ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2982 HSA HJR 53

State	Court Case	Issues	Status
Mississippi	Brooks v. Winter Federal Court (C)	• Requests judicial intervention in redistricting • Delay of primary election • Dilution of minority voting strength	Federal Court ordered court plan (6/8/82); U.S. Supreme Court remanded case to federal court for reconsideration under Sec. 2 of the Voting Rights Act (5/16/83).
Missouri	Schatzle v. Kirkpatrick Federal Court (C)	• Requests court to assume jurisdiction over redistricting process	U.S. Supreme Court affirmed court plan (6/17/82)
Montana	Manning v. Montana Districting and Apportionment Commission State Supreme Court (C, L - 12/22/82)	• Requests injunction on commission plan • Challenges the constitutionality of the commission: reapportionment should be done by legislators	State Supreme Court dismissed case as moot. (4/7/83)
	McBride v. Waltermire Federal Court (L - 3/11/83)	• Population deviation • Violation by commission of its own criteria, i.e. maintenance of communities of interest, county boundaries, compactness, contiguity	Pending trial August 10, 1983
Nebraska	None		
Nevada	None		
New Hampshire	Gover v. Gardner Federal Court (L - 5/17/82)	• Challenge to House plan	Federal Court upheld enacted House plan and appeal dismissed. (8/27/82)
New Jersey	Karcher v. Daggett Federal Court (C)	• Population deviation • Legislative procedure	U.S. Supreme Court declares plan unconstitutional. (6/22/83)
New Mexico	Sanchez v. King Federal Court (L - 1/82)	• Dilution of minority voting strength • Compactness • Contiguity • Court to assume jurisdiction	Federal panel declares eligible voter population case unconstitutional and postpones primary (4/2/82); U.S. Supreme Court reinstates primary for nonlegislative candidates (4/23/82) Pending hearing by federal panel on unresolved issues.
	Apodaca v. King State Supreme Court (L - 7/6/82)	• One senator's term regarding 1982 elections	State Supreme Court ruled senator didn't have to run. (8/82)
New York	Flateau v. Anderson Federal Court (C, L - 2/82)	• Population deviation • Dilution of minority voting strength • Violation of the Voting Rights Act	Federal Court approves plans accepted by the legislature. (7/8/82)
	Bay Ridge Community Council v. Carey State Supreme Court (L - 8/25/82)	• Violation of state constitution on basis of compactness, contiguity, and convenience. • Request to enjoin state from holding elections	State Supreme Court declares plan unconstitutional (8/31/82); case appealed to the Court of Appeals:

State	Court Case	Issues	Status
New York	Bay Ridge (cont.)	• County boundary splits • Dilution of minority voting strength • Violation of communities of interest • Political gerrymandering	case transferred to the Appellate Division (1/13/83).
	Montano v. Carey Federal Court (L - 6/17/82)	• Incorporated allegations set out in Plateau • Improper interference with election schedule • Violation of the Voting Rights Act	Federal Court upheld plan (7/7/82); U.S. Supreme Court denied stay of order (7/23/82); Federal Court ordered action discontinued because moot (1/13/83).
	Mirrione v. Anderson Federal Court (L - 11/12/82)	• Dilution of minority voting strength • Violation of Voting Rights Act • Alleged that legislators acted contrary to their responsibility to constituents costing taxpayers under expense • Protection of communities of interest	Federal Court dismissed case (12/3/82); pending decision of U.S. Court of Appeals (4/27/83).
North Carolina	Gingles v. Edmisten Federal Court (C, L)	• Population deviation • Dilution of minority voting strength • County boundary splits • Single-member districts	Federal Court cross congressional charges (5/82); pending trial in summer of 1983.
North Dakota	None		
Ohio	Flanagan v. Gillmor Federal Court (C)	• Requests court to assume jurisdiction for redistricting • Population deviation • Dilution of minority voting strength • Political gerrymandering	Federal panel: all charges dismissed except population deviation pending decision in New Jersey case (8/25/82); case still pending.
	Laurence v. Rhodes Federal Court (L - 9/10/81)	• Requests injunction for plan because it gerrymandered against Republicans	Federal Court: suit dropped.
Oklahoma	None		
Oregon	Caroo v. Paulus State Supreme Court (L - 10/80)	• All senators to be elected in 1982 • Municipal boundary splits • Authority of Secretary of State to assign senators to specific districts challenged	State Supreme Court declares plan unconstitutional (9/23/81); court upholds Secretary of State's plan (10/27/81).
Pennsylvania	In Re: Pennsylvania Congressional Districts Reapportionment Cases Federal Court (C - 2/15/82)	• Alleges congressional plan is unconstitutional • Requests court to delay primary • Population deviation • Requests court to assume jurisdiction	U.S. Supreme Court affirms 3-judge federal panel which affirmed plan drawn by legislature. (7/6/83)
	Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission Federal Court (L - 1/28/82)	• Dilution of minority voting strength	U.S. Supreme Court upheld commission plan. (2/24/82)

State	Court Case	Issues	Status
Rhode Island	Licht v. State of Rhode Island and Providence Plantations State Superior Court (L - 4/82)	• Challenges validity of Senate plan	State Superior Court ordered legislature to redraw plan. (6/3/82)
	Holmes v. State of Rhode Island State Superior Court (L - 4/82)	• Challenges validity of House plan	State Superior Court upheld House plan. (10/29/82)
	Farnum v. State of Rhode Island Federal Court (L - 8/7/82)	• Challenges 1974 Senate District lines imposed for 1982 elections by legislature	Federal Court declares 1974 Senate districts invalid. (1/10/83)
South Carolina	NAACP v. Riley Federal Court (C - 10/14/81)	• Denial of equal protection under the law • Dilution of minority voting strength • Violation of Voting Rights Act • Population deviation • Failure of legislature to complete redistricting	Federal court ordered plan proposed by the House implemented with minor [illegible] (3/8/82); U.S. Supreme Court upheld the court plan (11/23/82).
South Dakota	O'Connor v. Kundert Federal Court (L - 7/2/81)	• Multi-member districts	Federal Court dismissed case as moot due to adoption of single-member district plan. (1/7/82)
	Twinnereim v. Kundert State Supreme Court (L - 7/29/81)	• County boundary splits	State Supreme Court refused to hear the case. (8/14/81)
Tennessee	Lockert v. Crowell State District Court (L)	• County boundary splits in Senate plan	State Supreme Court overturned lower court decision and upheld Senate plan. (3/30/82)
Texas	Seamon v. Clements Federal Court (C)	• Dilution of minority voting strength	Federal Court ordered an interim plan for 1982 elections. (2/27/82)
	Terrazas v. Clements Federal Court (L)	• Dilution of minority voting strength • Population deviation • Disruption of the election process • Violation of Voting Rights Act	Federal Court redrew legislative plan for 1982 elections. (3/5/82)
Utah	Dmitrich v. Monson State Supreme Court (L - 1/29/82)	• Representation in districts with holdover senators	State Supreme Court rejected motion.
	Rawson and Wiese v. State of Utah State District Court (L)	• Provisions regarding holdover senators	District court granted summary judgment and dismissed case. (4/82)
Vermont	Petition for Review of Apportionment Bill State Supreme Court (L)	• County and municipal boundary splits	State Supreme Court dismissed cases. (5/17/82)

State	Court Case	Issues	Status
Virginia	Cosner v. Dalton Federal Court (L)	• Contest House plan in nine cases • Dilution of minority voting strength • County boundary splits • Population deviation	Federal Court declared House plan unconstitutional, orders elections to be held 1981, 1982, 1983 (8/28/81); court upheld House plan as redrawn (8/21/82).
	Cline v. Robb Federal Court (L)	• Suit brought on behalf of counties who objected to being split into single-member districts in the House	Federal Court upheld House plan. (9/10/82)
Washington	Doch v. Munro Federal Court (C)	• Population deviation • Violation of criterion of communities of interest	Federal Court declared plan unconstitutional because of population deviation. (11/82)
	Republican State Committee and Dunn v. Munro Federal Court (C, L - 6/18/81)	• Plaintiffs asked for advisory opinion issuing a declaratory judgment upholding the constitutionality of the legislative plan	Case settled out of court. (1/82)
West Virginia	Brookover v. Manchin Federal Court (C)	• Requests court to compel legislature to complete redistricting	Federal Court approved plan drawn by legislature. (2/22/82)
	Moses v. Rockefeller Federal Court (L - 2/4/82)	• Requested court to require legislature to draw plan • Violation of population equality requirements	Federal Court accepted enacted plan. (3/25/82)
Wisconsin	AFL-CIO v. State Elections Board Federal Court (C, L)	• Present apportionment is unconstitutional • Request that court enjoin elections until valid plans are in effect	Federal Court ordered a court plan with minor corrections until valid constitutional plan enacted by law. (6/17/82) Congressional plan challenge dismissed April 2, 1982.
Wyoming	Brown v. Thomson Federal Court (L - 10/2/81)	• Dilution of voter strength • Population deviation	U.S. Supreme Court upheld legislative plan. (6/22/83)

C - Challenge to congressional plan.
L - Challenge to legislative plan.

Dates in parentheses with challenge designation signifies when case was initially filed.

Prepared by the National Conference of State Legislatures, July 22, 1983.

ALASKA LEGISLATIVE COUNCIL

LEGISLATIVE AFFAIRS AGENCY

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LEGISLATIVE APPORTIONMENT

IN ALASKA

Historical and Future Considerations

NOVEMBER 1966

LEGISLATIVE APPORTIONMENT

IN ALASKA

Historical and Future Considerations

Prepared by the

LEGISLATIVE AFFAIRS AGENCY

Fifth State Legislature

November 1966

Alaska Legislative Council
Legislative Affairs Agency

Pouch Y, State Capitol
Juneau, Alaska

FOREWORD

Senate Concurrent Resolution No. 39 was passed by the last legislature because the Superior Court, on April 11, 1966, in Nolan et al v. Wade,/1 directed that a constitutional convention be held or constitutional amendments be proposed by the legislature and ratified by the people before December 1, 1967, the amendment to provide for a valid reapportionment of the state Senate in conformity with the rulings of the U.S. Supreme Court. The resolution directed the Legislative Council to gather "information on all facets of the matter of legislative reapportionment to the end that the 1967 session of the legislature may have all the necessary data and alternatives on hand for consideration when preparing amendments to the state constitution regarding legislative apportionment" in conformity with the opinion in Nolan et al v. Wade.

Nolan et al v. Wade was appealed to the state Supreme Court and, as will be discussed in detail in this study, the Supreme Court almost entirely overturned the decision of the Superior Court. The Supreme Court declared the Governor's Proclamation of Reapportionment and Redistricting valid and the 1966 elections have been held under that proclamation. Therefore, the stated purpose for SCR 39 no longer exists since there is no need for a constitutional amendment by December 1, 1967. As a consequence, it was questionable whether the staff should proceed with this study. It was concluded that reapportionment will conti to be of interest to the legislature since the constitut will eventually have to be amended to conform to the fede and state decisions even though it need not be done in 19t

This study will cover the history of legislative apportionment in Alaska from the Organic Act of 1912 through the November 1966 elections, the federal and state cases on reapportionment, and possibilities for future action on this subject.

John C. Doyle
Executive Director

Juneau, Alaska
November 1967

/1 Memorandum Opinion, Civil Action No. 66-30 Superior Court for the State of Alaska, First Judicial District

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I. HISTORY OF LEGISLATIVE APPORTIONMENT IN ALASKA/1

The Territory of Alaska was first given legislative authority of its own in 1912 in the Organic Act of 1912 (37 Stat. 513). This Act provided for a bicameral legislature consisting of a House of Representatives of sixteen members and a Senate of eight members. For thirty-two years two senators and four representatives were elected at-large from the four judicial divisions into which the territory was divided, and the remaining seats were divided equally among the four divisions. By a 1942 amendment to the Organic Act (56 Stat. 1016), effective for the election of 1944, the Senate was increased to a membership of sixteen and the house to a membership of 24, the latter apportioned on the basis of estimated civilian population. The 1942 Act also provided for reapportionment of seats by the United States Director of the Census after the 1950 decennial census, and the territorial legislature was authorized to provide for legislative districting within the judicial divisions.

In 1951 the director of the census reapportioned the House seats on the basis of the civilian population reported in the 1950 census, with the following results:

Judicial Division	Apportionment 1944 - 1951	Apportionment 1952 - 1958
First	8	6
Second	4	3
Third	7	10
Fourth	5	5
	24	24

The apportionment and districting for the election of fifty-five delegates to the constitutional convention of 1955-1956 anticipated the provisions of the Alaska constitution on that point. The twenty-two election districts were of three types:

(1) The seventeen one-member districts were based on existing districts or combinations of those districts.

(2) Each of the four judicial divisions constituted a multimember district, as follows: First Division 7; Second Division 4; Third Division 12; and Fourth Division 8.

/1 "Reapportionment" by Robert B. McKay, 1965

(3) The territory as a whole constituted one district from which seven delegates-at-large were elected.

Alaska was admitted to statehood by proclamation dated January 3, 1959, on the basis of the constitution drafted in the 1955 constitutional convention. Under the constitution the Alaska legislature was divided into a House of Representatives of forty members and a senate of twenty. /2 Reapportionment is an executive function to be performed by the governor immediately following each United States decennial census. /3 The governor can appoint a reapportionment board of five members to act in an advisory capacity, which must include one member from each of the four senate districts. /4 The board must submit a report to the governor within ninety days following the official reporting of each census, and the governor must, by proclamation, reapportion or redistrict within ninety days thereafter. /5 Any qualified voter may apply to the Superior Court to compel the governor "by mandamus or otherwise" to perform his reapportionment duties. /6

Under the constitution, apportionment of the House is primarily by population. "Reapportionment shall be by the method of equal proportions." /7 Originally the state was divided into twenty-four election districts. /8 Then the total civilian population was divided by forty and "each election district having the major fraction of the quotient obtained" was allotted one representative. /9 If "the total civilian population of any election district falls below one-half of the quotient," provision is made for attaching the district to another election district "within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article." /10 After publication of the 1960 census results, the governor accepted the recommendations of his advisory board on apportionment and reduced the number of districts to nineteen, thereby meeting more nearly the population standard fixed in Article VI, Section 4.

Apportionment of the Senate is a combination of area and population, with the emphasis on area. The state was

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/2 Alaska Constitution, Art. II, Sec. 1
/3 Ibid., Art. VI, Sec. 3
/4 Ibid., Art. VI, Sec. 8
/5 Ibid., Art. VI, Sec. 10
/6 Ibid., Art. VI, Sec. 11
/7 Ibid., Art. VI, Sec. 4
/8 Ibid., Art. XIV, Sec. 1
/9 Ibid., Art. VI, Sec. 4
/10 Ibid., Art. VI, Sec. 5

originally divided into sixteen senate districts, /11 which were continued in the 1961 reapportionment.

The governor is allowed to change the size and area of election districts, but each district must "be formed of contiguous and compact territory containing as nearly as practical a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible." /12 Senate districts may be modified to reflect changes in election districts. /13

The report of the commitee on suffrage, elections, and apportionment to the Alaska Constitutional Convention stated in a letter of December 17, 1955, to the president of the convention that "These (election) districts are economic units of the Territory and may be compared in a sense to Swiss cantons. Their boundaries are watersheds wherever possible; waterways and steamship routes are not used as boundaries, but are considered as highways piercing valleys."

In view of the 1964 U.S. Supreme Court decisions discussed later in this study, it was obvious that Alaska must reapportion its state Senate. There was a population disparity of nineteen to one in the Senate and 2.5 to one in the House. In August 1964 the state attorney general advised the governor that he had authority to reapportion the state Senate. The governor then called the Advisory Reapportionment Board into session. That board submitted its report to the governor in September 1964. In March 1965 the governor reconvened the board for additional study and it submitted its second report to the governor on June 4, 1965. /14 On September 3, 1965, the governor issued a "Proclamation of Reapportionment and Redistricting" /15 which reapportioned the state Senate, to be effective for the 1966 election. The new reapportionment plan was designed to satisfy the equal-population principle. Each of the eleven senate districts (composed of one to two election districts) was given one senator except Anchorage (seven) and Fairbanks (four). No change was made in the house districts as promulgated in 1961. On February 21, 1966, fifteen state senators applied to the

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/11 Ibid., Art. XIV, Sec. 2
/12 Ibid., Art. VI, Sec. 6
/13 Ibid., Art. VI, Sec. 7
/14 Appendix "A"
/15 Appendix "B"

Superior Court for the First Judicial District in Juneau for a permanent injunction to prohibit the secretary of state from conducting an election under the governor's proclamation. Both sides eventually moved for a summary judgment and they agreed that Section 2, Article XIV of the Alaska Constitution was invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. The basic issue was the validity of the governor's Proclamation of Reapportionment and Redistricting.

