REDISTRICTING IN THE MIDWEST

Prepared by the Rose Institute of
State and Local Government

REDISTRICTING IN THE MIDWEST

Introduction

Since the so-called "reapportionment revolution" of the 1960s--a series of Supreme Court decisions that established the principle of "one man-one vote" in the districting of congressional and state legislative seats--the redistricting process has been a subject of concern to scholars, politicians, and voters alike. The concern is well-founded, for the past twenty years have shown that district population equality is no shield against partisan gerrymandering or gerrymandering to insure the re-election of incumbents. The character of the Congress and the legislatures is still shaped in part by the way districts are redrawn every decade or so. The redistricting process can still decide the electoral fate of individual lawmakers, determine the partisan composition of the national and state legislatures, and even influence the outcome of policy deliberations. It is no extravagance to say that all Americans are affected by what happens in the redistricting process.

Redistricting may be of great importance, but it is also one of the least studied and least understood processes in American politics. It is for this reason that the Rose Institute has undertaken a major publications program aimed at illuminating redistricting in all its aspects. The present volume, the first account of redistricting history and prospects in all the states of the Midwest, is a major contribution to that effort. It is one of four regional surveys (the other three cover the states of the Northeast, South, and West and Southwest) featuring essays by scholars familiar with redistricting history, law, and politics in the individual states. Indeed, many of the contributors to this volume are experts on redistricting in their

particular states, having previously published books or articles on the subject, advised political leaders, or offered expert testimony in state and federal court. Each essay is designed to serve as a convenient introduction to redistricting practice and outlook in the individual states, with the emphasis in most cases on the great changes that have occurred since the 1960s and the critical problems facing the state redistricting agencies--legislatures, bipartisan commissions, and other responsible bodies-- as they approach the redistrictings of the 1980s. Most authors have concentrated their attentions on the redistricting of state legislatures rather than the congressional seats, in order to keep the essays manageable and to point up the importance of local politics in state redistricting.

This is the only study of redistricting in the Midwest. The twelve states covered here differ considerably in how they have performed redistrictings in the past, and how they will carry out the redistricting process for the decade to come. It is only by analyzing the redistricting history and prospects of each individual state, however, that we become aware of all the problems of redistricting and all the influences that come to bear in the redistricting process. It is also only on the basis of a state-by-state analysis that we can hope to answer the question of what will happen in the redistrictings of the 1980s.

ILLINOIS

James L. McDowell

Redistricting Prior to 1960

Redistricting of Illinois' legislative districts proved to be extraordinarily difficult, if not altogether impossible, during the first half of the twentieth century. But it was not always that way.

The districts of the Illinois General Assembly were generally representative of the state's population in the first nine decades after Illinois' admission into the Union. During this period, population was the only basis for representation in either house of the legislature, except that the first two constitutions (1818 and 1848) specified "white inhabitants," and the third constitution (1870) permitted districts to contain as little as 80 percent of the average district population.

Unfortunately, the districting system established by the 1848 constitution resulted in largely sectional representation of the political parties in the General Assembly of the 1860s, along the lines of Civil War sympathies. In the House of Representatives in 1867, for example, only eight of the sixty Republican members came from the southern half of the state, while just five of the twenty-five Democrats came from districts north of Springfield. In order to deal with this sectional split, delegates to the state's third constitutional convention in 1869-1970 sought to provide a plan of representation that would reduce sectional partisanship in the legislature and reflect more accurately the division of party strength in the state. Their solution was Illinois' unique system of "cumulative voting."

Cumulative voting is a method by which Illinois voters could divide three votes among candidates in each of the state's three-member House districts, i.e., three

votes to one candidate, one and one-half votes each to two candidates, or one vote each to three candidates. For 110 years, until Illinois voters abolished this system in 1980 (at the same time that they reduced the size of the House from 177 members to 118), cumulative voting achieved the desired result. Voters in districts throughout the state--with an occasional exception in Chicago--sent two representatives from one party and one representative from the other party to the House. This resulted frequently in close partisan alignments in the lower chamber and, in the twentieth century, in relatively long tenure for many members, who did not want their districts revised.

From 1818 through 1901, the General Assembly followed the mandates of three constitutions and redistricted fourteen times as scheduled, generally in conformity to population growth and redistribution. To be sure, various apportionment acts--particularly those in 1882, 1893, and 1901--involved gerrymandering. But while the districts established in these acts may have been drawn for partisan advantage, the districts allotted to what might be called the two major divisions of the state, Cook County and "downstate" (i.e., the remaining 101 counties), did basically reflect the respective populations of these areas. The 1870 constitution called for fifty-one legislative districts, each electing one senator and three representatives. In the latter years of the nineteenth century, the General Assembly faithfully discharged its duty by increasing the representation of Cook County (Chicago) in step with the increase in the county's share of the state's population. In the 1901 redistricting, the legislature granted Cook County, with 38 percent of the population, nineteen of the fifty-one legislative districts (37 percent), an increase of four districts over the number allotted the county in the 1893 act.

However, members of the General Assembly, at the time the only ones authorized to redistrict, became increasingly aware as time progressed that if they continued to reallocate districts equitably after each decennial census, Cook County

eventually would come to hold a majority of the seats in both chambers of the legislative branch of government. As the Illinois Supreme Court had held that the judiciary had no authority to compel the legislature to act in any manner, the Illinois legislature joined many other state legislative bodies after the turn of the century in adopting the "silent gerrymander"; that is, the General Assembly simply ignored its constitutional responsibility to reapportion after the federal census of 1910--and continued to do so for more than four decades, as successive legislatures proved unwilling to transfer districts from the downstate area to Cook County in the proportion indicated by the census figures.

The result of the General Assembly's refusal to act, during a period of considerable population growth and redistribution in Illinois, was that the legislative districts established in 1901 became grossly unequal in population. Cook County, which by 1930 had 52 percent of the state's population, continued to be represented by only 37 percent of the legislators. Moreover, district populations within each of the two major divisions of the state varied so widely that, by 1952, the minimum percentage of the population necessary to elect a majority in the legislature was 26.4, just over a quarter of the state's residents.

The basic urban-rural cleavage between the state's lawmakers continued to stymie redistricting efforts until 1953. In that year, various pressures for reform and revision of the Illinois apportionment system became great enough to effect a significant change in the basis of legislative representation.

By the time Republican Governor William Stratton came into office in 1953, the largest district in the Illinois legislature contained nearly eighteen times as many residents as the smallest, and twenty-eight of the fifty-one districts contained fewer people than the constitutionally permissible minimum. As had been the custom of most of his predecessors in the state house, Governor Stratton pointed to an urgent need for redistricting and suggested changing the basis of representation

so as to prevent political domination of the state by a single densely populated area. Although Cook County had maintained its 52 percent share of the state's population in the 1950 census, Governor Stratton's efforts may not have been motivated so much by a sense of justice and fair play as by his realization that much of Cook County's growth now lay in the Republican-controlled suburban townships. Nonetheless, the governor did succeed where his predecessors had failed: he convinced the Republican-dominated legislature to submit a reapportionment amendment to the electorate in 1954.

The proposed amendment, of course, did not actually redistrict the General Assembly. First, the voters of the state had to approve the amendment in 1954; then, the 1955 legislative session would be faced with the task of drawing new district boundaries.

The legislature approved the proposed amendment over the opposition of legislative leaders from both sides of the aisle in both chambers. Once over the legislative hurdle, however, the proposal had the backing of Governor Stratton, both major political parties, a large number of interest groups, and all four of Chicago's metropolitan daily newspapers. When the proposal finally came before the public, the voters approved the change in representation overwhelmingly, by a four-to-one majority.

The 1954 constitutional amendment created a new set of conditions for redistricting the Illinois legislature. For one thing, it increased the size of the House from fifty-one districts electing 153 representatives, to fifty-nine districts electing 177. For another, it provided for "permanent" Senate districts, with "area the prime consideration" in determining their boundaries. While House districts were allocated among the city of Chicago, suburban Cook County, and "downstate" on a population basis, with redistricting scheduled in 1963 and every ten years thereafter, there was no provision made for redrawing Senate districts. The intent

of the legislators, in assigning eighteen Senate districts to Chicago, six to suburban Cook County, and thirty-four to the downstate counties, was to assure permanent downstate control of the upper chamber. Thus, while the more rural areas of the state could be expected to lose House seats to Cook County, this would be offset in the foreseeable future by their continuing control of the Senate.

In the long run, the most significant provisos of the 1954 amendment were two provisions which were designed to encourage the General Assembly to redistrict promptly in the future. As it assumed that most legislators would prefer to redraw their own districts rather than have someone do it for them, the amendment provided that in the event the legislature failed to act when it was scheduled to redistrict, a ten-member bipartisan commission, picked by the governor, would redistrict the House. As a further inducement to the legislature to act, a second provision mandated that, if the commission failed to redistrict within its allotted four-month tenure, all House members would be nominated and elected from the state at large.

These provisions were intended to serve as a kind of "sword of Damocles" to dangle over the heads of the legislators. However, it was widely expected that the candle's flame would never reach the slender cord supporting the sword: no legislator would want the drawing of district boundaries left to a non-legislative agency, not to mention running for re-election from the entire state!

There proved to be no real problem with redistricting in the 1955 session. Each chamber assumed the burden of drawing its own districts, and each agreed to accept the plan of the other house. Although a conference committee proved necessary to perform some minor adjustments, each house drew districts to please a majority of its members. On June 28, 1955, Governor Stratton signed into law the first change in the state's legislative districts in fifty-four years.

The 1955 redistricting act substantially improved the representative quality of House districts. While there were some extreme population variations (from +138 percent to -19.9 percent of the mean), the theoretical percentage of the population able to elect a majority of the Illinois House had improved from 26.4 percent prior to the redistricting to 46.0 percent following the drawing of new district lines. The representative quality of Senate districts was not greatly improved, however, because of the use of "area" as the principal consideration in drawing districts. Some thirty-nine of the fifty-eight Senate districts varied by more than fifteen percent from the population mean (thirty-three being at least that much smaller), and the minimum theoretical percentage necessary to elect a majority had increased only from 26.4 percent to 29.1.

