 years after redistricting 	within 90 days of the census data becoming available	5 months after the commission forms	8 months after formation
Montana	Develop a plan	5	<ul style="list-style-type: none"> -Majority and minority leaders of both houses of the legislature each select one member -Those 4 select a 5th, who is the chair -If the 4 cannot select a 5th within 20 days, then a majority of the supreme court will select the chair -Members cannot be public officials -Members cannot run for public office in the two years after the completion of redistricting 	the legislative session after the census data is available	The commission must give the plan to the legislature at the first regular session after its appointment	30 days after the plan is returned by the legislature
New Jersey	Develop a plan	10	<ul style="list-style-type: none"> -The chairs of the two major parties select 5 members each -If these 10 members cannot develop a plan in the allotted time, the chief justice of the state supreme court will appoint an 11th member 	December 1, 1990	February 1, 1991, or one month after the census data becomes available	The initial deadline, or one month after the 11th member is picked
Ohio	Develop a plan	5	Board is the governor, auditor, secretary of state, and two people selected by the legislative leaders of each major political party	Between August 1 and October 1, 1991		October 5, 1991
Pennsylvania	Develop a plan	5	<ul style="list-style-type: none"> -Majority and minority leaders of the legislative houses each select 1 member -These 4 select a 5th to chair -If they fail to do so within 45 days, a majority of the state supreme court will select the 5th member -The chair cannot be a public official 	none listed	90 days after the availability of the census data or after the commission formation, whichever is later	30 days after the public exception is filed against the initial plan
Washington	Develop a plan	4	<ul style="list-style-type: none"> -Majority and minority leaders of the house and senate each select one -These 4 select a non-voting 5th to chair the commission -If they fail to do so by January 1, 1991, the state supreme court will select the 5th by February 5, 1991 -No commission member may be a public official 	January 31, 1991	none listed	January 1, 1992

ADVISORY COMMISSIONS: STATE LEGISLATIVE PLANS

<u>STATE</u>	<u>ROLE</u>	<u>NUMBER OF MEMBERS</u>	<u>SELECTION REQUIREMENTS</u>	<u>INITIAL DEADLINE</u>	<u>FINAL DEADLINE</u>
Alaska	Advisory to the governor	5	<ul style="list-style-type: none"> -Governor selects all 5 -Members cannot be public officials or public employees -Each of the 4 regions of the state must have at least one representative on the board 	The board submits a plan to the governor within 90 days of receiving the census data	<ul style="list-style-type: none"> -Governor issues the final plan within 90 days after receiving the board's plan -Governor must justify any changes that he makes in the board's proposal
Iowa	Advisory to the legislature	5	<ul style="list-style-type: none"> -Senate majority leader selects 1 -Senate minority leader selects 1 -House majority leader selects 1 -House minority leader selects 1 -These 4 select the 5th, who is chair -Commission members cannot hold public office or political party office 	This commission is advisory only and does not draw up any plans	
Maine	Advisory to the legislature	15	<ul style="list-style-type: none"> -3 from the majority party in the house -3 from the minority party in the house -2 from the majority party in the senate -2 from the minority party in the senate -The chairs of the 2 major political parties -2 members from the public (1 democrat, 1 republican) -These 2 pick a third member from the public 	90 days after the 1983 legislature convenes	-Legislature must enact a plan by a 2/3 vote by 30 days after receiving the commission plan
Vermont	Advisory to the legislature	6	<ul style="list-style-type: none"> -Chief justice appoints the chair -Governor appoints 1 member from each political party who received 25% of the vote in the last gubernatorial election -Those parties then each select 1 -Secretary of state is a non-voting member -No commissioner may be a member of the legislature 	February 1, 1991	Legislature must adopt the official plan at the biennial session following the decennial census