On April 18, 1966, the Superior Court declared the governor's proclamation null and void. The court retained jurisdiction, providing that if a valid constitutional amendment modifying the state Senate apportionment was not adopted by December 1, 1967, the court would issue the necessary orders to insure that the 1968 election would be held under an apportionment plan consistent with the decisions of the U.S. Supreme Court.

The case was appealed to the Alaska Supreme Court which held that the governor and the reapportionment board had implied power under the constitution to reapportion the Senate on an interim basis. The validity of the reapportionment plan set out in the proclamation was not questioned with respect to the requirements of the equal protection clause of the Fourteenth Amendment so the court did not discuss that matter. The court delcared the governor's reapportionment plan effective for the 1966 elections and "thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate."

The 1966 elections have been held under the governor's proclamation as decreed by the state Supreme Court. The legislature may now wish to prepare consitutional amendments relating to reapportionment of the legislature or have a constitutional convention consider this problem. Scheduling factors in proposing and adopting constitutional changes are discussed in part VI of this study.

II. IMPORTANT APPORTIONMENT CASES IN THE U. S. SUPREME COURT

BAKER v. CARR, 369 U.S. 186 (1962)

> "This civil action was brought under 42 U.S.C. secs. 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties, 'these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes' was dismissed by a three-judge court convened under 28 U.S.C. sec. 2281 in the Middle District of Tennessee. The court held it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F.Supp. 824. We noted probable jurisdiction of the appeal. 364 U.S. 898. We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion." 369 U.S. at 187.

The court held only "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this court, that the appellants have standing to challenge the Tennessee apportionment statutes."

The court goes on to discuss at considerable length the factors which went into the determination of these three matters. In discussing the "justiciability" of the question presented, the court said:

> "We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a 'political question' and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable 'political question.' The cited cases do not hold the contrary."

WESBERRY v. SANDERS, 376 U.S. 1 (1964)

This case, while dealing with state establishment of districts for the election of representatives to the federal Congress, contains a worthwhile discussion of the history of the Great Compromise, by which agreement was reached on having the population represented in one house and the states represented in the other. This matter is important because of the argument which the Supreme Court subsequently makes that the "Federal analogy" is false as applied to state legislatures.

REYNOLDS v. SIMS, 377 U.S. 533 (1964)

> "On August 26, 1961, the original plaintiffs...filed a complaint in their own behalf and on behalf of all similarly situated Alabama voters, challenging the apportionment of the Alabama legislature.... The complaint alleged a deprivation of rights under the Alabama Constitution and under the Equal Protection Clause of the Fourteenth Amendment, and asserted that the District Court had jurisdiction under provisions of the Civil Rights Act, 42 U.S.C. secs. 1983, 1988, as well as under 28 U.S.C. sec. 1343(3)." 32 LW at 4535.
>
> "Plaintiffs below alleged that the last apportionment of the Alabama Legislature was based on the 1900 federal census, despite the requirement of the State Constitution that the legislature be reapportioned decennially. They asserted that, since the population growth in the State from 1900 to 1960 had been uneven, Jefferson and other counties were now victims of serious discrimination with respect to the allocation of legislative representation. As a result of the failure of the legislature to reapportion itself, plaintiffs asserted, they were denied 'equal suffrage in free and equal elections...and the equal protection of the laws' in violation of the Alabama Constitution and the Fourteenth Amendment to the Federal Constitution." 32 LW at 4536.

They showed that the history of the situation clearly demonstrated that there was no relief available to them except through the District Court. Plaintiffs sought a declaration of the unconstitutionality of the existing apportionment, an injunction against the holding of further elections without reapportionment, and a mandatory injunction requiring that the 1962 elections be held at large.

The District Court initially declined to stay the impending primary election in Alabama, and refrained from acting until the Alabama legislature has been given an opportunity to remedy the admitted discrepancies in the state's legislative apportionment scheme. After the Alabama legislature had failed to act effectively, the court ordered into effect a reapportionment using the best parts of two proposed plans. The District Court recognized that its own plan was only provisional, and would not be acceptable as a permanent apportionment. The District Court then retained jurisdiction while deferring a hearing in the issuance of a final injunction in order to give the provisionally reapportioned legislature an opportunity to act effectively.

Upon review, the Supreme Court approved the actions of the District Court, holding that:

> "...as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, 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."

It also found that the "federal analogy" [see Wesberry v. Sanders, supra] was inapplicable, since there has never been a question of subordinate units of state government surrendering, as did the original 13 States, a portion of their sovereignty in order "to form a more perfect Union."

The court qualified its remarks by stating that "mathematical exactness" was not required, but that a state would have to make "an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." The court also felt that a reasonable plan for periodic reapportionment is acceptable, and specifically approved the decennial reapportionment prescribed in forty-one states.

Finally, the court remarked:

> "...legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."

WMCA, INC. v. LOMENZO, 377 U.S. 633 (1964)

This action was similar in nature to that in Reynolds v. Sims, supra, and challenged the constitutional validity under the Fourteenth Amendment to the federal constitution of the apportionment of seats in the New York legislature. The District Court had initially found "want of justiciability," and dismissed the complaint. Baker v. Carr, supra, having been decided during the pendency of appeal from dismissal, the Supreme Court remanded the case for reconsideration by the District Court in the light of that opinion. The District Court subsequently dismissed the complaint on the merits, finding that the plaintiffs had not shown any invidious discrimination, that the New York Constitution's apportionment provisions were rational, that they were of historical origin and contained no improper geographical discrimination, and that the provisions could be amended by an electoral majority of the citizens of New York.

The Supreme Court, after a detailed examination of the New York scheme of apportionment, found that there was in fact an invidious discrimination against the voters in the more populous districts, as to both houses, and that there was no political remedy and remanded the case to the District Court to determine what relief was available, and when it should be made available to the plaintiffs. /16

LUCAS v. FORTY-FOURTH GENERAL ASSEMBLY OF COLORADO, 377 U.S. 713 (1964)

This case arose on appeal from a District Court decision upholding the validity of the apportionment of seats in the Colorado legislature pursuant to a constitutional amendment approved by the Colorado electorate in 1962.

The Supreme Court noted several features which rendered this case different from the other cases decided on the same date. First, at least one house of the Colorado legislature is at least arguably apportioned according to a population basis. Second, the scheme of apportionment question in the case is one which was adopted by a majority vote of the Colorado electorate at a recent date. Third, in Colorado there is an initiative to propose a constitutional amendment, which requires a percentage of the electorate to sign a petition without regard for the geographical distribution of the petitioners.

/16 For current status of legislative reapportionment in any state, see Appendix "C".

The court found the second and third features unpersuasive as arguments for the constitutionality of the scheme. It said:

> "Except as an interim remedial procedure justifying a court in staying its hand temporarily, we find no significance in the fact that a nonjudicial, political remedy may be available for the effectuation of asserted rights to equal representation in a state legislature. Courts sit to adjudicate controversies involving alleged denials of constitutional rights. While a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved. An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause."

The case was remanded to the District Court to determine whether the imminence of the 1964 primary and general elections required the use of one of the schemes attacked, or whether appellants' rights to cast adequately weighted votes could be effectuated in 1964. /17

MARYLAND COMMITTEE FOR FAIR REPRESENTATION v. TAWES, 377 U.S. 656 (1964)

This case arose under circumstances similar to Reynolds, supra. It adds to case law insofar as it describes the principle that the Supreme Court must of necessity consider the entire apportionment scheme of a legislature, and cannot be restricted, regardless of scope of consideration in inferior courts, to examining the apportionment in one house only. The Supreme Court further makes it clear that while it highly approves of state court attempts to deal with apportionment problems, these courts must apply federal constitutional standards.

/17 For current status of legislative reapportionment in any state, see Appendix "C".

The court remanded the case to the Maryland Court of Appeals with instructions to ensure that election of members to the Maryland legislature in 1966 was conducted in accordance with a constitutional apportionment scheme, noting that there appeared to be adequate time for the legislature to reapportion itself. /18

DAVIS v. MANN, 377 U.S. 678 (1964)

This case arose in much the same way as Reynolds, supra. The District Court found for the plaintiffs, and declared that the challenged 1962 apportionment scheme violated the Equal Protection Clause and accordingly was void and of no effect. Defendants were enjoined from proceeding under the 1962 plan, but operation of the injunction was stayed until the general assembly could act or appeal could be taken to the Supreme Court. After a characteristic examination of the facts surrounding the particular plan of apportionment, the court found that it was violative of the federal constitution and that no adequate political remedy for the malapportionment existed. While noting that the situation in Virginia is different from that in Alabama, since the Virginia legislature has consistently reapportioned itself every ten years as required by the Virginia constitution, the court found that significant uncorrected malapportionment existed, and affirmed the decision of the District Court with the understanding that the District Court would provide plaintiffs with suitable equitable relief should the Virginia legislature itself fail to act to correct the constitutional defects before the 1965 elections. /18

ROMAN v. SINCOCK, 377 U.S. 695 (1964)

Again similar in nature to the suit in Reynolds, supra. Plaintiffs here asked the District Court for relief from malapportionment in the Delaware legislature. Relief sought included a declaration that the apportionment section of the Delaware constitution was unconstitutional, an injunction to prevent further elections from being held under it, and, alternatively, a reapportionment by the court or a direction that the November 1962 elections be held on an at-large basis.

The District Court refused to interfere with the November 1962 elections, and the legislature elected approved, in January 1963, a constitutional amendment to the legislative

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/18 For current status of legislative reapportionment in any state, see Appendix "C".

apportionment provisions of the constitution. After trial of the suit, the District Court found that the apportionment both before and after the 1963 amendment resulted in the debasement of certain votes, and gave the general assembly until October 1, 1963, to reapportion itself in accordance with the Fourteenth Amendment. The District Court, having evidence of an apparent intention on the part of state officials not to comply with its instructions, enjoined the holding of any elections under the existing plans. This injunction was stayed by a Supreme Court justice pending outcome of the appeal.

The Supreme Court reviewed the facts of the Delaware situation and found the plan in force in Delaware to be unconstitutional. It affirmed the District Court's decision, and left it up to the District Court to determine.

> "...whether it would be advisable, so as to avoid a possible disruption of state election processes and permit additional time for the Delaware Legislature to adopt a constitutionally valid apportionment scheme, to allow the 1964 election of Delaware legislators to be conducted pursuant to the provisions of the 1963 constitutional amendments, or whether those factors are insufficient to justify any further delay in the effectuation of appellants' constitutional rights." 32 LW 4588. [N.B. It appears that "appellants" in the preceding quote should read "appellees."]

The court approved the manner in which the District Court gave the Delaware legislature an opportunity to act, and its deferral of decision until after the November 1962 elections "because of the imminence of that election and the disruptive effect which its decision might have had." Taking exception to the attempt of the District Court to establish a mathematical figure by which constitutionality could be judged, the court said:

> "Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." /19

/19 For current status of legislative reapportionment in any state, see Appendix "C".

BURNS v. RICHARDSON, __ U.S. __, 16 L ed 2d 376 (1966)

In proceedings challenging the constitutionality of Hawaii's legislative apportionment, the District Court for the District of Hawaii held that provisions of the Hawaii Constitution apportioning the state senate were unconstitutional under the Fourteenth Amendment to the federal constitution, and ordered the legislature to give the electorate an immediate opportunity, in a special election, to authorize a convention for the purpose of amending the state constitution, the court retaining jurisdiction so that it could reapportion the senate if the electorate failed to authorize the convention or if a suitable reapportionment amendment was not adopted by the convention and approved by the electorate. (238 F Supp 468) The court subsequently suspended its order that a special election be held, and ordered the legislature to enact a statute providing, on the basis of the number of registered voters, an interim plan of apportionment of the senate until the next general election. After the legislature enacted an interim senate reapportionment plan, the court disapproved it and ordered immediate resort to a convention, its disapproval of the plan being based upon the failure of the legislature to create single-member senatorial districts instead of using multimember districts. (240 F Supp 724)

On appeal, the U. S. Supreme Court vacated the District Court's orders and remanded the case for further proceedings. In an opinion by Justice Brennan, expressing the view of six members of the court, it was held that the legislature's freedom of choice to devise a reapportionment plan should not have been restricted by the District Court beyond the clear commands of the equal protection clause of the Fourteenth Amendment; that the legislature's use of multimember districts in its interim reapportionment plan was not shown to have constituted invidious discrimination in violation of the constitution; that the use of the number of registered voters as a basis for the interim plan was not shown to have produced a distribution of legislators substantially different from that which would have resulted from the use of a permissible population basis and was not unconstitutional; and that the District Court should adopt the legislature's interim plan, but should retain jurisdiction pending the effectuation of a permanent plan of legislative reapportionment.

Justice Harlan concurred in the result but expressed the view that an earlier Supreme Court decision involving legislative apportionment was constitutionally wrong, and that even under that decision an apportionment plan based on the number of registered voters should be considered permissible regardless of whether it approximates some other kind of a population apportionment.

III. APPORTIONMENT CASES IN ALASKA

NOLAN ET AL v. WADE, Civil Action No. 66-30, Superior Court, First Judicial District, Juneau. Memorandum opinion filed April 11, 1966.

For the first time, in either state or federal courts, the question of whether or not the Alaska State Senate was validly apportioned was raised in the above case. In addition, there was also raised the question of whether or not the governor's Proclamation of Reapportionment and Redistricting issued on September 3, 1965, was a valid exercise of executive authority and if not whether the 1966 elections could be held under the existing constitutional apportionment.

The parties conceded and the court found that the state Senate was invalidly apportioned under the equal protection clause of the Fourteenth Amendment of the U. S. Constitution.

The court held that the governor's proclamation was issued solely under the authority vested in him by Art. VI of the State Constitution, "Legislative Apportionment", and that the State Constitution gives no power to the governor to apportion the Senate. The court then directed that the 1966 elections be held under the existing provisions of the constitution and fixed December 1, 1967, as a reasonable date for enactment and adoption of a valid apportionment of the state Senate by constitutional amendment. The court retained jurisdiction of the case so that if a valid apportionment plan for the state Senate was not timely adopted, it could enter whatever order it considered necessary to permit a valid plan of apportionment to be used in the 1968 elections.

WADE v. NOLAN ET AL, 414 P2d 689 (1966)

The decision of the Superior Court was appealed to the Alaska Supreme Court. The Supreme Court agreed with the Superior Court that the state Senate was unconstitutionally apportioned because under the constitutional apportionment 30.7 per cent of the voters resided in districts which could elect a majority in the Senate.

However, the Supreme Court disagreed with the Superior Court which had held that the governor's reapportionment was invalid. The Supreme Court looked at Article VI of the constitution in detail. The court found that under Article VI reapportionment is an executive function in Alaska. The court looked at decisions from other states in which the question was where the authority lay to reapportion a frozen legislative body

on an interim basis. /20 It concluded that in such cases the courts recognized that the agency having the power of reapportionment could reapportion a "frozen" legislative body on an interim basis although not specifically granted that power by the constitution.

The court said that Article VI of the constitution as a whole and the appropriate convention minutes indicate the pervading purpose and intent of the convention was that reapportionment authority and responsibility be in the governor and the reapportionment board; "it is only reasonable to imply that it would have required the governor to periodically reapportion the Senate had it known that its frozen formula would be declared invalid." The court then held that the governor and the board had the implied power to reapportion the Senate on an interim basis.