Redistricting in the 1960s

The 1954 redistricting amendment required a change in House districts in 1963. In theory, redistricting of the House should have posed no real problem for the General Assembly in 1963. Exactly half of the state's 102 counties had lost population in the 1960 census; thirty-eight of these counties were in the southern portion of the state. The northeastern section of the state had experienced the most rapid growth, with the greatest increases coming in suburban Cook County and the adjacent counties of DuPage and Lake. Cook County, with 51.5 percent of the state's population, would retain thirty of the fifty-nine districts, but only twenty-one of these (rather than twenty-three) would go to Chicago. Two districts would be transferred from southern Illinois to the northeastern part of the state.

In reality, redistricting of the House proved to be an insurmountable problem in 1963. Originally, this problem was not expected to be related to partisan politics, for Republicans controlled both chambers of the legislature, although a Democratic governor, Otto Kerner, resided in the executive mansion. Under the traditional

rules of the game, the Senate played no active role in the House redistricting--but House Republicans, whose 90-to-86 majority (with one vacancy) was but one more than the number of votes needed for passage, could not hold their coalition together. All Democrats voted as a bloc on any redistricting issue, but fifteen Republicans--all but two of them from downstate--refusted to support any party plan which took more than one district from the southern end of the state. Only after nearly a month of negotiations among the numbers of the majority party, and only after a compromise was reached which moved only one district from the southern to the northeastern part of the state, was the General Assembly able to pass a House redistricting bill--and then only by the minimum number of votes needed.

While the Senate acted in perfunctory fashion in passing the House redistricting measure, approving it on a near party-line vote at its earliest opportunity, redistricting was not to be achieved in this session. Governor Kerner, a former Chicago judge and a product of that city's Democratic organization, had not played any role in the redistricting negotiations. When the bill reached his desk, he vetoed it.

Citing the fact that two-thirds of the new districts contained less than the statewide average district population, the governor said he had vetoed the redistricting bill to assure voters a fair voice in state affairs. A Republican-sponsored lawsuit, seeking to declare the veto null and void, was decided in the governor's favor, and the state prepared to employ its non-legislative redistricting apparatus for the first time.

The ten-member redistricting commission appointed by Governor Kerner, from lists supplied by the two state party chairmen, was heavily weighted with professional politicians, and it continued the same partisan squabbling that had characterized the General Assembly session; specifically, there was disagreement over whether one or two districts should be taken from the southern end of the

state, and also over whether some Chicago districts should "overlap" into suburban Cook County so that the city could continue to control twenty-three House districts. Republican members eventually agreed to move two districts from southern Illinois to the northeastern portion of the state, but the two partisan groups could not resolve their differences over the allotment of districts within Cook County. As a result, the commission's tenure expired before a redistricting plan could be presented, and it became necessary to elect all 177 House members from the state at large in 1964.

Accordingly, Governor Kerner called the General Assembly into special session in January 1964 to enact some ground rules for the nomination and election of the at-large candidates. The laws passed by the special session provided that candidates would be nominated in 1964 by special party conventions rather than by the direct primary; that neither major party could name more than 118 candidates (two-thirds of the membership); and that the state's cumulative voting procedure would not apply to a statewide election. These provisions were sanctioned by the state Supreme Court.

The 1964 legislative election confronted Illinois voters with the task of choosing 177 House members from among some 236 candidates, all presented on special orange "bedsheet ballots" more than three feet in length. It took more than a month to tally the results of the election. An overwhelming Democratic vote from Cook County determined that the 1965 legislature would be divided politically-- a Republican Senate and a House with the most lopsided partisan margin in Illinois history, 118 Democrats and fifty-nine Republicans. Together with the re-election of Governor Kerner, this result indicated that redistricting would again be very difficult in the session ahead.

The redistricting task of the 1965 legislative session appeared doubly difficult because of another occurrence: the United States Supreme Court decision in

Reynolds v. Sims that both houses of a state legislature had to represent "people, not trees or acres." Therefore, the makeup of the Senate, as well as that of the House, was at issue in 1965. In Germano v. Kerner, a federal district court panel did not order the redistricting of the Senate in 1965, but held that if the legislature did not act, it would be required to show cause why all senatorial seats should not be elected at large in 1966. 1/

That the redistricting effort was in serious trouble was indicated early in the session when each chamber passed its bills for both houses, then refused to consider the measures approved by the other chamber. When the General Assembly again adjourned without enacting a valid districting plan, the state Supreme Court assumed jurisdiction over senatorial districting, while the responsibility for redistricting the House went to another commission appointed by Governor Kerner.

Working in conjunction with a three-member federal district court panel, the Illinois Supreme Court produced a compromise Senate plan that took into consideration the divergent proposals submitted by the two political parties during the legislative session. Neither wholly pleasing nor entirely alienating either Democrats or Republicans, the court-ordered plan permitted no Senate districts to overlap the Chicago-suburban boundary, but also awarded thirty of the fifty-eight districts to Cook County. For the first time in history, Cook County would have a majority of seats in the Senate. The maximum population deviation for the new Senate districts was $\pm$7.0 percent from the statewide agerage, and the minimum percentage of the Illinois population necessary to elect a senatorial majority was 50.4. In order to achieve this substantial population equality, the judicial plan split up twelve downstate counties and divided the pieces among districts, and created fourteen districts containing no incumbents. At this point, however, the judicial panel stopped, holding it did not wish to enter further into the legislative realm by determining which districts would elect senators for two-year terms and which for

four years. Therefore, the court held, all fifty-eight seats would be filled for four-year terms in the 1966 elections.

The matter of House redistricting was not so easily concluded. After the first three months of its four-month tenure, the redistricting commission gave every indication of being hopelessly deadlocked. In the final two weeks of the commission's tenure, however, Democratic members agreed to a Republican proposal that Cook County House districts be identical to those approved for the Senate; Republican members, in turn, accepted a Democratic plan for downstate districts that would permit, if not guarantee, narrow Democratic control of the lower chamber after most elections. The maximum population deviation for the new districts was $\pm$8.5 percent from the statewide agerage, and the minimum percentage of the statewide population necessary to elect a House majority was 49.2; this latter figure, together with the senatorial index of 50.4 percent, made the Illinois General Assembly among the most representative in the nation.

Redistricting in the 1970s

Political conditions similar to those which had prevailed in 1965 were again present in 1971, and served to prevent the General Assembly from fulfilling the requirements of the new constitution of 1970 by dividing the state into fifty-nine legislative districts, each electing one senator and three representatives. Again, there was divided control of the legislative branch. Republicans controlled the House by a 90-to-87 margin, but the Democrats organized the Senate (which had twenty-nine members of each party) after the Democratic lieutenant governor cast the tie-breaking vote in favor of his party's candidate for Senate president.

Although Republican Governor Richard Ogilvie had pledged to sign any redistricting bill passed by the legislature, the General Assembly once again was unable to compromise partisan differences. Much of the controversy again centered

on the number of districts to be allotted the city of Chicago. Democrats wanted twenty city districts, a loss of only one, but Republicans wanted to assign the city only eighteen. The Republican speaker of the House eventually convinced his chamber's majority to accept the higher figure, but Senate Republicans refused to go along. This impasse could not be resolved prior to the constitutional deadline for legislative adjournment, and the problem once again was handed over to a redistricting commission.

The composition of the redistricting commission under the 1970 constitution was significantly different from that of the commissions which had operated in 1963 and 1965. Rather than a ten-member group, composed of five members of each political party, the new commission was composed of eight members (no more than four from each party), with the leaders of each party in each legislative chamber appointing one legislator and one public member to the commission. As it turned out, the House speaker and minority leader and the Senate president each adhered to the letter but not the spirit of the new constitution by appointing themselves and their principal administrative aides to the commission. The Senate minority leader was ill and could not participate himself, but he appointed his deputy leader and former Governor Stratton.

This group was able to accomplish legislative redistricting in just under one month, but not without provoking substantial Republican disagreement and some Democratic discontent over the new districts. With five votes needed to approve any plan, the commission adopted by a 6-to-2 vote a plan substantially the same as that passed earlier by the House but rejected by the Senate. The speaker and his aide joined Democratic members of the panel in approving the plan, while the Senate Republican appointees rejected it.

Republican opposition concentrated on the fact that while the redistricting plan created only eleven districts wholly within Chicago, it created nine others that

extended from the city into suburban townships. Republicans maintained, therefore, that the commission plan included more than 400,000 suburban residents in districts extending from Chicago and dominated by city voters, thereby permitting city Democrats to control twenty legislative districts rather than eighteen. Downstate Illinois, meanwhile, had twenty-nine districts, while eight other districts were entirely within suburban Cook County and two districts extended from the suburbs into the downstate counties of Kane and Will.

The 1971 commission plan proved to be a masterpiece in at least two respects: it involved only a modest displacement of incumbents and, perhaps more importantly, it adhered extremely closely to the population standard, with deviations of no more than $\pm$0.5 percent from the district population mean of 188,372. Although the state Supreme Court chided the legislative leaders for naming themselves and their aides to the commission, the state's highest tribunal rejected all challenges to the commission plan, which was used from 1972 through 1980.

Redistricting in the 1980s

As the preceding narrative indicates, the task of redistricting legislative seats in Illinois has rarely been easy to accomplish in this century. Observers anticipate with some trepidation, however, that the past may be only prologue: the redistricting required in 1981 is expected to be the most difficult such effort the General Assembly has yet undertaken.

The decade of the 1970s saw Democratic control of both houses of the legislature for the first time since the Roosevelt-dominated politics of the 1930s. However, it is now widely believed that the Democratic party in the General Assembly would require both the efforts of an extremely innovative mapmaker and the blessings of a particularly lenient state or federal judicial panel in order to

maintain its control of even one house of the legislature beyond 1982. A 1977 Illinois Bureau of the Budget forecast of the state's 1980 population indicated that the city of Chicago would lose control over five districts in the next redistricting, dropping to fifteen; suburban Cook County would gain control over two districts; and the surrounding metropolitan counties would pick up three districts.