BACKUP COMMISSIONS: STATE LEGISLATIVE PLANS#

<u>STATE</u>	<u>ROLE</u>	<u>NUMBER OF MEMBERS</u>	<u>SELECTION REQUIREMENTS</u>	<u>FORMATION DATE</u>	<u>FINAL DEADLINE</u>
Connecticut	Backup to the legislature	8	-President pro tem selects 2 -Speaker of the house selects 2 -Senate minority leader selects 2 -House minority leader selects 2 -These 8 must select the 8th within 30 days	After the legislative deadline which is August 1, 1991	October 31, 1991
Illinois	Backup to the legislature	8	-Senate president selects 2 -Speaker of the house selects 2 -Senate minority leader selects 2 -House minority leader selects 2 -In each pairing of two, one is to be a legislator and the other is not -Maximum of 4 from the same political party -If the commission cannot develop a plan by August 10, 1991, then the state supreme court will select 2 people and one of this pair will be chosen at random to be the commission tiebreaker	July 10, 1991, which follows the legislative deadline of June 30, 1991	October 5, 1991
Mississippi	Backup to the legislature	5	-Commission is composed of the chief justice of the supreme court (chair), attorney general, secretary of state, speaker of the house, and president pro tempore of the senate	60 days after the legislative deadline, which is the last day of the regular session	130 days after legislative adjournment
Oklahoma	Backup to the legislature	3	-Board is composed of the attorney general, superintendent of public instruction, and state treasurer	90 days after the convening of the first regular session following the decennial census	None listed, but the state supreme court has the right to compel the commission to act
Texas	Backup to the legislature	5	-Board is composed of the lieutenant governor, speaker of the house, attorney general, comptroller of public accounts, and commissioner of the general land office	Within 90 days after the final adjournment of the 1991 legislative session	90 days after formation

#The responsibility for redistricting in these states originally lies with the legislature. These commissions take action only if the legislature fails to develop a plan by its redistricting deadline.

Role

Of the eighteen states, half use commissions to develop the entire plan, four use commissions to advise the redistricting authority, and five have commissions to redistrict only if the legislature fails to redistrict by its deadline. The commissions that promulgate a redistricting plan have the most power because the legislature has been removed from the redistricting process. The advisory commissions are influential only to the extent that the redistricting authority listens to them. The commissions that draw up an initial plan are more powerful than those that draw no plans. The backup commissions only comes into play after the legislature fails to enact a plan. They act as a safety valve, providing the state another opportunity to redistrict before the court system becomes involved.

Composition

The number of commission members ranges from three in Arkansas to eighteen in Missouri. Even though the numbers span this wide range, commissions and boards separate into two basic categories: "small" and "large." The small commission has less than six members while the large commission has more than eight members. A small commission has an advantage in that it should have an easier time developing a plan because it has fewer people that have to reach agreement. Its disadvantage comes from the fact that with the fewer members it has, the fewer viewpoints that are represented. A large commission benefits from the fact that many viewpoints are represented on the commission. Technically, the more viewpoints on the commission, the better represented the people of the state will be in the redistricting process. Some states [Alaska, Colorado, and Missouri (senate)] write this into law by requiring that each segment of the state be represented on the redistricting commission. That way, the viewpoints of the whole state, rather than just one segment, are represented on the commission. The drawback of a large commission is that with more people, it is harder to get them all to agree on a plan.

These commissions may not be as independent as they appear. Even though commissions were established to be independent of legislatures, certain legislators hold great influence over their formation. Of the nine states that have commissions which develop the plan, six commissions have members who are either legislators or chosen by the legislature. Of the three states remaining, two of them have their composition dictated by the executive branch and only one commission, New Jersey, has its composition determined by a group outside of the direct political process. But even in that case the members are determined by the heads of the two major parties, so the influence is shifted from members of the government to the political parties themselves. Very likely, the result is that these independent commissioners will be tied to the political agenda of the people who select

them and that greatly restricts the independence of the commission.