/20 Buckley v. Hoff, 243 F Supp 191(D. Vt. 1964); Faubus v. Kinney, 389 S.W.2d 887 (1965); In re Apportionment of Michigan Legislature, 137 N.W.2d 495 (1965)

IV. POSSIBLE DEVIATIONS FROM SUPREME COURT RULE "ONE MAN, ONE VOTE"

It is clear that the principle which must underlie apportionment is "one-man, one-vote" in both houses. It presently appears that the only factor which a state may consider, apart from numbers, is political subdivisions./21 The Supreme Court does not feel that there can be a mathematical standard for testing the constitutionality of apportionment with respect to the permissable variation from the one-man, one-vote standard, but that the state must "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." /22 The deviation may be "such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." /23 It is clear that a state cannot give consideration to geographical considerations or have a variation to insure effective representation for sparsely settled areas as was done in the Alaska Constitution.

One probably minor aspect of determination of equality presented by the language of the Alaska Constitution is the provision of Article VI, Section 3, which provideds that the governor's decennial reapportionment shall be based upon the civilian population. This provision is not without precedent, as approximately the same limitation occurs in Washington. A number of other states have various limitations on the portions of the electorate to be used in apportioning legislative seats. The civilian limitation presents problems in that (1) there are military personnel who are residents of the state and entitled to vote in the state; (2) there is a great disparity in the distribution of military personnel throughout the state; and (3) the ratio of military to civilian personnel in the state is extremely high. In view of the fact that most military personnel stationed in Alaska do not vote here, it is probable that a deletion of the provision would give rise to much greater inequality, but it might be necessary to modify the provision somewhat to include resident military personnel in the apportionment figure. The Supreme Court has said in connection with military personnel, that "discrimination

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/21 Dissent to Reynolds v. Sims by Justice Harlan
/22 Reynolds v. Sims, 377 U.S. 533 (1964)
/23 Roman v. Sincock, 377 U.S. 695 (1964)

against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible." /24

In order to convey some idea of how the Supreme Court in Reynolds v. Sims, supra, and companion cases, and in the cases summarily decided on June 22, 1964, and the U.S. District Courts in cases decided after June 15, 1964, have been handling the situation, the following is a list of the pertinent cases together with the numerical figures describing the disparities alleged to result in invidious discrimination, and the action on the case:

Reynolds v. Sims, Alabama

Constitutional plan in effect since 1901: population-variance ratios of up to 41 - 1 in the Senate, 16 - 1 in the House.

Proposed constitutional amendment: population-variance ratios of up to 59 - 1 in the Senate and 4.7 - 1 in the House.

Crawford-Webb Act (standby legislation to take effect in 1966 if constitutional amendment should fail) population-variance ratios of up to 20 - 1 in the Senate and 5 - 1 in the House.

All rejected: A provisional plan put into effect using parts of the proposed constitutional amendment and part of the Crawford-Webb Act, with an opportunity given to the provisionally reapportioned legislature to adopt a valid permanent scheme.

WMCA v. Lomenzo, New York

1894 Constitution, 1960 census apportionment: maximum population-variance ratio in Senate 3.9 - 1 and in the House 21 - 1.

Case remanded to District Court to determine whether to conduct the election under the old provisions or whether conditions permit redress of the constitutional inequities before the 1964 elections. The state Court of Appeals appointed a five-man bipartisan commission to draw up a valid reapportionment plan by March 14, 1966, after the legislature failed to agree on a plan.

/24 Davis v. Mann, 377 U.S. 678 (1964)

Lucas v. Forty-fourth General Assembly of Colorado

Colorado Constitution as amended in 1962: maximum population-variance ratio is 3.9 - 1 in the Senate and 1.7 - 1 in the House.

Apportionment of the legislature as a whole was rejected, with the court specifically declining to comment upon the population-variance ratio in the House alone. Case remanded to the District Court to determine whether the 1964 elections would have to be conducted under the old scheme or whether appellants' right to cast adequately weighted votes could be effectuated in 1964.

Maryland Committee for Fair Representation v. Tawes

Maryland Constitution: maximum population-variance ratio is 32 - 1 in the Senate and 12 - 1 in the House.

Stopgap legislation in 1962 reapportioned the House so that a maximum population-variance ratio of 6 - 1 continued to exist.

Case remanded to Maryland court with instructions to act only if the legislature should fail to reapportion itself constitutionally.

Davis v. Mann, Virginia

Virginia Code: maximum population-variance ratio is 2.65 - 1 in the Senate and 4.36 - 1 in the House.

Case remanded to the District Court with instructions to exercise its equitable powers only should the Virginia legislature not act to create a constitutionally acceptable plan of apportionment before 1965, the next date of election of Virginia legislators.

Roman v. Sincock, Delaware

Delaware Constitution prior to 1963 constitutional amendment: maximum population-variance ratio of 15 - 1 in the Senate, and 35 - 1 in the House.

After 1963 amendment if effectuated: maximum population-variance ratio in Senate remains the same, reduced in House to 12 - 1.

Case remanded to District Court to determine whether 1964 elections should be held under the terms of the 1963 amendment or whether relief should be granted earlier.

In those cases summarily decided on June 22, 1964, the Supreme Court:

Affirmed Meyers v. Thigpen, 211 F. Supp. 826 (1963) in which it was held that equal protection was not denied by Washington's congressional districting in which the maximum population-variance ratio was 1.5 - 1 and that the District Court has jurisdiction of a legislative apportionment case in which invidious discrimination is alleged, even though Washington voters in 1962 rejected an initiative proposal to reapportion on the basis of population.

Reversed Nolan v. Rhodes, 31 LW 2641 (1963) in which it was held that the provisions of the Ohio Constitution which guarantees each county at least one representative in the lower house does not invidiously discriminate against urban voters proportionally represented in the upper house. (Ohio's maximum population-variance ratio in the lower house is approximately 14 - 1.)

Affirmed Williams v. Moss, 32 LW 2077 (1963) and Oklahoma Farm Bureau v. Moss (same citation) in which judicial reapportionment was held to be available where 1963 legislature had failed to correct malapportionment declared unconstitutional in 1962, even though a constitutional amendment had been proposed which would be placed before the voters in 1964 and would, if approved by the voters, become effective in 1965.

Affirmed Lucas v. Adams (USDC MFla May 22, 1963) in which it was held that no claim was stated on which relief could be granted by a complaint seeking to enjoin enforcement of the 1963 apportionment act on the grounds that the Act invidiously discriminates against residents of more populous counties by giving residents of smaller counties, regardless of population, the right to elect at least one lower house member, while failing to secure to somewhat similar numbers of citizens living in more populous counties the right to elect at least one house member.

Reversed Germano v. Kerner, 220 F. Supp. 230 (1963) which held that Illinois' apportionment of the upper house on a geographical basis did not violate the Fourteenth Amendment so long as the lower house was

apportioned on a population basis. (The maximum population-variance ratio in the Illinois Senate is 10 - 1.)

Reversed Marshall v. Hare (USDC EMich, March 16, 1964) which held that the Fourteenth Amendment was not violated by a provision of the Michigan Constitution which permitted a maximum population-variance of 4 - 1 in the upper house, even though this representation was said to be necessary to assure representation to certain counties.

Reversed Hearne v. Smylie, 225 F. Supp. 355 (1963) which held that (a) the District Court was obliged to dismiss as beyond its capabilities a declaratory judgment suit alleging Idaho's legislative apportionment to be irrational and unconstitutional and (b) owing to its inability to devise an effective remedy for injustices claimed by voters to result from malapportionment of the legislature, the District Court was required to dismiss, for want of equity, a voters' suit to enjoin further elections under Idaho's apportionment statute.

Affirmed Pinney v. Butterworth (USDC Conn. March 26, 1964) in which it was held that voters in larger towns were discriminated against by a limitation in the Connecticut Constitution that every town should have at least one and not more than two representatives in the lower house. (The maximum population-variance ratio in the lower house is 425 - 1.)

Affirmed Hill v. Davis (USDC SIowa, January 14, 1964) in which it was held that Iowa's constitutional provision that each county should have one representative in the upper house and at least one in the lower house was unconstitutional.

William B. Saxbe in "Criteria Established by Court Decisions" /25 concludes:

(1) Each legislator must represent approximately the same number of people. As a rule of thumb, a plan under which districts deviate from the population of the perfect district by no more than fifteen per cent will be

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/25 Reapportioning Legislatures, Chapter 4, Howard D. Hamilton, Editor, 1966.

constitutional, and a plan having districts that exceed this fifteen per cent limit will probably be unconstitutional. /26

(2) An apportionment plan cannot be used for purposes of racial discrimination. Any plan which results in the power of minority groups being split between several districts, or overwhelmed in a multiple member district by a monolithic majority, is likely to be held invalid.

(3) As a strictly legal proposition, it is unclear whether political gerrymandering raises a judicial question, but the interests of good government obviously make gerrymandering an unacceptable practice.

(4) Multiple-member districts are not unconstitutional per se. However, if used for purposes of racial discrimination, they will be unconstitutional. Additionally, if huge blocks of votes are seen in one district it is not likely to meet court approval.

(5) Sitting legislators have no constitutional right to their office. If an attempt to protect such legislators results in an apportionment plan that violates the other guidelines or which would continue in office legislators who were elected under an invalid system, then that plan is unconstitutional.

/26 See chart on the following pages. And see Appendix "E" for 1966 electoral percentages in all states.

CHARTS

SHOWING POPULATION FIGURES

PER HOUSE AND SENATE DISTRICT

and

APPORTIONMENT FORMULA

House District Number	House District Name	1960 Civilian Population	Number of Rep's	Population / Rep's	Senate District	Number of Senators	Population / Senators
1	Ketchikan	11,537	2	5,768	A	1	11,537
2	Wrangell-Petersburg	4,181	1	4,181	B	1	10,786
3	Sitka	6,605	1	6,605			
4	Juneau	9,545	2	4,773	C	1	12,471
5	Lynn Canal	2,926	1	2,926			
6	Cordova-Valdez	3,936	1	3,936	D	1	9,197
7	Palmer-Wasilla	5,261	1	5,261			
8	Anchorage	68,456	14	4,890	E	7	9,780
9	Seward	2,956	1	2,956	F	1	8,646
10	Kenai	5,690	1	5,690			
11	Kodiak	5,367	1	5,367	G	1	8,961
12	Aleutian Islands	3,594	1	3,594			
13	Bristol Bay	3,485	1	3,485	H	1	8,958
15	Yukon-Kuskokwim	5,473	1	5,473			
16	Fairbanks	34,958	7	4,994	I	4	8,740
17	Barrow-Kobuk	5,449	1	5,449	J	1	11,036
18	Nome	5,587	1	5,587			
14 /29	Bethel	5,412	1	5,412	K	1	8,469
19	Wade-Hampton	3,057	1	3,057			
		193,475	40			20	

/29 Bethel is out of numerical order since it is part of Senate District K

FORMULA FOR OBTAINING POPULATION FIGURE REPRESENTED BY EACH LEGISLATIVE SEAT /27

House	Senate
4,837 people should be represented by one legislator (40/ 193,475)	9,674 people should be represented by one legislator (20/ 193,475)
15% variance over 4,837 - 5,563	15% variance over 9,674 - 11,125
15% variance under 4,837 - 4,111	15% variance under 9,674 - 8,223
4,719 (41/ 193,475)	9,213 (21/ 193,475)
15% variance over 4,719 - 5,427	15% variance over 9,213 - 10,595
15% variance under 4,719 - 4,011	15% variance under 9,213 - 7,831

The above figures indicate that although each member of the House should represent 4,837 people, that in fact the representative from House District No. 5 represents only 2,926, while the representative from House District No. 3 represents 6,605.

/27 1960 civilian population of Alaska (193,475) divided by membership of the house.

V. CONSIDERATIONS FOR CONSTITUTIONAL CHANGES

A. Alaska Constitution

Article II

Section 3. An election has been held under the new apportionment scheme, and with the new plan in effect, this section is again appropriate. It is questionable whether any change should be made.

Article VI

Section 3. The Senate as well as the House should be covered by this section. A change may be indicated here in connection with basing the apportionment upon the civilian population. A possible change to bring the section in line with the Supreme Court's expressed view in Davis v. Mann, supra, would be to insert after "civilian" the words "and resident military". This change, if adopted, must also be made in other sections of this article where the phrase appears.

Sections 4 - 7. These sections embody provisions which now will permit the governor to redistrict the House within the requirements of the equal protection clause. It appears, however, that the limitation of section 7 would prohibit him from doing the same for the Senate within the present framework. A number of possible alterations are therefore possible in these sections. Such provisions as prevent the governor from complying with the mandate of the United States Constitution could merely be removed, or alternatively, a section or sections could be substituted for the present sections 4 - 7 which would specifically enunciate the principle of equal representation as a basis for the apportionment of both houses of the legislature.

Section 10. This section provides only for a decennial reapportionment, not for a reapportionment of the kind which has taken place in the 1966 election. Therefore, while the section is sound as a permanent part of the article, it was ignored in order to carry out the present reapportionment. The legislature may want to consider whether any change in the wording is indicated to take care of a similar situation in the future.

Article XIV

Sections 1 and 3. These sections set up the original apportionment schedule for the House and were in effect superseded by the action of the Reapportionment Board and the governor culminating in the reapportionment proclamation of September 3, 1965.

Section 2 is the description of the senatorial districts which will disappear with Senate reapportionment and redistricting.

It appears that Article XIV should be deleted in its entirety since it has served its purpose for the initial apportionment of seats in the first state legislature and no longer rules.

It should be mentioned that there seems to be a procedural question in preparing and voting on this series of amendments. The changes necessary to bring the constitution into conformity with the federal constitution may be several in number, affecting different sections and even articles of the constitution, yet closely related to one another. It would be problematical to regard each change in wording as an independent "amendment" since the integrated plan could be rendered meaningless if one part failed. It is suggested, therefore, that the situation might be simplified by the use of a kind of "one-subject" rule, by which changes proposed would be separated to the extent possible, but changes in different sections which formed part of a plan and would be meaningless independently would be considered a single "amendment" for purposes of proposal and placement on the ballot, and would stand or fall together upon referral to the people.

B. Other Considerations

(1) The number of members in each house. When considering constitutional amendments, it might be well to change the present constitutional provisions for even-numbered membership in each house to an odd number, e.g., a Senate of 19 or 21 members and a House of 39 or 41 members to avoid tied votes.

(2) Use of civilian population as an apportionment basis. Thus far there has been no judicial determination of record as to the constitutionality of using strictly civilian population as a basis for determining apportionment of legislative seats. Most states use total population but variations include using the total population excluding aliens, regular military, and non-tax paying Indians, the number of registered voters,

the number of persons voting in the preceding general election for a certain office (e.g., the governor), and, in Indiana, the male population over 21 years of age. See the discussion in the June 1, 1965, opinion of the state attorney general. /28

(3) Multi-member districts. The Advisory Reapportionment Board recommended that District 8 (Anchorage) be divided into four House Districts and four Senate Districts. The governor, in his proclamation, did not make any changes in the House Districts, and House District 8 remained a multi-member district. The governor designated House District 8 as Senate District E, with the seven senators running at large. The governor gave two reasons for his decision that House District 8 and Senate District E would be multi-member districts. First, Anchorage has traditionally been a multi-member district and secondly, it would be unfair to divide Anchorage into more than one legislative district on the basis of the 1960 census figures because they became obsolete after the 1964 earthquake which resulted in a radical population dislocation. See the discussion in the June 1, 1965, opinion of the state attorney general. /29

(4) Unicameral Legislature. There is evidence of increasing interest in the unicameral legislature idea (Nebraska) since the new requirement for apportionment of both houses on a strict apportionment basis removes the original purpose of a bicameral -- a balance of having one house based mainly on population and the other emphasizing area representation. However, there are many factors to be considered in discussing the relative merits of a bicameral versus a unicameral legislature that go beyond the differences in the basis of apportionment for a bicameral legislature.

/28 Appendix "D"
/29 Idem.

VI. SCHEDULE FACTORS IN PROPOSING AND ADOPTING CONSTITUTIONAL CHANGES IN LEGISLATIVE APPORTIONMENT

1967 — If the 1967 legislature proposed amendments, the proposition would not go on the ballot until August 1968 unless a special election is called for and financed for late 1967 or very early 1968.

1968 — If a regular election schedule is followed, amendments approved by the voters in 1968 would be effective for the 1970 filings and elections.