While the most immediate and obvious change under these circumstances would be a shift in partisan control of at least one house--and probably both houses--of the legislature after the 1982 elections, there is still more at stake. The city of Chicago would drop from a position of controlling slightly more than one-third of the districts (twenty of fifty-nine) to a position of dominating little more than one-forth of the total (fifteen). Suburban Cook County and the five surrounding metropolitan counties (DuPage, Kane, Lake, McHenry, and Will) are expected to control twenty-two legislative districts, and perhaps as many as twenty-four, through the use of district boundaries which overlap county lines. This would leave no more than twenty-two districts for the residents of the state's other ninety-six counties. Thus, the suburban townships and the surrounding metropolitan counties figure to hold the balance of power in the legislative sessions of the 1980s.

Two other factors underscore the importance of the 1981 districting. The success of the "Coalition for Political Honesty," by a two-to-one majority, in achieving passage of a constitutional amendment to reduce the size of the House of Representatives from 177 members to 118, all to be chosen from single-member districts, means an end not only to the legislative terms of one-third of the members of the lower chamber but also to Illinois' unique system of three-member districts and the device of cumulative voting. For 110 years, this system has virtually guaranteed the election to two representatives of one party and one of another party in all but the most lopsidedly partisan districts. This voting method was devised in the constitutional convention of 1869 in an effort to guarantee repre

sentation of the minority party throughout the state. Although observers expect legislators to create legislative districts for senators, then divide each of these to establish two single-member districts for representatives, they anticipate the election in 1982 of few, if any, Republican House members from the city of Chicago and a very small number of Democratic representatives from downstate Illinois. In addition, observers envision a spirited battle among the three representatives serving from each district in 1981, as each seeks for his individual preservation beyond the 1982 elections.

Also, the Senate elects all fifty-nine members in 1982. The constitution adopted in 1970 abolished the long-established practice of electing approximately one-half of the upper chamber every other year. Instead, the present legislative articles divides the fifty-nine Senate seats into three groups and creates staggered terms in combinations of 2-4-4, 4-2-4, or 4-4-2 for each district in a group over a ten-year period. Thus, one-third of the upper chamber will be chosen in 1984; two-thirds in each of the 1986 and 1988 elections; one-third in 1990; and all members in 1992, after which the Senate seats will again be divided into three groups and the process repeated. Significantly, however, the schedule calls for all Senate seats to be filled in the election immediately following each decennial redistricting.

Conclusion

Redistricting of the Illinois General Assembly in 1981 likely will succeed or fail on the basis of how legislators deal with the continuing problem of what to do about Chicago. The legislature has until June 30 to enact a valid redistricting plan. If the General Assembly fails, a redistricting commission appointed by legislative leaders, and consisting of four legislators and four non-legislators, has until August 10 to file a redistricting plan approved by at least five commission members. If the commission fails, the state Supreme Court is to submit the names of two persons,

not of the same political party, to the secretary of state. The secretary of state then selects one of these two persons, in a random drawing, by September 5 to serve as the ninth member of the redistricting commission. Not later than October 5, the enlarged commission is to submit a redistricting plan approved by at least five members.

The cutback of the lower house notwithstanding, the overriding concern of the legislature appears to be how to reduce the number of seats presently controlled by the city of Chicago (twenty) to that which the 1980 census figures apparently will permit (fifteen). The concern--and the problem--is complicated by divided control of the state government and extremely narrow partisan majorities in the legislature. Republican Governor James Thompson must deal with a General Assembly that has an 91-to-86 GOP majority in the House, but a 30-to-29 Democratic margin in the Senate. To complicate matters further, Republicans used a favorable parliamentary ruling by Governor Thompson and managed to elect the Senate's presiding officer, although in the minority. This action was expected to intensify feelings of partisanship in the divided General Assembly.

Thus, the possibility of a repeat of the legislature's failure to redistrict in 1963, 1965, and 1971 loomed large as the General Assembly convened in 1981. The specter of an at-large election no longer confronted those who had to initially deal with the task of determining district boundaries; but the ever-present likelihood of redistricting by commission, subject to judicial approval, weighed heavy on their minds.

NOTE

1/ 241 F. Supp. 715 (1965).

INDIANA

James L. McDowell

Redistricting Prior to 1960

The periodic problem of legislative redistricting has proved no less difficult to solve in Indiana than in most other states. In fact, Hoosier legislators were constitutionally required to face the issue more frequently than their counterparts elsewhere--every six years rather than the usual ten-year interval. However, Indiana lawmakers demonstrated little more willingness to comply with their mandate during the twentieth century than legislators in other states, leaving in place one set of districts for more than forty years until forced to redistrict by federal court action.

Prior to the "reapportionment revolution" of the 1960s, Indiana's constitution of 1851 established the basis for districting as a special census every six years of all "white, male inhabitants over the age of twenty-one years." (The word "white" was stricken by a constitutional amendment adopted in 1881, but the six-year enumeration of male residents twenty-one years and older remains a part of the constitution--albeit one wholly ignored--a century later.) Only a single additional provision affected redistricting: "no county, for Senatorial apportionment, shall ever be divided."

While the Indiana General Assembly adhered to these constitutional requirements in the latter half of the nineteenth century, usually allocating representation among the state's ninety-two counties in reasonable proportion to each county's share of the total voting-age population, members of the legislature proved reluctant to follow the constitutional mandate in the twentieth century. To be sure, the General Assembly did redistrict three times in this century before 1921. But

after that date, legislators refused to consider redrawing district boundaries until 1963--and then only in the face of federal court suits initiated in the aftermath of the Supreme Court's 1962 decision in Baker v. Carr.

The 1921 districting for the fifty-member Senate created forty-four senatorial districts, forty-two of which elected one senator each, while Marion County (Indianapolis) elected five Senate members and Lake County (Gary) elected three. While most of the districts consisted of two or three (and in a few cases as many as four) contiguous counties, each choosing a single member of the upper chamber, there were several instances of "districts within districts." In these cases, a county would elect its own state senator, then share a "joint-county senator" with an adjacent county. Under the 1921 plan, for example, Marion County alone elected five senators but shared a sixth member elected from a district that included Johnson County. Similarly, Vanderburgh County (Evansville) constituted a senatorial district but was also part of another district that included the adjacent counties of Posey and Warrick. Vigo County (Terre Haute) was a senatorial district unto itself and also elected a "joint senator" with Sullivan County.

The 1921 districting plan approached the matter of representation in the 100-member House of Representatives in a similar fashion. The act created seventy-five districts, sixty-six of which elected one member of the lower house. The remaining nine districts, which included the more populous counties, either elected two or more representatives or shared an additional member with an adjacent county. As examples, Marion County elected eleven members of the House and shared a twelfth with Johnson County; Lake County comprised a district selecting five representatives and shared a "joint-county representative" with Porter County; and Vanderburgh County selected three members itself and helped to pick yet another in a district composed of Vanderburgh, Posey, and Warrick Counties.

The districting plan adopted in 1921, which was based on an enumeration of the male voting-age population taken in 1919 (a count made, perhaps significantly, the year prior to women's receiving the right to vote), reflected the population distribution in the state reasonably accurately at that time. However, the plan became clearly unrepresentative as Indiana legislators refused to act over the next forty years.

There were at least two reasons for the failure to redistrict, one of which was hardly the fault of the legislators at all. The counties, it seems, were individually responsible for completing the six-year enumeration of the male voting-age population. This proved to be an expensive as well as a cumbersome procedure, which required the action of all ninety-two counties to provide the statewide count. If only a few counties failed to complete the special census, the results were useless. The last complete statewide count was taken in 1931, after which the 1933 General Assembly ignored its directive to redistrict. In 1955, only thirty-five counties took the required census; in 1961, no county completed the required enumeration.

Moreover, members of successive legislatures after 1921 proved unwilling to permit numerical control of both chambers of the General Assembly by members representing the more populous counties. By the decade of the 1960s, it was obvious that a districting plan based either on the total population or the voting-age population would grant theoretical, if not actual, control of both chambers to members representing the counties of Marion, Lake, Allen (Fort Wayne), Vanderburgh, Vigo, Delaware (Muncie), and Madison (Anderson). On the basis of the 1960 census, Marion County deserved fifteen seats in the House; it had eleven plus one joint-county representative. Lake County was entitled to ten seats; it had five plus one joint-county member. Similar changes would have affected Vanderburgh County (an increase to four members of its own) and Saint Joseph County (South Bend) and Allen County (an increase to five representatives each). While the urban

underrepresentation was striking, the overrepresentation of rural counties was even more telling: in terms of what would become known as the "one man-one vote" standard, a vote by a legislator from the rural areas of the state was calculated as being "worth" 4.5 times the vote of a member from an urban county. This rural domination of the Indiana General Assembly, based upon a districting plan devised four decades before, was seen by most observers as contributing to Republican domination of the legislative branch in a generally competitive state. Republicans controlled thirteen of twenty-one sessions from 1923 to 1963; they elected six governors during this period, the Democrats five.

Redistricting in the 1960s

The decision of the Supreme Court in Baker v. Carr that federal courts could assume jurisdiction over state legislative districting caused considerable consternation among members of the Indiana General Assembly. By 1963, the minimum percentage of the population theoretically able to elect a majority to the Indiana House from the 1921 districts was 34.8 percent, while the minimum percentage necessary to elect a majority to the Hoosier Senate was 40.4 percent. Under the threat of two suits in federal district court challenging the representative quality of the legislature, the Republican-controlled General Assembly finally overcame inter-chamber disputes and enacted the first change in districts in forty-two years. The legislators not only passed a redistricting bill, but they also proposed a constitutional amendment to establish a new basis for legislative representation in Indiana. At the time, legislators in Indiana, as elsewhere, were "waiting for the other shoe to drop," that is, waiting to see if the federal courts would require both chambers of a state legislature to be based on population, or if the judiciary would permit at least one house to reflect some other representational basis. The proposed amendment would have established a "little federal plan" for Indiana, basing representation in

the House of Representatives upon the voting-age population (both male and female) and that in the Senate upon a combination of this population and "county unit factors" which would insure non-metropolitan control of the upper house. The terms of this proposed amendment matched the criteria used in the districting plan enacted earlier in the 1963 session.