Direct Comparison

While eighteen states choose to use commissions in some form, most states leave redistricting responsibilities with the legislature. By no means is there a consensus on the effectiveness of these commissions. Many good government groups, such as Common Cause, feel that commissions are the best way to redistrict; while other interests feel that commissions are unnecessary and anti-democratic. The use of an independent commission has many pros and cons. Here is a brief summary of both sides:

PROS

- An ideal redistricting plan is drawn by a body that has no direct stake in the final outcome
- A commission takes the politics out of an extremely political and divisive issue, and the process would become scientific and technical, thereby enabling a fair plan to be drawn
- Commissions are more willing to create a plan where the districts would be more balanced, thereby allowing for competitive elections
- Commission creation serves the public interest and its operation is in the best interests of good government
- Incumbents who redraw the political map are made the judge and jury; and are thus susceptible to exploiting this conflict of interest, which undermines the democratic process

CONS

- The reliance on a commission assumes that the public has little ability to look out for its own interest
- Redistricting will always be a political issue. It is not possible to take the politics out of it. Therefore, the legislature, which is best equipped to deal with political issues, should redistrict
- Commissions are anti-democratic in their nature and less accountable to the public than the legislature
- Bipartisan commissions will inevitably feel the strains of partisan discord. Therefore, the process should be left to the legislature, which is designed to deal with partisanship
- Pluralism requires that policy be created by the give and take of groups in competition. By creating a commission, pluralism is undermined

-Commissions reduce the need for court intervention because the plans they draw will be fair to start with

-Redistricting is not a perfectible exercise. Conflict will exist, so the best that can be done is to manage the conflict through the legislature

-As long as legislatures redistrict, the specter of a gerrymander will hang over any plan drawn. The only way to eliminate the gerrymander is to have an independent commission redistrict

-While the idea of a gerrymander is distasteful to most people, giving redistricting to a commission may be going a step too far. The court system is a sufficient check on the temptation for the legislature to gerrymander

PERFORMANCE TEST

Purpose

One way to judge whether or not using an independent redistricting commission is better than having the legislature redistrict is to see how effective each method has been. This is done by judging whether or not the redistricting authority in each state has lived up to its redistricting expectations. Those that meet expectations are rated as "successful" and those that have not are judged as failing. This test judges successes to be only those states who meet the strict criteria of a redistricting success. Those that do not meet these criteria will be classified as having failed to successfully redistrict.

Methodology

Most states conduct legislative redistricting every ten years, after the data from the Federal Census becomes available. The results of the redistricting process in the 1970s and 1980s are used to judge the effectiveness of a state's redistricting body. A success is achieved when the body responsible for legislative redistricting develops the final plan without any interference from an outside force (i.e. the court system); and that final plan is the one that lasts through the decade. A failure is any state whose legislative redistricting is done by a group other than the one that was originally responsible for it (i.e. a backup commission developing a plan after the legislature fails to enact one); or if a body outside of the redistricting process forces the redistricting authority to alter its final plan (i.e. the court system overturning a plan and forcing the redistricting authority to draw a new one). This test only considers 48 states because the redistricting power in Alaska and Maryland rests with the governor. In the two decades, these are the results:

LEGISLATIVE SUCCESSES

1980s

Connecticut
Delaware
Florida
Georgia
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts (house)
Mississippi
Nebraska (unicameral)
Nevada
New Hampshire
New York
North Dakota
Oklahoma
Rhode Island (house)
South Carolina (house)
Utah
Vermont
Virginia (senate)
Washington
West Virginia
Wisconsin
Wyoming

1970s⁵

Arizona
Colorado
Delaware
Florida
Georgia
Idaho
Illinois
Indiana
Kentucky
Massachusetts
Nebraska (unicameral)
Nevada
New Hampshire
New York
North Carolina
Oklahoma
Rhode Island
South Carolina
South Dakota
Tennessee
Texas (house)
Utah
Vermont
Virginia (house)
West Virginia
Wisconsin
Wyoming

1980s*

House plan success rate: 66% (25 of 38)
Senate plan success rate: 62% (24 of 39)
Overall success rate: 64% (49 of 77)