1970 — Elections could be held under a new apportionment-districting plan. The federal decennial census is reported late in the year. If the census is still the basis, the advisory board or other authority would undoubtedly take into 1971 to come up with a new plan effective for 1972. If no constitutional convention is held in the meantime, the proposition asking for voter opinion on a constitutional convention would go on the November general election ballot. A constitutional convention would devise a plan, subject to ratification, which would become effective for the election year 1972.

Without any legislative action in 1967 - 1968, the normal course of events would bring about decennial reapportionment/redistricting effective for the 1972 filings and election. If the decennial census basis is kept and the legislature proposes a constitutional amendment during 1967 - 1968 and the amendment is approved in 1967 - 1968 by the people, it would be operative for only two years. A convention held during the same period would have the same two-year effect.

A P P E N D I C E S

APPENDIX A

REAPPORTIONMENT ADVISORY BOARD

STATE OF ALASKA

June 4, 1965

The Honorable William A. Egan
Governor of Alaska
Juneau, Alaska

Dear Sir:

The Reapportionment Advisory Board reconvened as a result of your official Proclamation, dated March 6, 1965. The Board has held public hearings on the matter of reapportionment in all of the major regions of the State of Alaska. The schedule of those public hearings was as follows:

Fairbanks	May 10th
Nome	May 11th
Anchorage	May 12th
Juneau	May 13th

In addition the following meetings were held by the Board as part of its program for developing a plan of Reapportionment for submittal to you:

Anchorage	March 22nd and 23rd
Fairbanks	April 9th and 10th
Juneau	May 13th and 14th
Anchorage	June 4th

In developing its program for reapportioning the State Legislature the Board has given due consideration to all the data presently available to it. This consists of the report submitted by the Board on December 10, 1964; the more recent opinions of the Attorney General and their relation to the decisions of the Federal Supreme Court which have become available subsequent to the December report; the hearings held; the personal contacts and observations of the Board Members; and all other relevant matter which has been presented in person, by letter, or other form to the Board for its consideration. On the basis of full and complete discussion of the relevant data and material, the Board unanimously recommends the following plan for Reapportionment and Redistricting of the Alaska State Legislature:

a. All existing House Districts except District No. 8 shall remain as presently constituted and retain their present number of House seats.

b. District No. 8 shall be subdivided into four districts. They shall be titled: Anchorage City, Anchorage North, Anchorage Southeast and Anchorage Southwest. The subdivision shall be in accord with the attached descriptions of the four new districts.

c. Anchorage City District shall have eight House seats and four Senate seats assigned to it with the candidates for these seats running at-large from the Anchorage City District.

Anchorage North District shall have two House seats and one Senate seat with the candidates for these seats running at-large from the Anchorage North District.

Anchorage Southeast District shall have two House seats and one Senate seat assigned to it with the candidates for these seats running at-large from the Anchorage Southeast District.

Anchorage Southwest District shall have two House seats and one Senate seat assigned to it with the candidates for these seats running at-large from the Anchorage Southwest District.

d. The House election Districts shall be renumbered from 1 to 22 and named in accord with the attached Schedule of House Apportionment.

e. The Senate Districts shall be fourteen in number and shall be designated by the letters "A" thru "N" and formed of the House Districts listed on the attached schedule of Senate Apportionment.

f. The terms of office for the Senators from the various Senate Districts shall be as set forth in the attached schedule of Senate Apportionment. In Senate Districts "E" and "L", one half of the Senate seats shall be designated as position "A" and one half designated as position "B" for the purpose of the initial election under this schedule of apportionment to insure that one half of the Senate is elected in each biennial election following the initial election.

The Board again wishes to repeat its recommendation that any future Federal Census be taken with more regard to the requirements of the Alaska State Constitution in the matter of redistricting and reapportioning the State Legislature. The use of enumeration districts encompassing more than 1/400th of the population of the State as well as enumeration districts totally surrounding other enumeration districts creates situations which make redistricting and reapportioning the State extremely difficult.

For your information and review the Board is attaching to this report minutes of the Board Meetings and Public Hearings, copies of correspondence received and marked up maps of the Anchorage area indicating the recommended redistricting of existing Election District No. 8.

Respectfully submitted,

Victor D. Toner, Chairman

Irene Ryan

Edward M. Cox

Florence Lancashire

Doris Wilke

ANCHORAGE - CITY AREA

Being that area used in the 1960 Census as the Anchorage City Area and more particularly described as follows:

Beginning at a point on the southerly boundary line of Section 22, T13NR4W, S.M., approximately 1800' west of the easterly boundary line of Section 22; thence east along the southerly boundary line of Section 22 and the centerline of Northern Lights Boulevard to the centerline of Minnesota Drive; thence south along the centerline of Minnesota Drive to the southerly boundary of the Martin Manor Subdivision; thence east along the southerly boundary of the Martin Manor Subdivision to the centerline of Spenard Road; thence north along the centerline of Spenard Road to the centerline of Northern Lights Boulevard; thence east along the centerline of Northern Lights Boulevard to the centerline of Arctic Boulevard; thence north along the centerline of Arctic Boulevard to the centerline of Fireweed Lane; thence east along the centerline of Fireweed Lane to the centerline of the Seward Highway; thence south along the centerline of Seward Highway to the east-west centerline of Section 29, T13NR3W, S.M.; thence east along the east-west centerline of Section 29 to the centerline of Lake Otis Parkway; thence south along the centerline of Lake Otis Parkway to the southerly east-west sixteenth line of Section 28, T13NR3W, S.M.; thence east along the southerly sixteenth line of Section 28 and 27, T13NR3W, S.M., to the north-south centerline of Section 27; thence north along the north-south centerline of Section 27 and Section 22 to the east-west centerline of Section 22, T13NR3W, S.M.; thence east along the east-west centerline of Section 22 to the centerline of Boniface Parkway; thence north along the centerline of Boniface Parkway to the east-west centerline of Section 15, T13NR3W, S.M.; thence west along the east-west centerline of Section 15 to the north-south centerline of Section 15; thence north along the north-south centerline of Section 15 and the centerline of Pine Street to the east-west centerline of Section 10, T13NR3W, S.M., identical with the centerline

of McPhee Avenue; thence west along the centerline of McPhee Avenue to the centerline of Taylor Street, projected; thence south along the centerline of Taylor Street to the centerline of Thompson Avenue; thence west along the centerline of Thompson Avenue, projected, to the intersection with the westerly sixteenth line of Section 9, T13NR3W, S.M.; thence north along the westerly sixteenth line of Section 9 to the centerline of Bluff Road; thence southwesterly along the centerline of Bluff Road to the centerline of Plum Street; thence north along the centerline of Plum Street and its projection to the east-west centerline of Section 5, T13NR3W, S.M.; thence west to the centerline of Knik Arm; thence southwesterly along the centerline of Knik Arm to a point due north of the point of beginning; thence due south to the place of beginning.

ANCHORAGE NORTH

All of that area drained by streams flowing into the Knik Arm from the east from and including the Old Knik River Bridge on the north to a southerly boundary line more particularly described as follows:

Beginning at a point on the centerline of Knik Arm where it intersects the westerly projection of the east-west centerline of Section 6, T13NR3W, S.M.; thence east along the projected east-west centerline of Section 6 & 5, T13NR3W, S.M. to the north-south centerline of Section 5, T13NR3W, S.M.; thence south along the north-south centerline of Section 5 and the centerline of Plum Street to the centerline of Bluff Road; thence northeasterly along the centerline of Bluff Road to its intersection with the westerly sixteenth line of Section 9, T13NR3W, S.M.; thence south along the westerly sixteenth line of Section 9 to the westerly projection of the centerline of Thompson Ave.; thence east along the westerly projection of the centerline of Thompson Ave. and the centerline of Thompson Ave. to the centerline of Pine Street; thence south along the centerline of Pine Street to the south boundary of Section 10, T13NR3W, S.M.; thence east to the intersection with the Knik Arm Drainage Divide.

ANCHORAGE SOUTHEAST

All of that area drained by streams flowing into Turnagain Arm from and including Placer River on the south; and bounded on the west by a line more particularly described as follows:

Beginning at the intersection of the centerline of Seward Highway with the east-west centerline of Section 29, T13NR3W, S.M.; thence south along the centerline of the Seward Highway and the easterly boundary of Section 30, T12NR3Wm S.M. to the centerline of Turnagain Arm.;

and bounded on the north by a line more particularly described as follows:

Beginning at the intersection of the centerline of the Seward Highway with the east-west centerline of Section 29, T13NR3W, S.M.; thence east along the east-west centerline of Sectioh 29 to the centerline of the Lake Otis Parkway; thence south along the centerline of Lake Otis Parkway to the southerly east-west sixteenth line of Section 28, T13NR3W, S.M.; thence east along the southerly east-west sixteenth line of Sections 28 and 27m T13NR3W, S.M. to the north-south centerline of Section 27, thence North along the north-south centerline of Sections 27 and 22, T13NR3W, S.M. to the east-west centerline of Section 22; thence east along the east-west centerline of Section 22, T13NR3W, S.M. to the centerline of Boniface Parkway; thence north along the centerline of Boniface Parkway tothe east-west centerline of Section 15, T13NR3W, S.M.; thence West along the east-west centerline of Section 15 to the north-south centerline of Section 15, T13NR3W, S.M.; thence north along the north-south centerline of Section 15 to the north boundary of Section 15, T13NR3W, S.M.; thence east to the Knik River Drainage Divide,

ANCHORAGE SOUTHWEST

Beginning at a point on the southerly boundary line of Section 22, T13NR4W, S.M. approximately 1,800' west of the easterly boundary line of Section 22; thence east along the southerly boundary line of Section 22 and the centerline of Northern Lights Boulevard to the centerline of Minnesota Drive; thence south along the centerline of Minnesota Drive to the southerly boundary line of the Martin Manor Subdivision; thence east along the southerly boundary of the Martin Manor Subdivision to the centerline of the Spenard Road; thence north along the centerline of Spenard Road to the centerline of Northern Lights Boulevard; thence east along the centerline of Northern Lights Boulevard to the centerline of the Seward Highway; thence south along the centerline of the Seward Highway and the easterly boundary of Section 30, T12NR3W, S.M., to the centerline of Turnagain Arm; thence northwesterly following the centerline of Turnagain Arm and northeasterly following the centerline of Knik Arm to a point due north of the point of beginning; thence due south to the place of beginning; and also including all of Fire Island within its limits.

SCHEDULE OF HOUSE APPORTIONMENT

House District No.	Name of District	No. of Representatives
1	Ketchikan	2
2	Wrangell-Petersburg	1
3	Sitka	1
4	Juneau	2
5	Lynn Canal	1
6	Cordova-Valdez	1
7	Palmer-Wasilla	1
8	Anchorage City	8
9	Anchorage North	2
10	Anchorage Southeast	2
11	Anchorage Southwest	2
12	Seward	1
13	Kenai	1
14	Kodiak	1
15	Aleutian Islands	1
16	Bristol Bay	1
17	Yukon-Kuskokwim	1
18	Fairbanks	7
19	Barrow-Kobuk	1
20	Nome	1
21	Wade-Hampton	1
22	Bethel	1
		40

Ratio Calculations:

Lowest District — Population 2,926 (Lynn Canal)

Highest District — Population 6,605 (Sitka)

Ratio - - - - - - 2.25 to 1

Percentage of Population required to elect majority of House 47.1%

SCHEDULE OF SENATE APPORTIONMENT

Senate District	Name of District	No. of Senators	Initial Term of Senator
A.	Ketchikan	1	4 years
B.	Wrangell-Petersburg & Sitka	1	2 years
C.	Juneau & Lynn Canal	1	4 years
D.	Cordova-Valdez & Palmer-Wasilla	1	2 years
E.	Anchorage City	4	(see note)
F.	Anchorage North	1	4 years
G.	Anchorage Southeast	1	2 years
H.	Anchorage Southwest	1	4 years
I.	Seward & Kenai	1	2 years
J.	Kodiak & Aleutian Islands	1	4 years
K.	Bristol Bay & Yukon-Kuskokwim	1	2 years
L.	Fairbanks	4	(see note)
M.	Barrow-Kobuk & Nome	1	4 years
N.	Bethel & Wade-Hampton	1	2 years
		20	

Note: In both Senate District E and Senate District L, it will be necessary to designate half the Senate seats as position "A" and half the seats as position "B" for the purpose of the initial election under this schedule of apportionment to insure that one half of the Senate is elected in each biennial election following the initial election.

Ratio Calculations:

Lowest District Population 8,159 (Anchorage Southeast)

Highest District Population 12,471 (Juneau-Lynn Canal)

Ratio - - - - - - 1,526 to 1

Percentage of Populations required to elect majority of Senate 53.1%

POPULATION TABULATION TO ACCOMPANY HOUSE and SENATE APPORTIONMENT SCHEDULES

House District No.	House Dist. Name	1960 Civilian Pop.	No. of Repr.	Pop/Repr.	Senate District	No. of Senators	Pop/Senator
1	Ketchikan	11,537	2	5,768	A	1	11,537
2	Wrangell-Petersburg	4,181	1	4,181)			
3	Sitka	6,605	1	6,605)	B	1	10,786
4	Juneau	9,545	2	4,773)			
5	Lynn Canal	2,926	1	2,926)	C	1	12,471
6	Cordova-Valdez	3,936	1	3,936)			
7	Palmer-Wasilla	5,261	1	5,261)	D	1	9,197
8	Anchorage City	39,018	8	4,970	E	4	9,954
9	Anchorage North	9,546	2	4,773	F	1	9,546
10	Anchorage Southeast	8,158	2	4,079	G	1	8,158
11	Anchorage Southwest	10,934	2	5,467	H	1	10,934
12	Seward	2,956	1	2,956)			
13	Kenai	5,690	1	5,690)	I	1	8,646
14	Kodiak	5,367	1	5,367)			
15	Aleutian Islands	3,594	1	3,594)	J	1	8,961
16	Bristol Bay	3,485	1	3,485)			
17	Yukon-Kuskokwim	5,473	1	5,473)	K	1	8,958
18	Fairbanks	34,958	7	4,994	L	4	8,740
19	Barrow-Kobuk	5,449	1	5,449)			
20	Nome	5,587	1	5,587)	M	1	11,036
21	Bethel	5,412	1	5,412)			
22	Wade-Hampton	3,057	1	3,057)	N	1	8,469
		193,479	40			20	

PROCLAMATION OF REAPPORTIONMENT AND REDISTRICTING

WHEREAS, the United States Supreme Court in the case of Reynolds v. Sims, and in other companion cases decided in June of 1964, held that under the Equal Protection Clause of the United States Constitution both houses of a state legislature must be apportioned on a population basis and that a state is required to make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable;

WHEREAS, it does not appear that the Alaska State Senate is apportioned on a population basis within the meaning of the Supreme Court decisions;

WHEREAS, the Constitution of the State of Alaska (Article VI) and the minutes of the Alaska Constitutional Convention clearly contemplate that the Governor shall have the sole responsibility for legislative reapportionment;

WHEREAS, the mandate of the United States Supreme Court can be carried out in a manner consistent with the manifest intent of the Constitution of the State of Alaska only by reapportionment by the Governor with the advice of the Advisory Reapportionment Board;

WHEREAS, I, William A. Egan, Governor of the State of Alaska, pursuant to Article VI of the Constitution of the State of Alaska, issued a Proclamation on March 6, 1965, directing the Advisory Reapportionment Board to submit a plan that would meet the requirements of the Supreme Court decisions and those provisions of the Constitution of the State of Alaska that are not in conflict with those decisions;

WHEREAS, the Advisory Reapportionment Board convened pursuant to my order and on June 8, 1965, submitted to me a plan for reapportionment and redistricting;

WHEREAS, the Governor is required by law to issue a proclamation of reapportionment and redistricting within 90 days after receipt of the recommendations of the Advisory Reapportionment Board;

NOW, THEREFORE, I, WILLIAM A. EGAN, Governor of the State of Alaska, do proclaim the following plan of reapportionment and redistricting:

First: The election districts for the House of Representatives shall remain as designated by the Proclamation of Reapportionment and Redistricting of December 7, 1961.