Following these legislative actions, however, an almost comical series of events ensued. A variety of outside factors, including both state and federal judicial action and a governor's veto (later held not to be a veto), would cause the Indiana General Assembly, which had passed but one redistricting plan in the preceding forty-two years, to enact a total of ten different plans over the following twenty-eight months.

The redistricting bill passed by the legislature in 1963 had only slightly increased the "majority electoral percentage" for the House to 36.5 percent, and had actually reduced it for the Senate to 38.5 percent. Governor Matthew Welsh, a Democrat, vetoed the plan, objecting to gross population inequities, especially as these affected the Senate, although he did acknowledge that his action would leave in place an even less desirable plan, the 1921 districts. After a special session of the legislature failed either to override the veto or to enact another redistricting measure, the governor's action left the 42-year-old districts in effect--but not for long. The federal district court for southern Indiana invalidated the 1921 districting arrangement and enjoined the state from holding any elections from these districts beyond 1964. Then, the Republican-controlled state Supreme Court (the justices of which were subject to partisan election in Indiana until 1972) invalidated the governor's veto. The court held that the governor had not returned the bill to the legislature within three days, as the constitution then required, so the bill had become law without his signature. The court then ordered the 1964 legislative elections conducted under terms of the "little federal plan," and the federal district court concurred.

The 1965 General Assembly was elected from the districts drawn in the 1963 act, but, while the legislature was in session, the federal district court held that these districts failed to meet the Supreme Court ruling in Reynolds v. Sims that the districting in both houses of a state legislature must reflect population. Democrats, aided by the massive Lyndon Johnson landslide, dominated both houses of the legislature in this session, and they moved quickly to enact another districting plan, hoping to satisfy both the federal judicial standards of equal population and the state constitution's prohibition against dividing counties in creating districts. The resulting plan did improve the "majority electoral percentages" to 48.1 percent for the House and 49.4 percent for the Senate, but the federal district court invalidated it because certain multi-member districts discriminated against urban voters.

Governor Roger Branigan, a Democrat, then called a special session of the General Assembly in October to deal with the matter of redistricting. The legislature passed four alternative plans for each chamber and submitted these to the district court for its consideration. The federal panel selected the General Assembly's third-choice plan for the House and its second-choice proposal for the Senate, on the basis that these had the smallest population deviations, and ordered the two districting schemes into effect for the legislative elections of 1966, 1968, and 1970. The redistricting plans were based on the voting-age population of both males and females and improved the "majority electoral percentages" to 48.7 percent for the House and 49.5 percent for the Senate. Theoretically, the state's nine most populous counties could control the lower chamber, its eight most populous counties the upper chamber.

Taken as a whole, the redistricting plan provided for a combination of single- and multi-member districts in both legislative chambers. It created a number of multi-county, single-member districts in each chamber (twelve in the House, twenty-three in the Senate), as well as many multi-county, multi-member districts

in each chamber (twenty-five in the House, eight in the Senate). In fact, only two counties, Henry (New Castle) and Knox (Vincennes), were individual, single-member House districts; while only three counties--Elkhart (Goshen), LaPorte (Michigan City), and Tippecanoe (Lafayette)--were individual, single-member Senate districts. Under this sytem, eighty-six of the 100 representatives and twenty-seven of the fifty senators were elected at large from within multi-member districts. In the House districting, Marion County received fifteen representatives, Lake County eleven, Allen County five, and Vanderburg County four. All representatives in each county, however, were elected at large. A similar situation existed in the Senate, where Marion County received eight seats and Lake County five seats, all of them filled through at-large elections. The other larger counties, Allen (three seats) and Vanderburgh (two seats), shared their senators with adjacent counties.

This redistricting plan, with its combination of single- and multi-member districts and districts in which a number of legislators were elected at large, was admittedly more representative of the state's population than previous apportionment systems. However, it would still prove to cause some problems for the General Assembly in the near future.

Redistricting in the 1970s

Difficulties over redistricting the Indiana legislature in the 1970s actually began in 1969. In January of that year, former state Senator Patrick Chavis, a black Democrat from Indianapolis, and other Democrats from Marion and Lake Counties, filed a federal court suit, seeking to have the state's multi-member districts declared unconstitutional. Chavis argued that the at-large elections, particularly in Marion and Lake Counties, diluted the voting strength of minority groups and deprived their members of equal protection of the law. A special, three-judge panel agreed with the plaintiffs' contention and ordered Indiana to redistrict the entire

state into single-member districts by October 1, 1969, so that the new districts could be used in the 1970 legislative elections.

Newly-elected Republican Governor Edgar Whitcomb, however, refused to call the legislature into special session, pointing out that necessary relief could be granted when the legislature drew new districts in 1971. The U.S. Supreme Court agreed with the Hoosier governor and stayed the lower court action, ordering the 1970 elections conducted from the districts devised in 1965. The Chavis suit had attracted the attention of the General Assembly, however, and in 1969 the legislature approved for the first time a proposed constitutional amendment which would require single-member districts throughout the state for both chambers of the legislature.

The Republican-controlled 1971 General Assembly did not give second approval to the proposed amendment, as required by the state constitution, thus preventing its submission to the voters for ratification. But the 1971 legislature did break with tradition in two ways. First, it created 100 single-member districts for the House of Represenatatives and fifty single-member districts for the Senate, all adhering closely to the equal-population edict of the U.S. Supreme Court. More significantly, for the first time in the state's history, the legislature caused district boundaries to cross county lines. In some instances, the legislature created districts of only a few contiguous precincts in the more populous counties; in others, the legislators added a single township of a county to an adjacent county to bring a district's population to the required level. In short, the 1971 General Assembly no longer considered county boundaries sacrosanct in devising either House or Senate districts for the 1970s--the language of the state constitution notwithstanding.

The attitude of the 1971 General Assembly was somewhat modified in the following year, however. The 1972 session of the legislature (a 1970 constitutional amendment now allowed the legislature to meet in annual sessions) revised the

House districts substantially. The Supreme Court in June 1971 had ruled that multi-member districts did not necessarily discriminate against minority groups and had reversed the lower court order requiring single-member districts for both houses of the Indiana legislature. Following this decision, the General Assembly retained the fifty single-member districts for the Senate, but it altered the House plan to establish fifty-three single-member districts, thirteen two-member districts, and seven three-member districts (five of which were in Marion County). Even with this eleventh-hour change prior to the filing period for the 1972 primary elections, the Indiana legislature had substantially improved its representative quality. The deviation in the actual population of Senate districts from the statewide average ranged from +1.7 percent to -1.6 percent, and for the House seats the deviation was ±1.0 percent. Because of the population equity, some observers predicted that the two chambers of the General Assembly would be more frequently under divided political control, and this happened almost immediately. The 1974 elections produced a Democratic House and a Republican Senate, the 1976 balloting a Republican House and a Democratic Senate.

Redistricting in the 1980s

What the Indiana General Assembly would do about legislative redistricting for the 1980s remained a matter of conjecture as the 1981 session of the legislature convened. Republicans were firmly in control, 63-to-37 in the House and 35-to-15 in the Senate. Yet, some believed the majority party was almost too strong for its own good. While the political environment of the state at the outset of the 1980s was decidedly favorable to the GOP--not only did the party dominate the legislature but it also held all nine statewide elective offices--there was no guarantee Republicans in the General Assembly could satisfy all (or even most) of their members in drawing districts for the elections of 1982 and beyond. With individual preservation the

uppermost concern of most members, there appeared to be no way the Republican majority could improve the political cast of all districts held by GOP lawmakers.

Population shifts indicated by preliminary census reports also indicated potential problems for the mapmakers in 1981. Every major city in the state has lost population, apparently to their surrounding counties and not necessarily to their suburban townships. When final census figures are made available, it is expected that counties adjacent to Indianapolis, Fort Wayne, Evansville, South Bend, Gary, and Terre Haute will show the largest gains--and deserve the biggest increases in representation. This could significantly affect the placement of districts, resulting in the pitting of a number of incumbent members of both chambers against each other in the 1982 primary elections.

The question of whether to continue the combination of single- and multi-member districts in the House is also likely to cause some problems. Republicans prefer the multi-member districts, particularly in Marion County where they are able to control twelve of the fifteen seats by this method. With their substantial majorities in both chambers, Republicans are likely to retain the multi-member system in those counties where it benefits them; but they admit to the possibility of federal court action finding such a plan discriminatory.

Two other points must be made. First, the 1981 session of the General Assembly does not have to pass a redistricting bill. It can defer action until the 1982 session. But a new districting plan must be in effect by the end of February 1982, when filing for the legislative primaries in May of that year begins.

Also, there is no backup agency, such as a redistricting commission, in Indiana. The General Assembly is the only body empowered to draw district lines. If it fails to do so, either in 1981 or 1982, the only recourse will be redistricting by a judicial panel.

IOWA

John M. Liittschwager

Historical Perspective on Redistricting in Iowa 1/

When Iowa became a state in 1846, the Iowa constitution provided for apportionment of the legislature on the basis of population. In 1904 and 1928, however, amendments to the Iowa constitution altered the sections governing the composition of the legislature. The 1904 amendment provided that the House of Representatives be based on area representation, with one representative for each of the ninety-nine counties--except for the nine most populous counties, which were to have two each. The 1928 amendment provided that Senate apportionment be determined, at least to some extent, by population, although no county was to have more than one senator. These guidelines continued in effect until 1961.