1970s

House plan success rate: 67% (26 of 39)
Senate plan success rate: 63% (25 of 40)
Overall success rate: 65% (51 of 79)

5. All data on the 1970s comes from "Independent Commissions: The Next Step in the Redistricting Revolution?" by John Michael McGehee

*Percentages are formulated by dividing the number of total plans into the number of successful plans. In 39 states, there are 77 plans (Each state must draw a house and a senate plan, with the exception of Nebraska, which is unicameral)

Tennessee	Court forced a redraw
Texas	Court forced a redraw after the 1982 election
Virginia (house)	Court forced a redraw

House failures: 34% (13 of 38)
Senate failures: 38% (15 of 39)
Overall failure rate: 36% (28 of 77)

1970s

Alabama	Court drew the plan
California	Court drew the plan
Connecticut	Legislature failed to meet deadline
Iowa	Court drew the plan
Kansas	Court drew the plan
Louisiana	Court forced a redraw
Maine	Court drew the plan
Minnesota	Court drew the plan
Massachusetts	Court drew the plan
New Mexico	Court forced a redraw
North Dakota	Court drew the plan
Oregon	Court forced a redraw
Texas (senate)	Legislature failed to meet deadline
Virginia (senate)	Court drew the plan
Washington	Court drew the plan

House failures: 33% (13 of 39)
Senate failures: 37% (15 of 40)
Overall failure rate: 35% (28 of 79)

COMMISSION FAILURES

<u>STATE</u>	<u>REDISTRICTING AUTHORITY</u>	<u>CAUSE OF FAILURE</u>
	<u>1980s</u>	
Arkansas	Board	Court forced a partial redraw in 1989
Hawaii	Commission	Court overturned plans
Michigan	Commission	Court ruled the commission was unconstitutional, so it drew the plan

Commission failures: 33% (3 of 9)

1970s

Michigan	Commission	Court drew plan
Missouri (house)	Commission	Court drew plan
New Jersey	Commission	Court forced a redraw

Commission failure: 31% (5 of 16)

Summary

The data shows that the ratings are stable from one decade to the next. Commissions have a slightly better percentage point rating than do legislatures. On average, for every three plans that a commission draws, it succeeds on slightly more than two. For every three plans the legislature draws, it succeeds on slightly less than two. Overall, it appears that no matter who does the redistricting, the overall success rate percentage will hover in the mid-sixties.

These statistics deal with just two rounds of redistricting. While the statistics show that commissions and legislatures have had about the same success rate in the past (about two out of three), that could change drastically in the next redistricting period. The existence of commissions has been brief and it will take more redistricting rounds before their success rate can be definitively judged. The best one can do now is look at the data and form some preliminary conclusions.

CONCLUSION

Commissions were created in the hope of reforming the redistricting process, however there are pros and cons to using these commissions. There is no evidence that commissions are free of the evils of gerrymandering, nor does the performance test show that one redistricting method outperforms the other. The jury remains out as to whether or not independent legislative redistricting commissions are the way to go.

The rise in the creation of independent redistricting commissions came out of the desire to correct the problems that existed in redistricting when the legislature did it. However, even if a state opts to use an independent commission, these problems may remain. There are other factors that influence the redistricting process regardless of what the redistricting authority is. The main factor is the composition of the state's population. A state with a homogenous population should have an easier redistricting job than a state with a heterogeneous population. Heterogeneity can arise from differences in ethnicity, political affiliation, and geography. States with such a diversity in population will encounter redistricting controversy no matter what the redistricting authority is. Redistricting is the process of drawing lines. When many groups need to be considered, the process of drawing a line will give an advantage to one group over another. No plan can satisfy everyone because there will always be some group who feels that the redistricting plan is unfair. States must be cautious and realize that redistricting problems may not be controllable by the redistricting authority. The creation of an independent commission may not cure the redistricting problems that exist within a state.