Second: Members of the Senate shall be elected from the Senate Districts and in the number shown below:

Senate District	Name of District	Composed of Election Districts	Number of Senators
A.	Ketchikan	1	1
B.	Wrangell-Petersburg & Sitka	2 & 3	1
C.	Juneau & Lynn Canal	4 & 5	1
D.	Cordova-Valdez & Palmer-Wasilla	6 & 7	1
E.	Anchorage	8	7
F.	Seward & Kenai	9 & 10	1
G.	Kodiak & Aleutian Islands	11 & 12	1
H.	Bristol Bay & Yukon-Kuskokwim	13 & 15	1
I.	Fairbanks	16	4
J.	Barrow-Kobuk & Nome	17 & 18	1
K.	Bethel & Wade-Hampton	14 & 19	1
			20

Third: This reapportionment and redistricting shall be effective for elections of members of the Legislature until the next decennial census.

Fourth: This reapportionment and redistricting shall be implemented for the 1966 primary and general elections. The terms of all members of the Fourth State Legislature shall terminate on the fourth Monday in January, 1967. In the 1966 general election 40 members shall be elected to the House of Representatives and 20 members to the Senate.

Fifth: Members of the State Senate elected at the 1966 general election shall serve the term indicated as follows:

Senate District	Name of District	Initial Term of Senator
A.	Ketchikan	4 years
B.	Wrangell-Petersburg and Sitka	2 years
C.	Juneau-Lynn Canal	4 years
D.	Cordova-Valdez and Palmer-Wasilla	2 years
E.	Anchorage A	4 years
	Anchorage B	2 years

Senate District	Name of District	Initial Term of Senator
	Anchorage A	4 years
	Anchorage B	2 years
	Anchorage A	4 years
	Anchorage B	2 years
	Anchorage A	4 years
F.	Seward & Kenai	2 years
G.	Kodiak & Aleutian Islands	4 years
H.	Bristol Bay & Yukon-Kuskokwim	2 years
I.	Fairbanks A	4 years
	Fairbanks B	2 years
	Fairbanks A	4 years
	Fairbanks B	2 years
J.	Barrow-Kobuk & Nome	4 years
K.	Bethel & Wade-Hampton	2 years

Sixth: State legislators elected at the 1966 general election shall hold office for a term beginning with the fourth Monday of the January following election. Their term shall be two years, except that senators elected for four-year terms shall serve an additional two years thereafter.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State to be affixed, this third day of September in the year of our Lord nineteen hundred and sixty five.

William R. Egan
Governor

ATTEST:

Secretary of State

STATEMENT ACCOMPANYING PROCLAMATION
OF
REAPPORTIONMENT AND REDISTRICTING

I have adopted the excellent and well-considered recommendations of the Advisory Reapportionment Board with two exceptions, neither of which increases or decreases the numerical representation allotted by the Board to any area.

Under the Board's recommendation District 8 would be divided into four House Districts. Under my Proclamation all House Districts, including District 8, remain exactly as they were designated in the Proclamation and Redistricting of December 7, 1961.

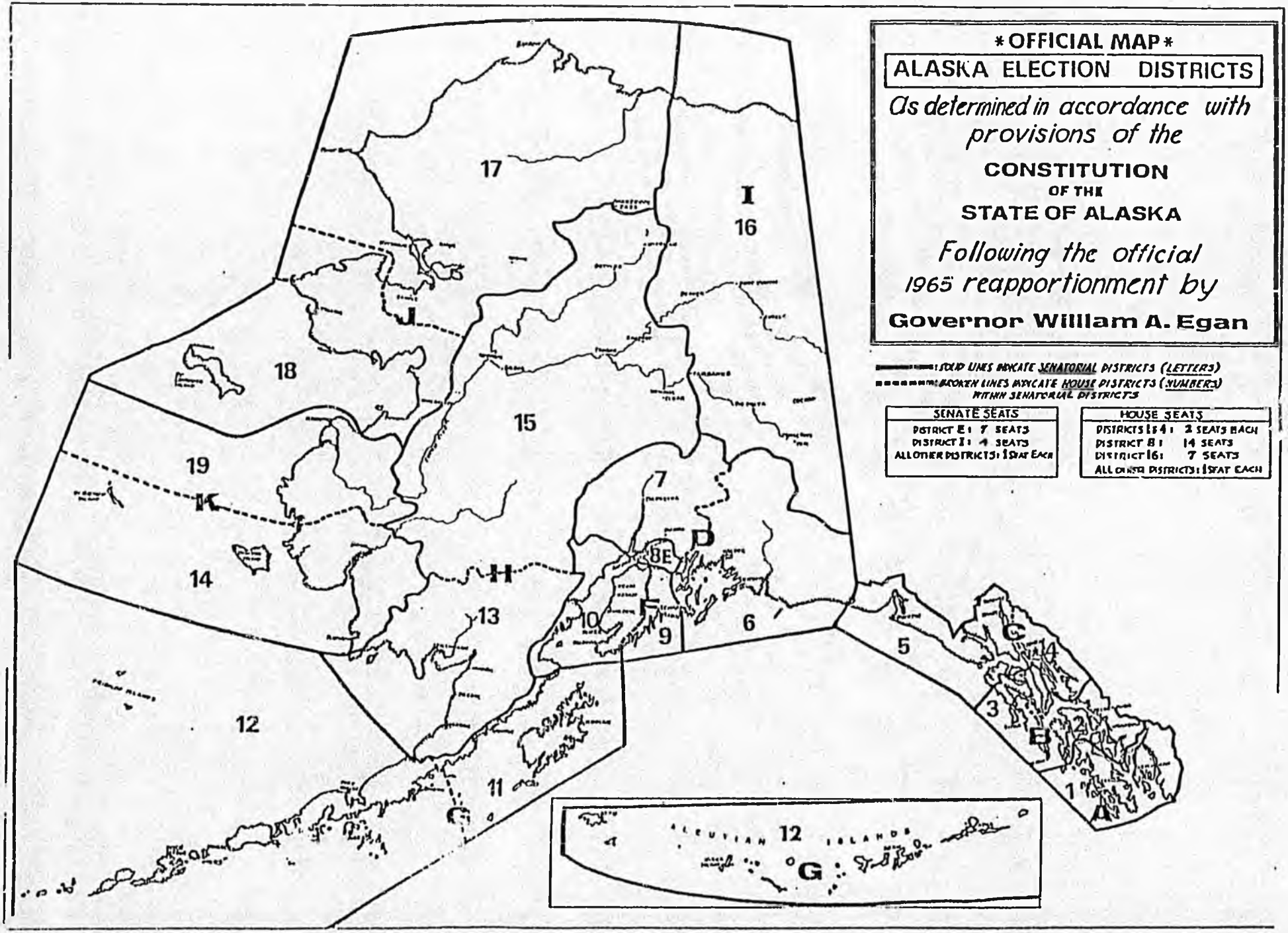
Under the Board's recommendation District 8 would also be divided into four Senate Districts (E, F, G and H), with a total of 7 senators assigned to the four districts. I have changed the Board's recommendation so that the 7 senators assigned to District 8 will all run at large in that district which will be designated Senate District E. This will eliminate Senate Districts F, G and H from the Board's proposal, and all other Senate Districts have been re-lettered accordingly in the Proclamation.

It would be unwise and unfair to attempt to divide District 8 into more than one legislative district on the basis of the 1960 census figures. These figures became obsolete with the March 27, 1964, earthquake which devastated large, heavily populated areas in and around Anchorage and resulted in radical population dislocation and movement of unknown proportions. Therefore, any reapportionment plan based on the 1960 census which would split District 8 into several legislative districts could result in over-representation of districts which have lost a considerable part of their population and under-representation of districts which gained substantially in population as a result of the earthquake and subsequent dislocation.

Furthermore, Anchorage has traditionally been a multi-member district with all of its candidates for the Legislature running at large. This system has proved workable and fair in the past, and is the most equitable one which can be devised under existing circumstances.

Dated September 3, 1965.

William A. Egan
Governor


OFFICIAL MAP
ALASKA ELECTION DISTRICTS
As determined in accordance with provisions of the
CONSTITUTION
OF THE
STATE OF ALASKA
Following the official 1965 reapportionment by
Governor William A. Egan
SOLID LINES INDICATE SENATORIAL DISTRICTS (LETTERS)
BROKEN LINES INDICATE HOUSE DISTRICTS (NUMBERS) WITHIN SENATORIAL DISTRICTS
SENATE SEATS
DISTRICT E: 7 SEATS
DISTRICT I: 4 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
HOUSE SEATS
DISTRICTS 1 & 4: 2 SEATS EACH
DISTRICT 8: 14 SEATS
DISTRICT 16: 7 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
ALEUTIAN ISLANDS
12
G
17
16
I
J
18
15
19
K
7
D
8E
14
H
13
10
F
9
6
5
G
4
3
B
2
1
A
12
11
G

LEGISLATIVE REAPPORTIONMENT IN THE STATES /1

(November, 1965 - May, 1966)

The following checklist shows that 33 states have now been reapportioned. In four additional states one house has been so apportioned: in one of these a plan for the other house is being challenged in the courts; and in three more, a temporary plan has been implemented. In five states reapportionment schemes for both houses await court approval, while eight states are operating with temporary plans.

PLAN ADOPTED AND NO CURRENT LITIGATION

Alabama
Alaska (house only)
Arizona
Arkansas
California
Colorado
Connecticut
Idaho
Illinois
Indiana
Kansas (house only)
Kentucky
Louisiana (house only)
Maine
Maryland
Massachusetts
Missouri
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon /2
Rhode Island
South Carolina (house only)
South Dakota
Tennessee[1]
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

PLAN ADOPTED BUT LITIGATION OR COURT APPROVAL PENDING

Delaware
Florida
Louisiana (senate only)
Minnesota
Mississippi
Pennsylvania

TEMPORARY LEGISLATIVE OR COURT PLAN

Alaska (senate only)
Georgia
Hawaii
Iowa
Kansas (senate only)
Michigan
Montana
New Jersey
Ohio
South Carolina (senate only)
Texas

/1 Published by the Council of State Governments.
/2 Some litigation is yet pending; nevertheless, the basic plans have received court approval.

STATES IN WHICH THERE HAS BEEN NO CHANGE IN LEGISLATIVE REAPPORTIONMENT SINCE NOVEMBER 1965 ARE FOUND IN THE BACK OF THIS APPENDIX.

ALASKA

On April 11 the Alaska superior court issued a memorandum opinion that (1) the governor had exceeded his constitutional authority in reapportioning the senate (2) the 1966 elections be held under the existing plan, and (3) a constitutional amendment for a valid reapportionment of the senate be adopted no later than December 1, 1967. The state supreme court reversed, in part, the superior court ruling and adopted the governor's plan of September 3, 1965, declaring it effective for the 1966 elections and thereafter until the constitution is amended to provide a permanent reapportionment plan for the senate (Wade v. Nolan, et al, decided May 20). A separate appeal from the April 11 ruling is pending with the federal court.

ARIZONA

The federal court on February 2 reapportioned both houses of the Arizona legislature, reducing the house from 80 to 60 members, increasing the senate from 28 to 30 members, and providing for at-large elections except in Maricopa and Pima counties (Klahr v. Goddard). On March 14 the court issued a supplemental decree approving subdistricting plans for the two counties.

ARKANSAS

On November 4 the federal court issued a memorandum opinion approving a reapportionment scheme for the general assembly, as submitted by the state board of apportionment (Yancey v. Faubus). The plan calls for 44 districts for the house and 25 for the senate. Intervenors' appeal to the U. S. supreme court that the 1965 plan failed to meet the "one-man, one-vote" requirements was denied February 28 (Crawford County Bar Association v. Faubus; Alexander v. Faubus).

CALIFORNIA

The state supreme court on January 11 upheld the reapportionment of the California legislature, as adopted October 21 during the second 1965 special session. In doing so, the court overruled objections that the senate plan included two multi-member districts for San Francisco and the populous part of Alameda county and did not have such multi-member districts for other sections of the state (Silver v. Brown; Adams v. Brown).

CONNECTICUT

On December 14 voters approved a new state constitution with provisions conforming with the 1965 reapportionment act. The senate consists of 30 to 50 members, the house from 125 to 225 members. Responsibility for future reapportionment, following each decennial federal census, is placed with the legislature or, should it fail, an eight-member legislative commission or, should it fail, a board comprised of two judges from the state superior court and one elector.

DELAWARE

Sincock v. Gately is still pending in the federal court. The contested reapportionment plan, enacted by the Delaware legislature in 1964, is based wholly on straight population and provides single-member districts for both houses.

FLORIDA

The federal court on December 23 declared the 1965 legislative reapportionment act (HB 19-XX) unconstitutional but allowed it to stand as an interim plan until 60 days following adjournment of the 1967 regular session (Sobel v. Adams; Swann v. Adams). On February 25 the U. S. supreme court ruled that the district court erred in approving the plan on an interim basis (Swann v. Adams). The legislature subsequently adopted another reapportionment scheme, HB 17-X (66), which was then approved by the federal court on March 19 (Swann v. Adams). Appeal has been lodged with the U. S. supreme court.

GEORGIA

On March 25 the federal court rejected arguments that the Florida case Swann v. Adams required an immediate reapportionment of the Georgia legislature. (NOTE The court had previously accepted the 1965 house reapportionment plan as an interim measure but had ordered both houses reapportioned no later than the end of the 1968 regular session or May 1, 1968, whichever arrived first.) But the court did advance to May 1, 1967, the date by which further reapportionment must be accomplished (Toombs v. Fortson).

HAWAII

On April 25 the U. S. supreme court reversed its lower court and accepted the interim scheme (HB 987) passed during the 1965 regular session to reapportion the senate and the existing house apportionment as temporary plans for use in the 1966 general elections and to continue until such time as a permanent plan is adopted (Burns v. Richardson, et al; Cravalho, et al v. Richardson, et al; Abe, et al v. Richardson, et al).

IDAHO

The federal court on December 20 declared the Idaho reapportionment plan, enacted during a March, 1965 special session, unconstitutional and ordered at-large elections for both houses until constitutionally apportioned (Hearne v. Smylie). The legislature then enacted a new reapportionment plan during the third 1966 extraordinary session. The defendants from Hearne petitioned the federal court to dissolve the December 20 injunction which required at-large elections. When plaintiffs failed to respond to the petition, the court on April 1 granted the petition which, in effect, approved the new reapportionment plan.

ILLINOIS

On December 8 a special bipartisan commission appointed by the governor filed its plan for new house districts with the office of the secretary of state. It became immediately effective for the 1966 elections, providing for three representatives elected at-large from each of 59 multi-member districts. There is no court action pending.

INDIANA

On November 18 the federal court approved one of four alternate plans for the house and one of four alternates for the senate as adopted by the legislature in 1965 (Stout v. Bottorff; Grills v. Branigin).

IOWA

In Davis v. Cameron the federal court deferred to the state district court which, in turn, on November 5 gave temporary approval to the interim apportionment scheme for both houses, enacted during the Iowa 1965 regular session. On April 15 the state supreme court declared the 1965 temporary plan sufficient to serve as an interim plan of apportionment until 1968. But the court also ruled that a combination of multi- and single-member districts could not be used for the same chamber (Kruidenier v. McCulloch). Defendants are expected to file a writ of certiorari with the federal court.

KANSAS

On December 28 the senate apportionment was declared unconstitutional, although the federal court delayed the effective date of its ruling until April 1 (Long v. Avery). The court followed on February 24 with a decree that the legislature adopt a new senate plan no later than April 1, 1968 or, failing to do so, the court would order into effect its own plan or at-large elections. The state supreme court on March 23 approved the reapportionment plan (HB 504) for the lower house, adopted during a 1966 special session (Harris v. Anderson).

MAINE

During the 1966 special session the legislature approved a proposed constitutional amendment providing for not less than 30 nor more than 40 senators. In the event the legislature failed to reapportion, the state supreme court would be entrusted with the duty. If the amendment is approved by the voters in November, the legislature in its 1967 session will have to establish lines for the districts which would take effect in the 1968 elections.

MARYLAND

The lower state court on December 22 accepted a 1965 special session act (SB 5) to reapportion both houses of the Maryland legislature (Maryland Committee for Fair Representation, et al v. Tawes). The court also found another act of the 1965 special session (SB 8) violative of the equal protection clause of the 14th Amendment. The ruling was reaffirmed by the state court of appeals on January 11.