The 59th General Assembly (1961) was the first of a series of Iowa legislatures to make an effort to fulfill its constitutional obligations regarding reapportionment (which previously had not been performed following each decennial federal census, even though it was constitutionally required). On the basis of the 1928 amendment, the 59th General Assembly redistricted the majority of the Senate seats for the first time in seventy-five years. It also shifted the 108th member in the House, due to a change in the nine most populous counties. This was the only change permitted under the 1904 amendment. Following this reapportionment the population variance ratio of the fifty-member Senate was almost 9-1, and the ratio for the 108-member House was more than 18-1. 2/

The 59th General Assembly also proposed an amendment to the state constitution that would have tightened the population requirement for Senate districting. This amendment, commonly known as the Shaff Plan, called for a 58-member Senate and a 99-member House. One House member was to be elected from each of the

ninety-nine counties, whereas the Senate districts, to be determined by a commission, were not to exceed a 10 percent deviation from the average population (the plan had a House population variation of 35-1) and were to cross county lines if necessary. Although the amendment received the necessary second approval by the 60th General Assembly (1963), it failed to gather the necessary popular support and was rejected when submitted to the people at a special election in December 1963.

As a consequence of this amendment's defeat, and of a 1963 ruling by the federal district court for southern Iowa that the 1904 and 1928 amendments were "invidiously discriminatory," the 60th General Assembly was called into extraordinary session in early 1964 to enact new apportionment legislation. The resulting acts of this session provided for apportionment of the 61st General Assembly (1965) under a temporary plan and also for a "permanent plan" of apportionment. In the temporary plan, population was introduced as a factor in the House; there was a 59-member Senate and a 124-member House, with some multi-member districts and population variations of 3.2-1 in the upper house and 2.2-1 in the lower. The permanent plan involved fifty Senate and 114 House districts, with population variations of at least 3.8-1 and 1.8-1. As a consequence of the Reynolds v. Sims decision of June 15, 1964, however, and also for political reasons, the 61st General Assembly (1965) abandoned the permanent plan and revised the temporary plan for the 59-member Senate to provide a population variance ratio of 1.7-1; the temporary plan for the 124-member House, which had a variation of 2.2-1, was not altered.

On April 15, 1966, the Iowa Supreme Court held that subdistricting of multi-member legislative districts in Iowa was necessary to "extend equal protection of the laws" to all citizens. As a result, the 62nd General Assembly (1967) was required to subdistrict each of the twenty-five multi-member districts of the state. These districts included seven Senate districts and eighteen House districts, involving nineteen of the ninety-nine counties. This subdistricting was accomplished

by a bipartisan commission that found it necessary to break a county line in one case to achieve equal-population districts, in apparent violation of the state constitution. The 62nd General Assembly also gave second passage to a proposed constitutional amendment, previously passed by the 61st General Assembly, to reduce the size of the legislature to no more than fifty Senate and 100 House members and to eliminate the requirement that county lines be preserved in legislative districting. The subsequent passage of this constitutional amendment by the people in 1968 guaranteed that redistricting would once again be a major issue in the 63rd General Assembly (1969), especially since the legislature would be reduced from 185 to 150 members.

In 1969 the 63rd General Assembly, with the aid of a fourteen-member bipartisan commission, formulated House districts that varied in population from 26,000 to 29,590 (1.14-1) and Senate districts that varied in population from 52,116 to 58,822 (1.13-1). This plan was challenged, and on February 10, 1970, the Iowa Supreme Court (which, because of the passage of the 1968 amendment, now had original jurisdiction) ruled that the 1969 legislature had not made a good-faith effort to achieve districts equal in population. Although the Iowa Supreme Court found the plan unconstitutional, however, it denied a request to order a constitutionally valid plan into effect for the 1970 election, ruling that insufficient time was available to formulate such a plan. Another compelling factor for the Court was that the 1960 census was already ten years old, and new population data would soon be available. Although it did not order a constitutionally valid plan for 1970, the Court provided rather specific guidelines to the legislature for 1971 redistricting activities. The following quotations are from the Court's order in Rasmussen v. Ray:

> Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.

Quoting Kirkpatrick v. Preisler, the Court continued:

> The nearly as practicable standard requires that the State make good-faith effort to achieve precise mathematical equality. Unless population variances . . . are shown to have resulted despite such effort the State must justify each variance no matter how small.

The Iowa Court also quoted the Supreme Court's rejection of the de minimis approach to districting, whereby the Court

> . . . could see no nonarbitrary way to pick a cut off point in which population variances suddenly become de minimis. Moreover to consider a certain range of variances de minimis would encourage legislatures to strive for that range rather than for equality as nearly as practicable.

Following its study of the Court's decision, the 64th General Assembly (1971) adopted a plan of reapportionment which involved a House population variation of 1.038-1 and a Senate population variation of 1.032-1. An appeal to the Iowa Supreme Court was initiated, and on January 14, 1972, the Court found the proposed plan unconstitutional, saying,

> . . .The record before us is replete with testimony of witnesses tending to establish that districts were being created by House File 732 to facilitate keeping present members of the legislature in office and . . . to avoid having such members contest each other at the polls. Such considerations, which caused departures from the standards of population equality and compactness in the reapportionment districts, require us to hold House File No. 732 unconstitutional under both the Federal and State Constitutions. The

same factors caused even greater avoidable deviations in the prior apportionment plans struck down by this Court in Rasmussen v. Ray.

The Iowa Supreme Court then proceeded to the development of its own apportionment plan to comply with the constitutional requirements. The resulting plan, the current Iowa apportionment, achieved a senatorial population deviation of 1.0005-1 (or about one-twentieth of one percent) and a House population deviation of about 1.0010-1 (or one-tenth of one percent). The Senate deviation in the 1972 plan resulted in districts ranging in population from 56,491 to 56,519--a difference from the smallest to the largest of just twenty-eight persons. (This Senate plan, the current one for the Iowa Senate, is shown in Figure 1.) Under the 1972 plans each Senate district was subdistricted into two House districts to form the 100-member House.

Legislative Redistricting Activities in 1980-81

In 1980, the 68th General Assembly passed House File 707, a fifteen-page act authorizing preparations and prescribing procedures for the next redistricting. This comprehensive act, the basis for current redistricting planning in Iowa, prescribes nonpartisan procedures and standards for preparation of a legislative redistricting plan by the Legislative Service Bureau, a staff agency of the Iowa legislature. The act also provides for the appointment of a redistricting advisory commission, the principal duties of which involve not preparing plans but holding public hearings on the plan prepared by the Service Bureau, and reporting on the hearings to the legislature. The Legislative Service Bureau is to submit its plan to the legislature by April 1, 1981. The legislature must act on the proposed plan, without amending it, within seven days of receipt of the advisory commission's report. If the bill embodying the plan submitted by the Service Bureau fails in either house, the house in question shall "transmit to the Legislative Service Bureau information . . . why

the plan was not approved." The Service Bureau will then prepare a second plan, "taking into account the reasons cited" insofar as it is possible to do so within the standards established by H.F. 707. The second plan, when submitted, is also not subject to amendment on the floor. If this plan fails, the Legislative Service Bureau is to develop a third plan, following the same procedures as for the second plan. This third plan, however, may be amended on the floor. If a final plan is not adopted by September 15, 1981, the matter is turned over to the Iowa Supreme Court.

The standards for redistricting prescribed by H.F. 707 are of special interest in that they provide the nonpartisan guidelines under which the Legislative Service Bureau is to prepare the various plans. These standards cover six of the fifteen pages of H.F. 707; only brief mention can be made here of the standards pertaining to population equality, political subdivisions, and compactness, and the reader should consult the act itself for details.

With regard to population equality, districts are to have a population "as near as practicable to the ideal population." In no case, however, shall the average absolute deviation "exceed one percent of the applicable ideal district population," and no Senate (or House) district population shall exceed that of any other Senate (or House) district by more than five percent. To the extent consistent with the above population requirements,

> district boundaries shall coincide with the boundaries of political subdivisions of the state. The number of counties and cities divided among more than one district shall be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions shall be divided before the less populous, but this statement does not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county.

Districts are also to be "composed of convenient contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous." Moreover, "it is preferable that districts be compact in form." But the standards mentioned above "take precedence over compactness where a conflict arises between compactness and these standards." The act goes on to define various quantitative measures for comparing the relative compactness of two or more plans.

Summary

Redistricting in Iowa is an interesting subject, both historically and as it is manifested in the current ongoing process. The low population variation of the current court-drawn plan, and the procedures proposed for 1981, would appear to make the state unique in its redistricting efforts.

Since 1967, specialist staff of the Legislative Service Bureau have assisted various commissions, the legislature, and the Iowa Supreme Court in preparing redistricting plans; this assistance has included the extensive use of computers in the redistricting process.3/

Preliminary 1980 census reports indicate that the Iowa population has increased by only eight-tenths of one percent since 1970.4/ With an equal-population court-drawn plan already in use, it may be that only minor adjustments to this plan will be necessary in 1981. On the other hand, the continued eastward shift of the state's population center may preclude such a minimal-change solution.

NOTES

1/ This section is adapted from the author's earlier paper, "The Iowa Redistricting System," as published in the Annals of the New York Academy of Science (November 1973): 221-35.

2/ The population variance ratio is defined as population of the largest-population district divided by the population of the smallest-population district.

3/ Liittschwager, "Iowa Redistricting System," pp. 221-35.

4/ "Only a Tiny Increase in Iowa's Population," Des Moines Register, July 25, 1980, p. 1.

KANSAS

Allan J. Cigler

James W. Drury

Since the early 1960s, the legislature of the state of Kansas has undergone numerous attempts to reapportion in order to comply with a series of federal and state court decisions directed toward bringing legislative representation in line with the "one man-one vote" principle. The Kansas experience in dealing with the "political thicket" has paralleled the experience of other states that were forced to apply the Supreme Court's guidelines. Kansas, like forty other states at the time of Reynolds v. Sims, had representation in one house of the legislature based on something other than population. And the second house, though representation there was historically based upon some consideration of population factors, was badly malapportioned when equal-population criteria became the sole basis for representation. The 1960s and early 1970s were characterized by major disagreements among the federal and state courts and the legislature over reapportionment in Kansas, resulting in two instances in court-imposed reapportionment plans.

Besides its parallels with other states, the Kansas experience in reapportionment has many unique features as well. The basis for apportionment is the state Agricultural Census (which will be discussed later in this essay) rather than the federal census. The most recent reapportionment of the state legislature was in 1979, and unlike most states, there will not be a state legislative reapportionment in the early 1980s. And as the state enters the new decade, it does so with a new procedure for apportionment upon which there is widespread consensus among members of both political parties. The procedure involves a mandatory review by the state courts of any new reapportionment plan, and represents an attempt by the legislature to exclude the federal courts from the reapportionment process.

Apportionment Prior to Baker v. Carr

Prior to Baker v. Carr both houses of the Kansas legislature used a districting system which for the most part followed county lines, and equality of population among districts was not a major goal of the apportionment decisions of either the Kansas House or the Senate.1/ The 1859 Kansas constitution placed limits of no more than thirty-three senators and 100 representatives on the size of the legislature, and the initial apportionment established a House of seventy-five members and a Senate of twenty-five members, to be apportioned among forty counties. In the House, each county was constitutionally entitled to at least one representative. The constitution instructed the legislature to determine the exact size of each of its chambers within constitutional limits, and to apportion itself every five years.

Initially, apportionment did not engender serious controversy. As more counties were established by westward expansion, each new county was simply given one or more representatives in the House, and existing Senate districts were expanded. Apportionment decisions were handled on an ad hoc basis, at times with little regard for constitutional limitations on the size of the two chambers. For example, under an apportionment in 1871 the legislature created ninety House districts in fifty-five counties, but seated eight additional members from unnumbered districts and later in the session granted seats to a number of new counties; in the next session, when confronted with a problem over whom to seat, the legislature resolved the difficulty by seating 133 House members, a number well in excess of the constitutional maximum.

New counties pressuring for representation, and an attorney general's ruling that each new county was entitled to a House seat even if the existing constitutional maximum was exceeded, led to a constitutional amendment in 1873 to set new maximum limits on both houses. The limit for the House of Representatives was

raised to 125 and for the Senate to forty, and these limits have remained in effect ever since. As might be expected, the results of the referendum on the 1873 constitutional amendment indicated substantial cleavage between the growing western portion of the state that stood to gain from the expansion of the number of House seats allocated on a county basis, and the bloc of established eastern counties.

Tension between the eastern and western portions of the state increased following the amendment. In 1881, for example, the legislature not only seated 137 House members, exceeding even the new constitutional limit, but passed an apportionment bill which increased the proportion of representatives for the western portion of the state. Tensions over representation became so aggravated that in 1886 a special legislative session concerned with reapportionment was convened. The special session recognized eighty-eight counties, each of them entitled to House representation. Dissatisfaction with this result in the eastern part of the state was a major factor leading to a referendum for a constitutional convention; the referendum, however, was defeated by an overwhelming "no" vote from western Kansas.

The last extensive reapportionment of the Kansas House before the 1960s took place in 1909. By that time all of the current 105 counties had been established, and the twenty remaining seats that were available were distributed among the more populous counties. Between 1909 and the Baker v. Carr decision, House apportionments involved only occasional shifts from one populous county to another of the twenty seats not designated for specific counties. In the Kansas Senate, minor apportionment adjustments were made in 1933 and 1947. Indeed, the last general reapportionment of the Senate before the 1960s took place in 1886.

Throughout the period before Baker v. Carr, the Kansas courts had refused to strike down legislative apportionments, holding that each house of the legislature

had considerable discretion in seating its members. Nor did the courts attempt to enforce the constitutional provision that reapportionment take place every five years.

The lack of frequent and extensive apportionments, coupled with major population shifts within the state, led to Kansas's entering the 1960s with both branches of the legislature severely malapportioned on a population basis. Particularly underrepresented were the urban areas of the state. Between 1910 and 1959, for example, the overall population of the state increased by 27.4 percent. Many northern and southeastern counties actually experienced population declines during this period, however, and many other rural areas of the state grew at relatively slow rates. Meanwhile, the urban areas of the state experienced major growth, with Johnson County (suburban Kansas City) experiencing a 671 percent growth rate, Shawnee County (Topeka) a 109 percent rate, and Sedgwick County (Wichita) a 388 percent growth rate during the same 49-year period.2/

Predictably, there were substantial variations in population among the rural and urban districts in both the House and the Senate. For example, according to the 1959 state Agricultural Census, one rural county with 2,061 people had one representative, while urban Sedgwick County (Wichita), with a population of 321,503, was entitled to just five representatives. In the Kansas Senate just prior to Baker v. Carr, district populations ranged from 17,058 to 321,503. From another perspective, the winning candidate for one House seat in the 1958 elections received 397 votes, while a winning representative in another district received 24,560. Using a "representative quotient" as a basis for comparison, a large number of both Senate and House districts were either seriously overrepresented or seriously underrepresented prior to Baker v. Carr.3/

Even compared to other states prior to the reapportionment cases of the 1960s, Kansas emerges as extremely malapportioned in both houses of its

legislature. This is true whether the measure of malapportionment is directed toward assessing the deviation from equal-population apportionment,4/ or the representation of rural and urban interests,5/ or the amount of political party bias in the representation scheme.6/ In comparisons with other states, both houses of the Kansas legislature before the 1960s ranked low in population representativeness, high in terms of rural bias, and high in the advantage accorded to the Republican party.

Kansas Responds to the Supreme Court Decisions

Given the existence of extreme malapportionment, the infrequency of past reapportionment attempts, and a state constitutional requirement that 105 our of the 125 House seats be reserved for counties, it is not surprising that the Kansas legislature had great difficulty complying with the Supreme Court reapportionment decisions of the 1960s. Furthermore, the legislature confronted a federal district court which not only attempted to guarantee citizens equal representation, but was also quite willing to pursue in detail the question of whether or not gerrymandering was involved in legislative reapportionment decisions.

After the decision in Baker v. Carr, attention in Kansas first turned to the state Senate. Unlike the House, the Senate was not required by the state constitution to use individual counties as districts, and was already made up of districts which crossed county lines; it therefore appeared that the Senate would be the easier of the two houses in which to meet population equality standards. Senate reapportionments were made in 1963 and 1964, and each resulted in districts that came closer to population equality. However, the 1964 reapportionment was challenged in the federal courts and found to violate the equal protection clause of the Fourteenth Amendment. The federal district court of Kansas outlined a series of criteria that it would use in applying the Supreme Court decisions.7/ Not only

should there be approximate population equality, but the plan of apportionment should result in the various districts being compact, and each district should contain a population relatively homogeneous in its economic, political, and cultural interests. The court was particularly concerned with maintaining the integrity of county boundaries in the reapportionment plan. The population range in the 1964 Senate reapportionment (district populations ranged from a high of 61,920 to a low of 47,114) was not grounds in and of itself for the court's disapproval; it was the fact that many counties had been divided in constructing the new Senate districts, when following county lines in all cases would have led to even greater numerical equality among the districts.

The district court did not allow injunction relief at the time, ruling that senators elected under the 1964 reapportionment should be allowed to serve their terms. The court, however, retained jurisdiction and indicated that action would be taken if the Senate did not reapportion before the 1968 elections.

In 1968 the legislature did pass two bills for reapportioning the Senate, but the district court declared both measures invalid, the grounds being that the variation among district populations was too large (under the second of the two bills, the districts ranged in population from a high of 60,809 to a low of 52,136). Because of the pressing need to get an apportionment that could be utilized in the 1968 election, the court, in what it regarded as a temporary measure, devised its own reapportionment plan for the Kansas Senate. The aim of the plan was to equalize the districts in population, and at the same time recognize the integrity of county boundaries. The court also attempted to anticipate population changes in the state, including expected increases and decreases in population. The court experienced major problems in its attempt to devise equal-population districts, and finally devised a plan which included multi-member districts in Wichita (six members), Topeka (three members), Kansas City (three members), and the suburban area near Kansas City (four members).8/

The Senate seemed basically content with the new arrangements, and did not act again until 1972, when it passed two different apportionment plans. Both were vetoed by the Democratic governor, and the vetoes were not overridden. In March of 1972 the district court judges established their own new plan, which included forty single-member districts ranging in population from 54,808 to 57,676.9/ The Senate was elected on the basis of this plan in both 1972 and 1976.

After Reynolds v. Sims, the Kansas House was forced to deal with representation issues, a monumental task given the amount of population inequality inherent in a branch of the legislature in which representation was essentially based upon counties; at the time of Reynolds v. Sims, in fact, the population of districts in the Kansas House ranged from 821 percent of the average to 26 percent of the average district size.

The House did eventually agree on a new districting plan in 1966, though there were plenty of charges that the districts were drawn to help incumbents, particularly Republicans. The populations of the districts in the new plan ranged from 15,609 to 19,521, and the apportionment was upheld by the Kansas Supreme Court.

The changes brought about by this plan were significant, particularly for the urban areas. The Wichita area was assigned eighteen seats; Topeka, eight; Kansas City, eleven; and Johnson County, ten.

The Kansas House had a much more difficult time in its reapportionment efforts in the early 1970s. In 1972 the legislature made several attempts to reapportion itself, and did pass a House plan over the veto of the governor. This plan was challenged in the federal district court and ruled invalid, on the grounds that the plan of apportionment was designed primarily to insure that no incumbent members of the House, particularly majority party members, would have to run against one another for re-election.10/ Because of time considerations, the court

permitted the 1972 elections to be held on the basis of the plan just ruled invalid, but the court retained jurisdiction and directed the legislature to devise an acceptable revision. The legislature did act in 1973, and the court upheld the plan in 1974.