MICHIGAN

The plan presented by the commission in 1964 was never explicitly ruled unconstitutional. But the state supreme court indicated its shortcomings insofar as compliance with the state constitution was concerned by instructing the commission on November 2 to prepare new plans within 60 days. However, the commission deadlocked. The court itself stalemated regarding the validity of the 1964 plan and, thus, issued seven separate opinions on March 9 (In Re Apportionment).

MINNESOTA

On November 26 the state supreme court reversed its lower court and declared that the veto power existed with respect to apportionment legislation. Thus the governor's veto of the 1965 reapportionment act was upheld. But the court also noted that its decision was not intended to be an evaluation of the act (Duxberry, et al v. Donovan). On January 14, plaintiffs from Honsey v. Donovan petitioned the federal court to go ahead with preliminary plans for establishing new legislative districts for the 1966 elections. The judges denied the petition, noting that sufficient time existed for the legislature to reapportion.

The Minnesota legislature on May 9 enacted a reapportionment bill (SF 2) in special session providing 67 and 135 members, respectively, for the senate and house. On May 11 the governor vetoed the bill, charging population inequities and gerrymandering. But the legislature followed one week later with a new plan which was signed by the governor on May 20.

MISSISSIPPI

On January 21 the federal court received briefs in Conner, et al v. Johnson. (This suit was filed October 19, 1965 challenging the 1963 reapportionment.)

MISSOURI

During a special session in the fall of 1965, the legislature approved a proposed constitutional amendment to create a commission for reapportioning the house periodically. The amendment was approved by referendum January 14. New house districts were announced by the commission in March. (The senate had been reapportioned by a commission in the fall of 1965.)

NEBRASKA

On January 25 the Nebraska supreme court upheld a 1965 reapportionment act (LB 925) which provided for crossing of county lines in forming districts (Carpenter v. State). Consequently the state withdrew its appeal to the U. S. supreme court on LB 628, a previously invalidated reapportionment act. The federal court followed on February 10 by dismissing litigation regarding the constitutionality of LB 925 in League of Nebraska Municipalities v. Marsh.

NEVADA

On November 13 the legislature in special session passed a reapportionment bill which provided for a 20-member senate and 40-member house. The federal court approved the plan on March 21 (Dungan v. Sawyer).

NEW HAMPSHIRE

Since the legislature had reapportioned both houses during its 1965 regular session, the federal court on December 2 dismissed Levitt v. Stark, et al, which had attacked the 1961 apportionment.

NEW JERSEY

A constitutional convention began work on March 21 to draft new constitutional provisions for apportioning the legislature. It is to report in June, 1966.

NEW MEXICO

The federal court on March 17 ruled that the senate reapportionment act, adopted in a 1966 special session, fell short of the "one-man, one-vote" requirements and issued its own plan establishing 39 senatorial districts (Beauchamp v. Campbell). The court increased the number of districts to 42 in an amended order dated March 31.

NEW YORK

A commission appointed by the legislature reported a reapportionment plan in December, but the legislature failed to act on the issue by the court deadline. On February 23 the New York court of appeals assumed jurisdiction and appointed a five-member commission to prepare apportionment plans for both houses. One month later the court adopted the commission's report providing for a 57-member and 150-member senate and house, respectively.

NORTH CAROLINA

The North Carolina legislature was ordered by the federal court to reapportion no later than January 31, 1966. The court warned that if the legislature failed the court would hand down its own plan in time for the 1966 primaries and elections (Drum, et al v. Seawell, et al, November 30). On January 14 the legislature adjourned a five-day special session after enacting bills to reapportion both houses. The federal district court accepted the plan on February 18 (Drum, et al v. Seawell, et al). And the U. S. supreme court on April 4 reaffirmed the decision.

OHIO

On December 20 arguments were heard before the state court of appeals (10th district) re: King v. Rhodes. Plaintiffs contended that the members of the state apportionment board exceeded their power in reapportioning the Ohio legislature. The U. S. supreme court issued a per curiam opinion February 21 reaffirming its lower court ruling which had adopted the board's reapportionment plan and ordered it into effect on a temporary basis for the 1966 general elections (Nolan v. Rhodes, October, 1965).

OREGON

An original mandamus proceeding commenced in the state supreme court December 9 as plaintiffs petitioned for a redistribution of the representatives from the subdistricts of Multnomah county (Portland). However the court refused granting relief until the legislature had had an opportunity to act (Cook, et al v. McCall, January 26).

PENNSYLVANIA

On February 4 the Pennsylvania state court reapportioned the legislature, reducing the house from 209 to 203 members and leaving the senate at 50 members (Butcher v. Bloom). The federal court has subsequently been asked to review the state supreme court decision. Briefs were filed during April.

RHODE ISLAND

After receiving two extensions to the original January 15 deadline, the 15-member legislative commission on March 28 filed its report. The legislature subsequently enacted separate bills providing for the reapportionment of each chamber. Both bills were vetoed by the governor. However, in each instance, the legislature overruled the vetoes. A general constitutional convention is now at work that will consider a permanent apportionment plan.

SOUTH CAROLINA

The federal court on February 18 upheld the 1961 apportionment of the house, and approved the 1966 reapportionment plan for the senate as an interim measure for purposes of the next election only, and for a limited term of two years (O'Shields v. McNair, et al; Mungo v. McNair).

TENNESSEE

On November 15 a three-judge federal court upheld the 1965 Tennessee legislative reapportionment act (Baker v. Carr). However, the chancery court at Nashville held unconstitutional that portion of the 1965 act which divided four urban counties into senatorial subdistricts (Williams v. Carr, March 7). An appeal is now pending with the state supreme court.

TEXAS

Hainsworth v. Martin was vacated as moot by the court of civil appeals on November 15 in view of the enactment of the 1965 Texas apportionment act. On February 2 the federal court upheld the 1965 act (HB 195) as a valid interim plan of apportionment for the 1966 elections, but ordered the eleven flotorial districts revised no later than August 1, 1967 (Kilgarlin v. Martin).

VERMONT

On November 18 the Vermont supreme court denied appeals aimed at blocking the November 23, 1965, special legislative election and at having the 1965 reapportionment acts declared null and void.

WYOMING

On February 28 the U. S. Supreme court reaffirmed a federal court ruling that subdistricting of multi-member districts was not required (Harrison v. Schaefer).

LEGISLATIVE REAPPORTIONMENT

IN THE STATES /1

(November 1965) /2

ALABAMA

In summer, 1962, the federal court, after declaring the existing Alabama legislative apportionment unconstitutional, issued its own temporary plan (Sims v. Frink). On appeal the lower court was sustained by the supreme court in the now famous Reynolds v. Sims.

During 1965 regular session, the house approved a proposal which would have reapportioned the senate. This bill died on the senate calendar. The federal court later made it clear that the bill would have been insufficient inasmuch as it applied only to the upper chamber.

On September 23, the legislature reapportioned both houses during special session. The court on October 2 held the reapportionment of the senate constitutional but substituted its own scheme for the lower house to correct certain population discrepancies of the legislative version.

COLORADO

Lucas v. Forty-Fourth General Assembly (1964) struck down a "little federal" plan that had been approved by the voters in preference to a straight population proposal. Meeting in 1964 special session, the legislature then enacted a plan using a population basis. This statute was challenged because of its provision for subdistricts in multi-member counties. After the state supreme court found for the plaintiffs, the 1965 general assembly passed a new apportionment act eliminating subdistricts and, shortly thereafter, the state supreme court dismissed all litigation.

KENTUCKY

The Kentucky legislature successfully reapportioned itself in 1963 special session. No litigation is pending.

/1 Published by the Council of State Governments.

/2 There has been no change in legislative reapportionment since November 1965 in the states in this listing.

LOUISIANA

Meeting in special session, the legislature reapportioned the house in 1963 after the federal court declared that the existing apportionment violated the 14th Amendment (Daniel v. Davis).

Litigation has been pending since 1963 (Bannister v. Davis) to reapportion the senate; however, plaintiffs have not yet moved to bring the matter to a hearing on merits.

MASSACHUSETTS

After the state supreme court declared existing house apportionment unconstitutional (Fishman v. White), the legislature realigned house districts in October, 1963. But reapportionment will be required again in 1966 following the new state census.

MONTANA

Suit challenging apportionment of the Montana legislature was decided January, 1965 (Herweg v. Thirty-Nineth Legislative Assembly) when the federal court held both houses malapportioned.

However, the court stayed remedial action pending outcome of the 1965 regular session. When the legislature failed to report a new apportionment scheme, the court on August 6 announced its own plan for use in the 1966 elections and declared that its plan would remain in force until the legislature was properly apportioned.

NORTH DAKOTA

As a result of longstanding litigation (Lien v. Sathre and Paulson v. Meier), the legislature reapportioned itself in the 1965 regular session. The act was declared unconstitutional by the federal court which on August 13 ordered into effect its own plan, to become effective with the 1966 elections (Paulson v. Meier).

The court plan is a slight modification of a proposal to the legislature by the Legislative Research Committee.

OKLAHOMA

In Moss v. Burkhart, the federal court ruled the state legislature malapportioned and warned that if a new plan was not devised by March, 1963, the court would implement its own scheme. New measures were adopted by the legislature in 1963, but these also were invalidated by both the federal and state supreme courts. Extensive litigation finally was climaxed on July 31, 1964, when the federal court reapportioned both houses on a population basis.

SOUTH DAKOTA

Both houses of the legislature were reapportioned on a population basis in 1961.

UTAH

A federal court ordered the reapportionment of the state legislature in Petuskev v. Clyde. After the legislature enacted new plans during its 1965 regular session, the attorney general filed motion to dismiss all suits pending.

The plan, providing for 28 senators and 69 representatives, was approved by the federal court, excepting one section designed to allow senators elected in 1964 to complete their full terms.

VIRGINIA

The reapportionment undertaken by the 1962 state legislature was declared unconstitutional by a federal court in Mann v. Davis. During a March, 1964 special session, the legislature enacted a new plan which a federal special three-judge court found acceptable, except that two of the house districts, each having one delegate, were ordered combined into a single district with two delegates.

Henrico County appealed to the U.S. supreme court asserting that the effect of being placed in a single district with the City of Richmond, rather than being made an independent district, was to give Richmond a voting power greater than Henrico and deprived the county of representation by its own citizens. On October 26, the High Court upheld the ruling of the special court.

WASHINGTON

In Meyers v. Thigpen the U. S. supreme court affirmed a federal court decision that declared existing apportionment unconstitutional and enjoined further elections thereunder. On February 26, 1965, the legislature reapportioned itself and the federal court dismissed pending litigation.

WEST VIRGINIA

After Robertson v. Hatcher declared existing apportionment unconstitutional, the legislature successfully reapportioned itself during 1964 extraordinary session.

WISCONSIN

Following gubernatorial veto of three separate legislative apportionment acts and legislative failure to conform with an order to reapportion, the state supreme court issued its own scheme on May 14, 1964.

Upon resuming the 1965 regular session on October 4, the legislature considered several bills that would give statutory standing to the court plan. However, none of the proposals advanced to final passage and after one month the legislature adjourned until May 2, 1966.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 — JUNEAU 99801

June 1, 1965

Mr. Felix Toner, Chairman
Advisory Reapportionment Board
Juneau, Alaska

Dear Mr. Toner:

You have asked the following questions:

1. May the Board create a multi-member legislative district in the Northwest?

2. May the Board include military personnel in population for apportionment purposes?

I will answer these questions in order.

1. Some residents of the Northwest have proposed that the Board establish a single legislative district in the Northwest, stretching from the Kuskokwim River in the south to Point Barrow in the north. Under the proposed plan a huge multi-member district would replace the single-member districts now used in the Northwest. All candidates for both the House and Senate would be required to run at large.

You have indicated that the Board is considering retaining multi-member districts in Anchorage and Fairbanks. The Board has decided that it would be practically impossible to divide these urban areas into single-member districts. The 1960 census gives population figures for enumeration districts which have no relationship in size or shape to apportionment of the area into single-member districts of approximately equal population. Also, it is obvious that last year's earthquake displaced large numbers of people from the major population centers of Anchorage. Since the Board must use 1960 census figures, it would only compound the inequities resulting from use of census figures rendered obsolete by the earthquake to attempt to establish single-member districts in Anchorage. We understand that for these reasons, the Board intends to retain multi-member districts in Anchorage and Fairbanks.

With the census data available it is possible, however, for the Board to establish single-member districts elsewhere in the State. Although the United States Supreme Court, in Forston v. Dorsey, 379 U.S. 433 (1965), upheld use of some multi-member districts in Georgia, the Court warned:

> "It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster."

If the Board determines that a vast multi-member district in the Northwest would "minimize or cancel out the voting strength of racial or political elements of the voting population," it would be unconstitutional for the Board to create such a district.

A multi-member district in the Northwest might minimize or cancel out voting strength in several ways. For example, in a vast, sparsely-settled Northwest legislative district voters in several population centers might be able to elect most, if not all, of the entire Northwest's legislators. These voters would minimize or cancel out the voting strength of entire areas containing small, widely-scattered villages which could elect their own representatives if the Northwest were divided into single-member districts. In addition, voters in population centers located in one part of the district, which would stretch almost 800 air miles from the Kuskokwim to Point Barrow, might combine to prevent voters in other parts of the district from electing their unanimous choice. If voting strength of a minority of voters were minimized or cancelled out, vast areas of the Northwest would be without any effective representation in the legislature. It would be unconstitutional for the Board to create a multi-member district in the Northwest which would give rise to this type of discrimination.

In retaining multi-member districts in Anchorage and Fairbanks, the Board runs a risk that political or racial minorities in these areas will argue that use of multi-member districts minimizes or cancels out their voting strength. It is clear, however, that the Board plans to retain multi-member

districts in these urban areas only because of the practical impossibility of dividing the cities into single-member districts and, in the case of Anchorage, because of the inequities that would result from following pre-earthquake census figures. Since the Board has no reason to believe that use of multi-member districts in these two relatively compact urban areas would submerge political or racial minorities, it is improbable that use of these multi-member districts would be held unconstitutional.

2. Your second question is whether the Board may include military personnel in population for apportionment purposes. The Alaska Constitution, in Article VI, Section 3, states:

> "Reapportionment shall be based upon civilian population within each election district as reported by the census."

This clearly provides that military personnel are not to be included in population for apportionment purposes. Unless the United States Supreme Court declares this provision unconstitutional, it must be followed by the Board.

The United States Supreme Court has not held that military personnel must be included as part of the population base for apportionment purposes. It has not yet been asked to settle this specific issue. In Davis v. Mann, 377 U.S. 678 (1964), the Court discounted Virginia's argument that certain areas were not in fact under-represented because these areas contained large numbers of military personnel who were not domiciled in Virginia and did not vote there. The Court purported to answer this argument by stating that "discrimination against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible." Whatever this statement means, it does not invalidate Alaska's constitutional provision excluding military personnel from the population base for apportionment purposes. Until the Supreme Court decides in explicit terms that such a provision is unconstitutional, the Board must follow Alaska's Constitution.

This was the approach taken by a federal district court in Holt v. Richardson, 33 U.S. Law Week 2443 (Feb. 17, 1965). Under Hawaii's Constitution, apportionment is based on the number of registered voters in the last general election. Since many military personnel are not Hawaii residents and do not vote there,

they are not counted for apportionment purposes. Plaintiffs argued that apportionment must be based on total population, including military personnel. The federal district court refused to invalidate the apportionment of Hawaii's House of Representatives because registered voters, and not total population, were used as a basis for apportionment. The Court stated its reason for holding that registered voters were a valid basis for representation:

> "Hawaii has become the United States' military bastion for the entire Pacific and military population in the State fluctuates violently as the Asiatic spots of trouble arise and disappear. If total population were to be the only acceptable criteria upon which legislative representation could be based, in Hawaii, grossly absurd and disastrous results would flow from a blind adherence to the 'elusive "one-person-one-vote"aphorism.' (Mr. Justice Harlan in Forston v. Tombs, 33 U.S. Law Week 4172)"

Military personnel accounted for about 10 percent of Hawaii's total population in 1960. Military personnel account for about 15 percent of Alaska's population. Alaska can point to the same inequities as does Hawaii if military personnel are included in population for apportionment purposes.