The Current State of Apportionment in Kansas

Apportionment decisions in Kansas have been based upon the Kansas Agricultural Census rather than the federal census, and that is one of the reasons the Kansas House and Senate will not be reapportioned in the early 1980s. Until 1978 the Kansas census was conducted annually. The constitutionality of its use in reapportionment decisions has been upheld in the federal courts; indeed, the federal district court used the state census as the basis of its court-imposed apportionments of the Kansas Senate in 1968 and 1972.

The federal and state censuses differ in two ways. Because military personnel and students are counted under different rules and procedures in the two censuses, the federal and state numbers are likely to be most divergent in localities near college campuses and military installations. Essentially, military personnel in federal enclaves are not tabulated in the Kansas Agricultural Census, and in some cases students are counted twice, once by home county and once by the school county.

A watershed event in the history of Kansas reapportionment was the approval by the voters in 1974 of a new constitutional article on apportionment.11/ The provision directed the legislature to reapportion every ten years, beginning in 1979. By selecting the year when the federal census information was most out of date, it was assumed that data only a year old would be used in preference to data eight or nine years old, and that the annual state census would continue to be the basis of reapportionment.

The new constitutional provision also represented a deliberate attempt by the state to keep reapportionment controversies out of the federal courts. Basically, the legislature passes reapportionment legislation just as it would any other law. The attorney general is then required to file an action with the Kansas Supreme Court within fifteen days after passage by the legislature. The Court has thirty days in which to act on the "validity" of the reapportionment action. Should the Court find the reapportionment invalid, the legislature gets a second and then a third opportunity to pass a valid reapportionment plan before the Court acts to impose its own plan.

Clearly this means that the state Supreme Court is deeply involved in the apportionment process in Kansas. Aggrieved groups can still bring action in federal courts, but it is likely that federal judges would give substantial consideration to the decisions of the highest state court in interpreting the reapportionment article of the Kansas constitution.

Both houses of the Kansas legislature, as required by the constitution of the state, passed reapportionment acts in 1979 using the 1978 state census. The Kansas Supreme Court upheld the two reapportionment schemes, using as the tests of "validity" both the procedure by which the acts became law and the substance of the two reapportionments (particularly population equality and the absence of any invidious discrimination).

In judging population equality, the Court used the standard of "total maximum variation," the sum of the greatest percentage above the ideal population and the greatest precentage below the ideal. The Court found that maximum variations in the Senate districts of 6.5 percent, and in the House districts of 9.9 percent, were within the 10 percent de minimum rule and did not have to be explained or justified.12/

In spite of a very competitive party balance in both houses of the legislature, the 1979 reapportionment did not engender the heated controversy of previous reapportionment attempts. One new House district was viewed by some as an attempt to split the student vote at the University of Kansas, but the Court ruled that invidious discrimination did not take place because students were not a cohesive political bloc. Charges were also made that the reapportionment did not do enough to take into consideration future growth patterns in eastern Kansas. According to the constitutional provisions on reapportionment, aggrieved citizens do not need to establish standing in Court, and during its deliberations the Court allowed individuals and groups to come before it to protest the provisions of the 1979 reapportionment plan.

Kansas, then, begins the decade of the eighties with a new apportionment and will not reapportion again until 1989. The legislature, however, voted to discontinue the state census after 1978, so when the time comes for the next reapportionment in Kansas, either the state census will have to be reestablished or the legislature will have to use federal census data.

The Impact of Reapportionment on Kansas Politics

Given the extreme malapportionment in both houses of the Kansas legislature before the reapportionment cases of the early 1960s, it should not be surprising that the movement toward population equality in apportionment has had a major effect upon the representation of various political interests in Kansas. In many instances, however, gauging the effect of the "reapportionment revolution" is extremely difficult, because of the near impossibility of separating changes brought about by reapportionment from changes attributable to other factors. For example, though Kansas is still a predominantly Republican state, the Kansas Democratic party has had increasing success in winning legislative seats since the 1960s. How much of this success can be attributed to reapportionment it is impossible to determine,

since in this period there has been a nationwide trend toward the Democrats which has affected virtually all of the states. Likewise, while the proportion of the state budget that goes for welfare has increased since the early 1960s, has this been due in larger part to the effects of reapportionment, or to the federal initiatives which have increased the responsibility of the states for welfare services?

The most obvious change brought about by the application of the "one man-one vote" principle to the Kansas legislature was a sharp decline in the number of elected representatives from rural constituencies and a huge increase in the number of urban and suburban representatives. In 1963, urban legislators held 7.5 percent of the seats in the Kansas Senate, at a time when 30.8 percent of the state's population resided in urban areas. By 1973 urban legislators held 32.5 percent of the seats in the Senate, though the percentage of the state's population that resided in urban areas remained at 30.8 percent. Similar figures could be cited for the House. Suburban representation in the Senate likewise grew from four percent of the seats in 1963 to 12 percent in 1973. Information on the characteristics of legislators reveals that there was an increase in the number of black legislators in this same period, and a decline in the number of legislators having agricultural occupations. The number of legislators from central cities who held committee chairmanships increased greatly after the reapportionments of the 1960s and early 1970s.13/

The elimination of rural bias in the districting of the Kansas legislature did not change party representation as greatly as might have been expected, due largely to Republican strength in the suburban areas and in some of the state's central cities. The Democrats made their greatest gains in the House and Senate in the middle and late 1970s. Perhaps the major immediate effect of reapportionment was to create a cleavage between suburban Republicans and their rural colleagues.14/

There is also some evidence that the changing interest group representation brought about by reapportionment has contributed to major changes in the policy

agenda of the state. A survey of Kansas legislators in 1973 showed a large porportion of the respondents listing educational expenditures and the distribution of state aid to localities as the issues most affected by the movement toward equal-population representation. In 1962, it might be pointed out, the central-city counties received 26.4 percent of the aid given by the state to localities; in 1971 they received 38 percent of the aid.15/

A Note on Congressional Districting

Congressional districting has not been a highly controversial issue in Kansas politics in recent decades, nor is major controversy expected after the release of the new census data. Kansas has had five congressmen since the 1960 census and should retain the five seats after the 1980 census results are announced. Controversy has been minimal because most districts are electorally "safe," and because districting decisions have involved only marginal changes. The growing competition between Republicans and Democrats in the state legislature, however, coupled with the projection that Kansas is likely to lose a congressional seat in 1990, suggests that districting decisions may become more controversial in the future. Also, the 2nd Congressional District (in the northeast corner of the state) is steadily growing more competitive, and in the future even marginal changes in the district lines are likely to become the subject of highly partisan political wrangling.

Conclusion

Clearly, Kansas has struggled in the past two decades with representation issues in the state legislature. Indeed, the 1979 Senate reapportionment was the first plan upheld by the courts in the eighteen years since Baker v. Carr. Yet the state would seem to be entering a new decade with the most difficult issues of representation having been resolved. Relative population equality has been achieved in legislative

districts, and a procedure for reapportionment has been developed that is quite workable.

Demographically, Kansas will remain a relative homogeneous state in the coming decade. A large proportion of the state's economy will continue to be based on agriculture. It is likely that the fastest population growth in the state will continue to take place in the suburban areas of eastern Kansas, while rural areas, particularly in western Kansas, will probably decline in population in the next ten years. Still, any future changes in the rural-urban balance in the state legislature are not likely to be too abrupt. The rural-urban issue is very real in Kansas, but it does not have the intensity there that it has in some states where the split is accentuated by racial concerns.

When one looks to the future of apportionment in Kansas, it is difficult to envision major changes in the ways things are now done. The possibility of reapportionment by a non-partisan citizens commission has been discussed on occasion, but has never been seriously considered by the legislature. Computer-based reapportionment has few advocates (the most notable being Common Cause and the League of Women Voters), and leaders of both parties, somewhat suspicious of "reform" groups, feel that their flexibility might be limited by the adoption of such a procedure. Future apportionments are likely to be formulated as in the past, through the legislative process, with all its attendant political trappings and compromises. And protection of incumbents is likely to remain something all legislators will agree to as a major priority of reapportionment.

The changing partisan complexion of Kansas is likely to be a crucial factor in the next Kansas reapportionment. At the present time, the Democratic party seems to be growing in strength, and the next reapportionment effort in Kansas may be characterized by intense party competition. But 1989 is a long way in the future, and for now at least, apportionment issues are not of much concern to the political leaders of Kansas.

NOTES

1/ For a detailed study of the subject, see Thomas Page, Legislative Apportionment in Kansas (Lawrence: Bureau of Governmental Research, University of Kansas, 1952).

2/ James W. Drury and James E. Titus, Legislative Apportionment in Kansas: 1960 (Lawrence: Governmental Research Center, University of Kansas, 1960), p. 32.

3/ The "representative quotient" equals the state population divided by the number of districts. Using this criterion in 1960, we see that fifteen of the House districts were "seriously underrepresented" (district population more than 160 percent of the ideal) and fifty-seven percent of the House districts were "seriously overrepresented" (district population less than 40 percent of the ideal); in the Senate, three urban districts were "seriously underrepresented" and fourteen other districts were "seriously overrepresented." See ibid., pp. 36-39.

4/ One widely used measure of the degree of equal-population apportionment is the Dauer-Kelsay Index of Representativeness, which is based on the minimum percentage of a state's population needed to elect a legislative majority. A score of 50 would be ideal. See Manning Dauer and Robert G. Kelsay, "Unrepresentative States," National Municipal Review 44 (December 1955): 571-75, 587. Kansas scored 27 in the Senate and 19 in the House before the 1960s reapportionments, according to data reported in the Book of States, 1968-69 (Lexington, Ky: Council of State Governments, 1968), pp. 66-67.

5/ John White and Norman C. Thomas, "Urban and Rural Representation and State Legislative Apportionment," Western Political Quarterly 17 (December 1964): 724-41, have developed a procedure to classify states as to the degree to which deviations from population equality in apportionment translates into a rural or urban bias in state legislative representation.

6/ Robert S. Erikson, "The Partisan Impact of State Legislative Reapportionment," Midwest Journal of Political Science 15 (February 1971): 57-71, has examined the relationship between malapportionment and the partisan distribution of seats in the northern state legislatures, including Kansas. The procedures used by Ericson indicate a bias in Kansas in favor of the Republicans.