Even if the Board were to include military personnel who are Alaska residents in the population base, this would not affect representation under any possible apportionment plan. The military has informed us that just over 100 military personnel stationed in Alaska consider themselves Alaska residents. There is no method of determining how many military personnel vote in Alaska. However, since voting is one factor in determining residence, it is likely that military personnel who claim residence in states other than Alaska do not vote in Alaska. Most vote by absentee ballot in the state where they claim residence and for that reason, in many cases, they will be counted for apportionment purposes.

Until the United States Supreme Court holds that a constitutional provision excluding military personnel from

population for apportionment purposes is invalid, the Board must follow Alaska's provision and reapportion on the basis of civilian population only.

Very truly yours,

WARREN C. COLVER
ATTORNEY GENERAL

WCC/grg

HEADQUARTERS, ALASKAN COMMAND
APO SEATTLE 98742

To PA

16 April 1965

Mr. Felix J. Toner, Chairman
Reapportionment Advisory Board
P.O. Box 2534
Juneau, Alaska

Dear Mr. Toner:

Reference is made to my letter of April 1st and your letter of March 29th concerning the matter of military residents in Alaska.

A survey of military personnel records indicates that there are 111 Alaskan residents in the military forces stationed in Alaska. I must point out, however, that this cannot be considered an absolutely accurate figure, as military personnel records do not contain an entry showing what can be called a "legal residence" for voting purposes. The record shows only the place the person prefers to consider as his permanent home.

The Alaska resident personnel are scattered in several places with the greater number in the Anchorage area. It appears, however, the total is so small that it would have no effect on reapportionment action.

Sincerely,

HARRY A. WAKEFIELD
Lt Col, USAF
Chief, Public Affairs

STATE REAPPORTIONMENT, ELECTORAL PERCENTAGES, 1966 ELECTIONS

STATE	DATE LATEST REAPPORTIONMENT		ELECTORAL PERCENTAGE*				REAPPORTIONING BODY**	PARTY STRENGTHS				196[illegible]TION
			HOUSE		SENATE			UPPER HOUSE		LOWER HOUSE		
	HOUSE	SENATE	Old	New	Old	New		Dem.	Rep.	Dem.	Rep.	
Alabama	1965	1965	43.0	47.7	27.6	47.8	Court, Legislature	35	0	103	3	Entire Legislature
Alaska	1961	1965	n.a.	47.8	35.4	51.0	Commission	17	3	30	10	One-half Upper House Entire Lower House
Arizona	1966	1966	45.8	49.1	12.8	49.1	Court	26	2	45	35	Entire Legislature
Arkansas	1965	1965	33.3	49.4	43.8	49.2	Commission	35 1 Vacancy	0	100 3 Vacancies	1	Entire Legislature
California	1965	1965	44.7	48.3	10.7	48.9	Legislature	25 2 Vacancies	13	49	31	Entire Legislature
Colorado	1965	1965	45.3	46.8	46.9	47.5	Legislature	15	20	42	23	One-half Upper House Entire Lower House
Connecticut	1965	1965	11.9	43.8	31.9	47.9	Legislature	23	13	111	189	Entire Legislature
Delaware	1964	1964	18.5	n.a.	22.0	n.a.	Legislature	13	3	30	3	One-half Upper House Entire Lower House
Florida	1966	1966	26.9	47.8	15.2	48.4	Legislature	41	2	105	7	Entire State Legislature
Georgia	1965	1962	22.5	42.3	21.4	48.2	Legislature	41	9	198	7	Entire Legislature
Hawaii	1959	1965	n.a.	38.4	18.1	n.a.	Legislature	16	9	40	11	Entire Legislature
Idaho	1966	1966	32.7	n.a.	16.6	n.a.	Legislature	19	25	37	41	Entire Legislature
Illinois	1965	1965	28.7	49.1	39.9	50.4	Commission, court	23 2 Vacancies	33	118 3 Vacancies	59	Entire Legislature
Indiana	1965	1965	34.8	48.7	40.4	49.5	Legislature	35	13	75 3 Vacancies	22	Entire Legislature
Iowa	1965	1965	26.9	44.8	35.2	45.1	Legislature					
Kansas	1966	1964	19.4	47.7	26.8	50.1	Legislature	34	25	101	23	One-half Upper House Entire Lower House
Kentucky	1963	1963	34.1	44.8	47.0	46.6	Legislature	13	27	44	81	Entire Lower House
Louisiana	1963	1921	n.a.	33.1	n.a.	33.0	Legislature	25	13	64	36	None
Maine	1961	1961	30.7	40.0	n.a.	40.8	Legislature	39	0	103	2	None
Maryland	1965	1963	35.6	50.3	14.1	47.6	Legislature	29	5	81	70	Entire Legislature
Massachusetts	1965	1961	n.a.	43.3	n.a.	50.4	Legislature	22	7	117	23	Entire State Legislature
								27	13	167 1 Ind. 3 Vacancies	69	Entire Legislature
Michigan	1964	1964	44.0	52.0	29.0	52.0	Court	23	13	73	37	Entire Legislature
Minnesota	1966	1966	34.3	47.2	40.1	48.1	Legislature	24 Technically--a non-partisan Legislature	43	53	79	Entire Legislature
Mississippi	1965	1965	29.1	41.2	34.6	37.4	Legislature	51	1	120	2	None
Missouri	1966	1965	20.3	49.8	47.7	52.0	Commission	22	12	123	40	One-half Upper House Entire Lower House
Montana	1965	1965	30.6	49.0	16.1	46.9	Court	32	24	56	38	Entire Legislature
Nebraska[1]	1965		44.0	49.3			Legislature	Unicameral Legislature 40 Non-Partisan Seats				Entire Legislature
Nevada	1965	1965	20.4	46.8	8.0	49.7	Legislature	8 1 Other	8	25	12	Entire Legislature
New Hampshire	1965	1965	44.0	45.2	49.8	52.3	Legislature	10	14	176	224	Entire Legislature

APPENDIX E

STATE	DATE LATEST REAPPORTIONMENT		ELECTORAL PERCENTAGE*				REAPPORTIONING BODY**	PARTY STRENGTHS				1966 ELECTION
			HOUSE		SENATE			UPPER HOUSE		LOWER HOUSE		
	HOUSE	SENATE	Old	New	Old	New		Dem.	Rep.	Dem.	Rep.	
New Jersey	1964	1965	n.a.	46.5	19.0	47.0	Legislature	19	10	41	19	None
New Mexico	1965	1966	27.9	47.4	11.0	45.8	Legislature, court	28	4	59	10	15 Seats Upper House Entire Lower House
New York	1966	1966	49.3	49.2	49.4	49.1	Commission (court)	20	36 1 Vacancy	90	75	Entire Legislature
North Carolina	1966	1966	27.1	47.3	47.1	48.8	Legislature	49	1	106	14	Entire Legislature
North Dakota	1965	1965	40.9	48.7	31.9	48.7	Court	20	29	65	44	Entire Legislature
Ohio	1965	1965	30.3	47.3	44.7	49.6	Commission	16	16	62	75	Entire Legislature
Oklahoma	1965	1965	29.4	48.7	24.5	49.2	Legislature (court)	41	7	78	21	One-half Upper House Entire Lower House
Oregon	1961	1951	n.a.	48.1	n.a.	47.8	Secretary of State	19	11	28	32	One-half Upper House Entire Lower House
Pennsylvania	1966	1966	42.7	47.0	43.4	50.1	Court	21	27 1 Vacancy	116	93	One-half of Senate Entire Lower House
Rhode Island	1966	1966	40.5	n.a.	18.1	n.a.	Legislature	30	15 1 Rep.-Ind.	76	24	Entire Legislature
South Carolina	1961	1966	n.a.	46.2	23.3	48.0	Legislature	46	0	124	1	One-half Upper House Entire Lower House
South Dakota	1965	1965	38.5	46.7	38.3	47.1	Legislature	16	29	30	45	Entire Legislature
Tennessee	1965	1965	44.5	48.4	39.7	49.1	Legislature	24	9 2 Vacancies	74	24 1 Ind.	Entire Legislature
Texas	1965	1965	38.7	47.0	30.3	49.4	Legislature	31	0	149	1	Entire Legislature
Utah	1963	1965	37.7	47.6	25.3	44.5	Legislature	15	12	39	30	One-half Upper House Entire Lower House
Vermont	1965	1965	11.6	48.7	47.0	48.8	Legislature	6	24	35	115	Entire Legislature
Virginia	1961	1961	40.5	47.7	41.1	49.0	Legislature	37	3	89	11	None
Washington	1965	1965	28.0	46.7	35.6	47.6	Legislature	32	17	60	39	One-half Upper House Entire Lower House
West Virginia	1961	1964	40.0	46.2	46.7	46.7	Legislature	27	7	91	9	One-half Upper House Entire Lower House
Wisconsin	1964	1964	40.0	45.4	42.5	48.4	Court	13	20	52	46	One-half Upper House Entire Lower House
Wyoming	1963	1965	35.8	46.5	24.1	47.4	Legislature, court	12	13	34	27	Entire Legislature

The electoral percentage is the percentage of each state's population which is theoretically able to elect a majority of each chamber of the state legislature.

**Where two bodies are listed, the first reapportioned the House and the second reapportioned the Senate.*

†Unicameral legislature.

n.a. Not available.

SOURCES: National Municipal League, Legislature Reference Service, Chamber of Commerce of the U.S., Congressional Quarterly.

A LEGAL VIEW OF REAPPORTIONMENT
A Cronology of Supreme Court Reapportionment and Voting Rights Decisions

CITY OF ROME vs. UNITED STATES, 64 L Ed 2nd 119, 100 S Ct. 1548 (1980) (GA - Local)

Voting Rights Act

Sec. 5 of the Voting Rights Act was not unconstitutional as exceeding Congress' power under the Fifteenth Amendment by prohibiting voting changes that have only a discriminatory effect; the Act, instead, being an appropriate means for carrying out Congress' power, under Sec. 2 of the Fifteenth Amendment to enforce the Amendment's Command that the right of United States citizens to vote shall not be denied or abridged on account of race, and the Act being consonant with all provisions of the Constitution.

CITY OF MOBILE vs. BOLDEN, 64 L Ed 2nd 47, 100 S. Ct. 1491 (1980) (AL - Local).

The city's at-large electoral system for city commissioners did not violate 14th and 15th Amendments and did not warrant replacing with a mayor council government.

Voting Rights Act

1. Since Negroes in the city registered and voted without hinderance, the court erred in holding that the 15th Amendment was violated by the at-large voting practice, since the 15th Amendment does not entail the right to have Negro candidates elected, but prohibits only purposefully discriminatory denial or abridgement by the government of the freedom to vote on account of race, color, or previous condition of servitude.

2. The courts below had erred in ruling that the 14th Amendment was violated by the at-large voting practice, since there can be no violation of the 14th Amendment's equal protection clause in regard to racial discrimination in voting if there is no purposeful discrimination in voting, and the evidence in the case at bar fell short of showing that the at-large voting practice was a purposeful device to further racial discrimination.

MISSISSIPPI vs. UNITED STATES, 444 U.S. 1050 62 L Ed 2nd 739 (1980) (MS - Leg)

Voting Rights Act

The statutory plan enacted in 1978 had the impermissible effect of diluting black voting strength.

NEVETT vs. SIDES, 571 F 2nd 209 (1979) (5th Cir. 1979) (AL - Local)

U.S. Court of Appeals At-Large Elections.

CLARK vs. MARENGO COUNTY, 469 F Supp. 1150 (1979) (AL - Local)

At-Large Districts

At-large scheme for elections of members of County Commission and County Board of Education cannot be held to be per se unconstitutional.

CONNOR vs. FINCH, 469 F Supp. 693 (1979) (MS - Leg)

Legislative reapportionment promulgated. Districts were drawn using federal census population, percent variance, percent black population, percent black voting age population.

DOUGHERTY COUNTY BOARD OF EDUCATION vs. WHITE, 439 U.S. 32 (1978) (GA - Leg)

Employee required to take a leave of absence to run for state Legislature.

Voting Rights Act

Sec. 5 of the Voting Rights Act must be given the broadest possible scope, encompassing the subtle as well as the obvious forms of discrimination.

WISE vs. LIPSCOMB, 437 U.S. 535 (1978) (TX - Local).

1. When the District Court invalidated the provisions of the Dallas city charter mandating Council elections, the city had the duty to devise a substitute plan rather than to leave the matter to the District Court.

2. No reason existed why the District Court was not entitled to consider the City Council's substitute plan under the principles applicable to legislatively adopted reapportionment plans.

3. The Council's ordinance should not be regarded as a court-ordered plan subject to a level of scrutiny more stringent than required by the Constitution.

Additional Opinion - Renquist, Burger, Stewart, Powell

The case at bar did not present, and the court did not decide, the question whether the use of multimember districts for city governments was unconstitutional as diluting the voting strength of racial groups.

UNITED STATES vs. BOARD OF COMMISSIONERS OF SHEFFIELD, 435 U.S. 110 (1978) (AL - Vote)

Voting Rights Act

Sec. 5 applied to all entities having power over any aspect of the electoral process within covered jurisdictions, not only to counties or to whatever units of state government performed the function as registering voters and, therefore, Sec. 5 required the city to obtain preclearance of a voting change even though it had never conducted voter registration.

UNITED JEWISH ORGANIZATIONS OF WILLIAMSBURG, INC. vs. CAREY, 430 U.S. 144 (1977) (NY - Leg)

Voting Rights Act

The Hasidic Jewish community sued, alleging that the state's use of racial criteria and quotas in developing a redistricting plan acceptable to the U.S. Justice Department, (65% non-white population majority) violated their rights. The U.S. Supreme court upheld a dismissal of their suit.

MORRIS vs. GRESSETTE, 432 U.S. 491 (1977) (SC - Leg - Senate)

Voting Rights Act

Is the USAG's decision not to object to a covered state's proposed change in its laws, submitted for his consideration under Sec. 5, subject to judicial review?

1. When the Attorney General failed to interpose a timely objection, a federal District Court did not have jurisdiction to review the Attorney Generals' action under Sec. 5.

2. Compliance with Sec. 5 is measured solely by the absence of a timely objection by the Attorney General.

BRISCOE vs. BELL (1977), 432 US 404 (TX - Vote)

Voting Rights Act

1. Under Sec. 4(b) of the Act, judicial review of coverage determinations by the Attorney General and the director of the census was absolutely barred, the only procedure available to Texas being a "bailout" suit under Sec. 4(a) to seek termination coverage.

2. In enacting Sec. 4(b), Congress acted within its "power to enforce the fourteenth and fifteenth amendments by appropriate legislation."

CONNOR vs. FINCH (1977), 431 US 407 (MS - Leg).

Population Variance

1. The District Court's reapportionment plan under which there were maximum population deviations of 16.5% in the Senate districts and 19.3% in the House districts were unconstitutional, and such a departure from constitutional requirements was not justified as reflecting deference to the state's historic respect for the integrity of county boundaries especially where

(a) the court had failed to identify any unique features of the state political structure to support the plan's more than de minimus variations,

(b) the court had been presented with a more statistically acceptable plan which fragmented fewer county boundaries.

Voting Dilution

2. With respect to challenges of the plan impermissibly diluting Negro voting strength, the court should either draw legislative districts that would be reasonably contiguous and compact, so as to eliminate suspicions that Negro voting strength was being impermissibly diluted or explain precisely why in a particular instance such a goal could not be accomplished.

KIRKSEY vs. BOARD OF SUPERVISORS OF HINDS COUNTY, MS (1977), 54 F 2nd 139 (Court of Appeals) (MS - Local).

Redistricting plan is constitutionally impermissible as racially discriminatory if it is racially motivated gerrymander or if it perpetuates existant denial of access by racial minority to political process. The court ordered a plan of voting districts for election of county officials by single member districts.

BEER vs. UNITED STATES, 425 U.S. 130 (1976) (LA - Local)

Multimember districts

Since the two at-large city councilmanic seats, having existed since 1954, could not be reviewed in a proceeding to obtain approval for the reapportionment plan under Sec. 5 of the Voting Rights Act, the plan could not be rejected solely because it did not eliminate the two at-large seats.

Voting Rights Act

The plan did not have the effect of denying or abridging the right to vote on account of race or color under Sec. 5 since under a prior plan, none of the five councilmanic districts had a clear Negro majority of registered voters and no Negro had been elected to the City Council but, under the plan for which approval had been sought, Negroes would constitute a majority of the

CONNOR vs. WALLER, 421 U.S. 656 (1975) (MS - Leg)

Voting Rights Act

Three judge panel, sitting for the U.S. District Court for the Southern District of Mississippi, erred in ruling the Mississippi statutes reapportioning the state legislature were not legislative enactments subject to federal approval pursuant to Sec. 5 of the Voting Rights Act.

CHAPMAN vs. MEIER, 420 U.S. 1 (1975) (ND - Leg - Sen)

Population Variance

A population variance of 20.14% between the largest and smallest Senate district could not be justified on the grounds of absence of electorally victimized minorities, the state's sparse population, the division of the state by a river or the goal of observing geographical and political boundaries, since none of such factors had been explicitly shown to necessitate the substantial population deviation ...

Multimember Districts

Absent persuasive justification, a federal court's reapportionment plan for a state legislature should avoid use of multimember districts, and should ordinarily achieve the goal of population equality with little more than de minimis variation.

TAYLOR vs. MCKEITHEN, 499 F 2nd 893 (1974) (LA - Leg)

Long history and continuing vitality of wards in voting districts in New Orleans entitled ward boundaries to respect in drawing district lines.

Constitution extends equal protection of the laws to people, not to interests.

WHITE vs. REGISTER, 412 U.S. 755 (1973) (TX - Leg - House)

Population Variance

House districts of 71,597 to 78,943 or 9.9% overall deviation plan upheld.

Multimember Districts

The court invalidated the use of two large multimember districts in two metropolitan counties because the Black and Chicano communities had been "effectively excluded from participation in the Democratic primary selection process".

population in two of the five districts and a clear majority of the registered voters in one of them, making it predictable that at least one and perhaps two Negroes could be elected to City Council. An impermissible effect is created whenever a reapportionment plan has the effect of diluting existing black voting strength.

EAST CARROLL PARISH SCHOOL BOARD vs. MARSHALL, 424 U.S. 636 (1976) (LA - Local)

Multimember districts

The Supreme Court's preference for single-member districts in court ordered apportionment plans is extended to districts in a local jurisdiction. The preclearance procedures of Sec. 5 of the Voting Rights Act were not applicable when a District Court adopted a reapportionment plan submitted to it by a local legislative body that was covered by the Act.

McGILL vs. GADSDEN COUNTY COMMISSION, 535 F 2nd 277 (1976) (FL - Local) (Court of Appeals)

At Large Districts

Plaintiff failed to establish that at-large voting scheme used to elect members of County Commission diluted black voting strength.

WHITE vs. REGISTER, 422 U.S. 935 (1975) (TX - Leg). (Follow-on case to White v. Weiser.)

The Texas Legislature adopted a single member redistricting plan for the multimember districts at question subsequent to WHITE vs. REGISTER. On direct appeal, the U.S. Supreme Court vacated the District Court judgment and remanded the case for further consideration.

CITY OF RICHMOND, VIRGINIA vs. UNITED STATES, 422 U.S. 358 (1975) (VA - Local)

Voting Rights Act

The effect of annexation did not deny or abridge the Negroes' right to vote in the postannexation community, since the fairly designed ward plan afforded them representation reasonably equivalent to their political strength in the enlarged community.

Multimember Districts, Racial Discrimination

In order to sustain a claim that multimember legislative districts are being used individiously to cancel out or minimize the voting strength of racial groups, it is not enough to show that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. Evidence must be produced to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question - that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

GAFFNEY vs. CUMMINGS, 412 U.S. 735 (1973) (CT - Leg)

Population Variance

Senate 83,441 to 84,973; total 1.81%

House 19,297 to 20,870; or 7.83%.

Plan upheld.

Partisan Gerrymandering

The plan was based on a "political fairness" principle, which was designed to reflect the relative strength of the major political parties, by creating a certain number "safe" of "safe" districts for each party and a certain number of "swing" districts.

Court Holdings

Minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Equal Protection Clause.

The population variations in this case are so minor the state need not justify them.

The principle of "political fairness" is not invidiously discriminatory.

Congressional districts are to be judged by stricter deminimus standards than are state legislative districts.

GEORGIA vs. UNITED STATES, 411 U.S. 526 (1973) (GA - Leg)

Voting Rights Act

State reapportionment plans are specifically included in Sec. 5 preclearance requirements. Despite the lack of any affirmative finding by the Attorney

General to the effect that the reapportionment plan had a racially discriminatory purpose or effect, the Attorney General had properly promulgated and applied a regulation stating that the burden of proof was on the submitting party, and that the Attorney General would refrain from objecting only if his review of the material submitted satisfied him that the proposal change did not have a racially discriminatory purpose or effect.

MAHAN vs. HOWELL, 410 U.S. 315 (1973) (VA - Leg)

Population Variance

Legislative redistricting plans are not to be judged by the more stringent standards applicable to Congressional reapportionment, but judged against Equal Protection Clause.

Some divergences from a strict population standard are constitutionally permissible with respect to the apportionment of seats in either or both houses of a bicameral state legislature, where such divergences are based on legitimate considerations incident to the effectuation of a rational state policy.

Maintenance of political subdivision lines in the apportionment of legislative seats is not an irrational state policy; though such a policy, however rational, cannot be permitted to emasculate the goal of substantial equality of representation.

Tested by such standards, the population disparities among the House districts created by the Virginia General Assembly (+6.8% to -9.6% or 16.4% overall), though approaching tolerable constitutional limits, do not exceed them.

WHITE vs. WEISER, 412 U.S. 783 (1973) (TX - Cong)

Population Variance

458,581 to 477,856 for a spread of 4.1% is unconstitutional (2.43% & 1.70% average deviation among districts; .745% or 3,421 persons).

Although the percentage deviation in the legislative plan are smaller than those in Kirkpatrick & Wells, they were not "unavoidable" and the districts were not as mathematically equal as reasonably possible.

Avoidable variations must, if possible, be avoided.

Partisan Gerrymandering

The drawing of district boundaries, in a way that minimizes the number of contests between present incumbents, does not of itself establish invidiousness.

GOINES vs. HEISKELL, 362 F Supp. 313 (1973) (WV Leg - House) (U.S. District Court)

Population Deviation

16.179 maximum percentage population variance among the delegate districts was tolerable and acceptable, and did not violate "one man - one vote".

Multimember Districts

Statute apportioning membership in House of Delegates of the West Virginia Legislature did not arbitrarily discriminate against some voters and favor others in creating multimember districts.

67TH MINNESOTA STATE SENATE vs. BEENS, 406 U.S. 187 (1972) (MN - Leg)

Federal Court Intervention:

Insofar as possible, a federal court in reapportioning a state legislature should accommodate the relief ordered to the appropriate provisions of state constitutions and state statutes relating to the legislature's size.

In a federal district court action for reapportionment of a state's legislature, a court-imposed minor variation from the state's prescribed figures as to the proper size of the legislature, is permissible when the change is shown to be necessary to meet constitutional requirements; but cutting a state Senate's size almost in half and the House size by nearly 1/4 is more than a mere minor variation.

CONNOR vs. WILLIAMS, 404 U.S. 449 (1972) (MS - Leg)

Multimember Districts

The Supreme Court affirmed its preference for an emphasis upon single-member districts in court-ordered reapportionment plans.

ABATE vs. MUNDT, 403 U.S. 182 (1971) (NY - Local)

Population Variance

Population variances of 11,577 to 13,020 or +4.8% to -7.1%, or total of 11.9%, are constitutionally permissible in light of the absence of a built-in bias tending to favor any particular area or interest and the longstanding local governmental structures in which the towns and the county worked in close cooperation to provide overlapping public services.

WHITCOMB vs. CHAVIS, 403 U.S. 124 (1971) (IN - Leg)

Population Variance

Multimember districts

The use of multimember state legislative districts is not per se unconstitutional under the Equal Protection Clause, but is subject to challenge where circumstances of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

Racial Discrimination

Minorities are not ipso facto and per se, entitled to representation in proportion to number or to relief even in multimember districts, based only on the fact of their racial or political minority.

ELY vs. KLAHR, 403 U.S. 108 (1971) (AZ - Leg)

Population Base

The use of voter registration as a basis is allowable only if it produces a "distribution of legislators not substantially different from that which would have resulted from the use of a permissible population basis".

Partisan Gerrymandering

Plan tried to insure inter alia, that no incumbent would run for re-election against another incumbent. Court held that "the incumbency factor has no place in any reapportionment or redistricting", and found "inapposite" the consideration of party strengths as a factor.

CONNOR vs. JOHNSON, 402 U.S. 690 (1971) (MS - Leg)

Multimember Districts

When U.S. District Courts are forced to fashion state legislative apportionment plans, "single-member districts are, as a general matter, preferable to large multimember districts".

PERKINS vs. MATTHEWS, 400 U.S. 379 (1971) (MS - Local)

Voting Rights Act

Definitional refinement of Sec. 5.

Any change in election procedure, no matter how small, is subject to Sec. 5 scrutiny.

The local district courts do not have jurisdiction to review Sec. 5 cases; only the U.S. Attorney General and the U.S. District Court for the District of Columbia may review these cases.

OREGON vs. MITCHELL, 400 U.S. 112 (1970) (OR - Elections)

Federally imposed voting eligibility requirements:

Congress has the right to establish national standards for voting eligibility in federal elections.

The provision lowering the minimum voting age from 21 to 18 was valid as applied to federal elections.

Congress could not lower the voting age from 21 to 18 in state and local elections.

The provision suspending the use of literacy tests for both federal elections and state and local elections is valid.

Provisions pertaining to residency requirements and absentee registration and voting in a presidential and vice presidential election are valid.

HADLEY vs. JUNIOR COLLEGE DISTRICT, 397 U.S. 50 (1970) (MO - Local)

Population Variance

Population equality is necessary in a consolidated junior college district from which trustees are elected.

GASTON COUNTY vs. UNITED STATES, 395 U.S. 285 (1969) (NC - Local)

Voting Rights Act

The District Court could properly consider the county's practice of educational discrimination in determining whether its literacy test had the effect of discriminatorily denying the franchise.

It was not clearly erroneous for the District Court to conclude that the county had not met the burden of proving that the education it provided had no such discriminatory effect.

Adult Negroes who had received inferior education were discriminatorily affected by the use of this literacy test, despite impartial administration of

the voting registration law and recent progress toward equalizing and integrating the county's school system. Educational levels can have some effect on the voting regulations under Sec. 5.

MOORE vs. OGILVIE, 394 U.S. 814 (1969) (IL - Elections)

Election Nomination Procedures

A state statute providing that the 25,000 or more signatures of qualified voters prescribed for nominating petitions of independent candidates for offices to be filled by voters at large must include the signatures of 200 qualified voters from each of at least 50 of the 102 counties in the state; notwithstanding that it was designed to require a statewide support for launching a new political party rather than support from a few localities, violates the equal protection clause of the 14th Amendment in that it applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights, discriminates against the residents of the populous counties in favor of rural sections ...

WELLS vs. ROCKEFELLER, 394 U.S. 542 (1969) (NY - Cong)

Population Variance

A difference of +435,000 to -390,000 is unconstitutional.

Community of Interest

To accept population variances, large or small, in order to create Congressional election district with specific interest orientations, is antithetical to the basic premise of the constitutional command to provide equal representation for equal numbers of people.

KIRKPATRICK vs. PREISLER, 394 U.S. 526 (1969) (MO - Cong)

Population Variance

Districts varying in population from 420,000 to 445,000 were unconstitutional. "Limited population variances among Congressional districts are constitutionally permissable only if they are unavoidable despite a good-faith effort to achieve absolute equality or if justification for them is shown".

There is no de minimus standard for congressional districting.

Acceptable reasons must justify each variance, no matter how small.

Unacceptable justifications include:

- o avoided fragmenting areas with distinct economic and social interests;
- o a reasonable legislative compromise resolving practical political problems;
- o adjustments made on eligible voter population done on a haphazard basis;
- o projected population shifts not applied systematically geographic compactness.

ALLEN vs. STATE BOARD OF ELECTIONS, 393 U.S. 544 (1969)
(MS,VA - Local)

Voting Rights Act

Approval requirements of Sec. 5 were applicable to:

- o changes from district voting to at-large voting for county supervisors;
- o changes making the office of county superintendent of education from an elective to an appointive one in certain counties;
- o increasing the requirements for an independent candidate to gain position on a general election ballot; and
- o a bulletin issued by the State Board of Elections outlining new procedures for casting write-in votes.

AVERY vs. MIDLAND COUNTY TEXAS, 390 U.S. 474 (1968) (TX - Local)

County Precincts, Population Variance

One-man, one-vote appliesd to local units of government.

LUCAS vs. RHODES, 389 U.S. 212 (1967) (OH - Cong)

Population Variance

Unofficial population popul[illegible]on statistics are insufficient to justify the disparity among districts because they are too unreliable and not available for all areas. However, seven years after the initial census count such figures may be used.

KILGARLIN vs. HILL, 386 U.S. 120 (1967) (TX - Leg - House)

Population Variance

54,384 to 71,301, or +14.84% to -11.64%.

The Supreme Court accepted the ruling of the District Court sustaining the allocation of a representative to a smaller but more rapidly growing district.

Multimember Districts

The use of multimember and/or flaterial districts in state legislative reapportionment plans is not unconstitutional per se.

DUDDLESTON vs. GRILLS, 385 U.S. 455 (1967) (IN - Leg)

Case remanded to District Court in light of: SWANN vs. ADAMS, WESTBERRY vs. SANDERS, and REYNOLDS vs. SIMS

SWANN vs. ADAMS, 385 U.S. 440 (1967) (FL - Leg)

Population Variance Senate: +15.09; -10.56; House: +18.28; -15.27. Deviations are unconstitutional.

KATZENBACH vs. MORGAN, 384 U.S. 641 (1966) (NY - Elections)

Voting Rights Act

Sec. 4 (e) - barring English language proficiency and literacy tests as a condition of voting is constitutional.

BURNS vs. RICHARDSON, 384 U.S. 73 (1966) (HI - Leg)

Population Base

Hawaii's use of a registered voter base is upheld only because on this record it produced a distribution of legislators not substantially different from that which would have resulted from the use of a state citizen population base or another permissible population base.

Multimember Districts

The equal protection clause does not require that at least one house of a bicameral state legislature consist of single-member legislative districts.

Partisan Gerrymandering

Drawing district boundaries "in such way that minimizes the number of election contests between present incumbents does not in and of itself establish invidious discrimination".

of the state's population would elect a majority.

House: 21,825 to 95,064 + 40.5% of the state's population would elect a majority.

MARYLAND COMMITTEE FOR FAIR REPRESENTATION vs. TAWES, 377 U.S. 656 (1964) (MD - Leg)

Population Variance

Neither house, even after the reapportionment, was apportioned sufficiently on a population basis to be constitutionally sustainable. House: 6,541 to 37,879 and 35.6% of the state's population would elect a majority. Senate: 15,481 to 492,428 and 14.1% of the state's population would elect a majority.

WMCA, INC. vs. LOMENZO, 377 U.S. 633 (1964) (NY - Leg)

Population base

Case upheld New York's use of a citizen population base which excluded resident aliens.

Population Variance

Apportionment based on 1960 figures. State Assemblymen representing 37.5% of the state's citizens, and Senators representing 38.1% of the state's citizens, would constitute a majority in each chamber. Population in Assembly districts would vary from 14,974 to 190,343. Population in Senate districts would vary from 162,840 to 425,000. Population variance unconstitutional.

REYNOLDS vs. SIMS, 377 U.S. 533 (1964) (AL - Leg)

The equal protection clause requires that the seats in both houses of a bicameral state legislature be apportioned on a population basis.

Some deviations from the equal-population principle are constitutionally permissible, with respect to either or both houses of a state legislature, so long as such deviations are based on legitimate considerations incident to the effectuation of a rational state policy.

WESBURY vs. SANDERS, 376 U.S. 1 (1964) (GA - Cong)

Population Variance

The federal Constitution requires that Congressmen be chosen by "the people of