7/ Long v. Avery, 251 F. Supp. 541 (D. Kan. 1966).

8/ Long v. Docking, 282 F. Supp. 256 (D. Kan. 1968).

9/ Sub nom Anderson v. Docking, unpublished opinions (D. Kan. Case No. W. 3220, March 31 and April 7, 1972).

10/ Winter v. Docking, 356 F. Supp. 88 (D. Kan. 1973).

11/ Kansas, Constitution, art. X, sec. 1.

12/ As a basis for their criteria, the justices cited White v. Regester, 412 U.S. at 761-64.

13/ Timothy G. O'Rourke, The Impact of Reapportionment (New Brunswick, N.J.: Transaction Books, 1980), particularly pp. 27-43, 73-92. This book is "must" reading for anyone interested in the substantive impact of reapportionment in Kansas, one of six states highlighted in the study.

14/ Ibid., pp. 47-71.

15/ Ibid., pp. 134-35.

MICHIGAN

Kathleen L. Barber*

Michigan, like other north-central states, faces the 1981 legislative apportionment with a declining rate of population growth and a redistribution of residents from urban to suburban areas. While the population of the state grew 13.4 per cent in the 1960s, the state's estimated population growth between 1970 and 1978 was only 3.5 percent. The proportion of the residents living in Michigan's eleven metropolitan areas increased in the seventies from 76.7 percent to 81.3 percent of the total, but the population of the major metropolitan area, Detroit and its environs, actually declined by 1.1 percent between 1970 and 1978.1/ The city of Detroit, having lost 9.5 percent of its population in the sixties, lost another estimated 14.8 percent between 1970 and 1977.2/ However, the Detroit SMSA still accounts for 47.7 percent of Michigan's total population, a fact which polarizes Michigan politics between the southeastern corner and the rest of the state.3/ Fear of losing both legislative clout and federal money in the eighties led Detroit Mayor Coleman Young to challenge the Census Bureau in court in April 1980, alleging a significant undercount of Detroit's population. In September, the federal district court ordered the Census Bureau to adjust raw head count data for the undercount of black and Hispanic persons.4/

Sharp partisan debate has characterized reapportionment controversies in recent years. However, from the Civil War to the 1930s, Michigan was a reliably Republican stronghold in both state and national politics. The rapid development of the automotive industry, the Depression, and the onset of the New Deal, all

---

*The author wishes to thank Judith J. Hritz for assistance in the collection of data.

contributed to the growth of a two-party system in Michigan. In elections from 1948 through 1960, the closely divided Michigan electorate consistently chose a Democratic governor and a majority of Democratic statewide officials while awarding its electoral vote to Republican presidential candidates.5/ From 1962 through 1978, Michigan voters chose Republican governors, but in two out of four presidential elections favored Democrats. Statewide votes elected Democratic senators four out of six times in the same period.6/

Although judicial elections in Michigan are nominally non-partisan, candidates are nominated by state party conventions and have traditionally waged heated partisan campaigns. Control of the traditionally Republican state Supreme Court passed to the Democrats in 1960 and has generally been dominated by the Democratic party in the years since.7/ Heated electoral campaigns are generated not only by tight margins of victory for the winning party, but also by the strong ideological character of Michigan's parties; the strength of the state Democratic party is rooted in the automotive industry's well-organized and highly politicized unions, while the state GOP is equally dependent on the strength of management in the same industry.

Cutting across party lines in Michigan, however, is the urban/rural cleavage, which has moderated the effect of party competition on reapportionment struggles. Several "outstate" (i.e., outside of the Detroit SMSA) metropolitan areas have maintained their traditional Republican orientation, while the sparsely-populated upper peninsula is inhabited by a significant concentration of ethnic families, particularly Italian and Finnish, whose wage-earners work in the mines and whose loyalties are traditionally Democratic.8/

Historical Background

Under the provisions of Michigan's first (1837) constitution, both houses of the

legislature were elected from multi-member districts in proportion to numbers in the population.9/ However, new settlers from the east pressured the constitution-makers of 1850 to depart from the equal-population principle so that their sparsely-settled counties could elect their own representatives. A revised apportionment formula in the 1850 constitution provided that a newly-organized county could obtain separate representation when its population reached "a moiety of the ratio of representation." The upper peninsula won special protection through a provision guaranteeing that area at least three representatives and one senator regardless of population.10/ At the same time, the Michigan Senate was divided into single-member districts, over the objections of Democrats at the constitutional convention who feared that parochial representation of special interests would develop in a single-districted system.11/

Early in the twentieth century, a third constitution was adopted, extending the rural-small town advantage of "moiety" representation to all counties, and dropping the special provision for the upper peninsula.12/ The legislature was required by this constitution to reapportion after every federal census, but failed to do so after the 1930 and 1940 censuses. By 1950, over half the population lived in the Detroit metropolitan area, but the residents of this area elected only 27 percent of the House of Representatives.13/ Urban voters initiated constitutional amendments to restore equal-population apportionment in 1924, 1930, 1932, and 1952, but all of these proposed amendments were defeated by the electorate. In 1952, an alternative "balanced legislature" amendment, initiated and supported by the Michigan Farm Bureau, was adopted, guaranteeing area representation in the Senate but preserving the "moiety" clause for the House. (Area representation in the Senate was based on single-member districts whose geographical boundaries, written into the constitution, were unrelated to population but provided districts of approximately equal territorial size.) The only significant change provided for

apportionment by the Board of State Canvassers if the legislature failed to carry out its decennial duty.14/

The Sixties

The struggle for population-based apportionment was eventually incorporated into the larger attempt by Michigan reformers to restructure the state constitution. However, in 1958, the Republican legislature put a referendum on the ballot to call a constitutional convention, the delegates to which would be elected by geographical areas of the state rather than by equal-population districts. Urban, Democratic, and labor groups opposed the ballot issue successfully, and decided to turn to the courts for reapportionment relief. August Scholle, president of the Michigan AFL-CIO, filed suit in the Michigan Supreme Court arguing that the 1952 apportionment formula violated the due process and equal protection clauses of the Fourteenth Amendment. The state Supreme Court rejected the suit as non-justiciable,15/ and Scholle appealed to the U.S. Supreme Court, which consolidated the Michigan case with Baker v. Carr.16/

In the meantime, in 1961 the voters approved a call for a constitutional convention composed of one delegate from each House and Senate district. In the subsequent election of delegates, ninety-nine Republicans and forty-five Democrats were elected.17/ The two parties proposed competing apportionment plans for the new constitution. The Republican-proposed apportionment formula weighted representation in both houses by 80 percent population, 20 percent area. The GOP also proposed creation of a bipartisan apportionment commission, with recourse to the state Supreme Court in the event of a deadlock.18/ The Democratic proposal mandated equal-population districts for the legislature.

While delegates to the constitutional convention were debating the merits of competing Democratic and Republican apportionment plans, the U.S. Supreme Court

announced its decision in Baker and remanded the Michican Scholle case to the state Supreme Court for reconsideration in the light of Baker.19/ In spite of this dramatic development, however, the Michigan convention approved the Republican apportionment proposal by a straight party-line vote. The new constitution was ratified in April 1963, making the legal challenge to the 1952 apportionment formula moot. Because the 1962 election had produced a partisan tie on the state Supreme Court, the AFL-CIO litigants chose federal district court as the forum to challenge the new apportionment formula.20/ However, the Republican chief of the Court of Appeals assigned the case to a panel with a Republican majority. The federal panel split on party lines, with the Republican majority upholding the 80-20 plan as not grossly unequal. Democratic Judge Roth's dissent 21/ foreshadowed the equal-population rule of Reynolds v. Sims, a decision which the U.S. Supreme Court relied on to reverse the three-judge federal court in the Michigan case.22/

The new bipartisan Apportionment Commission was composed of eight members, four each of whom were appointed by the major parties' state central committees from constitutionally-defined regions of the state. Predictably, the Commission deadlocked and several rounds of litigation ensued. In June 1964, the plan proposed by two Democratic commissioners was finally ordered into effect by the Democratic majority of the state Supreme Court.23/ In 1965 and 1966, thirty-four Republicans citizens challenged the apportionment as a violation of state constitutional standards, arguing that political subdivision boundaries should not have been subordinated to a single federal standard of strict mathematical equality. They also complained that the plan was an unconstitutional partisan gerrymander, alleging that the Democratic commissioners had used data to draw district lines which would maximize Democratic strength and minimize Republican representation. The case was dismissed by an evenly divided state Supreme Court, and the appeal rejected by the U.S. Supreme Court.24/ Partisan judicial voting in

the Michigan apportionment cases increased the bitterness of the contests for control of the legislature, as well as contributing to the growing stridency of judicial elections.25/

The 1964 apportionment established single-member districts for both the 38-member Senate and the 110-member House. The population distribution was "the most equal" in the nation at the time, with a population variation of less than one percent in any one district from the average district population. County, city, and township boundaries were frequently crossed to equalize the population of districts. Although the plan corrected the underrepresentation of Michigan's urban areas which had characterized the legislature since 1850, implementation came too late to help Detroit, which was already losing population at a significant rate.26/

The change from multi-member districts to single-member districts in the House was expected to favor the Republicans in urban areas and offset anticipated Democratic gains from population-based apportionment. Before-and-after comparisons of partisan results in individual Michigan districts are difficult to make because of extensive crossing of county lines in the 1964 apportionment. However, the Wayne County (Detroit) boundaries remained virtually intact, and for the rest of the decade the county's delegation registered little change in party composition. Wayne County's new single-member districts produced thirty-six or thirty-seven Democrats and one or two Republicans, a proportion similar to that produced earlier by the multi-member districts.

In the 1962 election, which was based on the 1954 apportionment, 55.9 percent of the vote for House members was Democratic, yielding to the Democrats 47.2 percent of the seats; in the Senate, 51.7 percent of the vote produced 33.3 percent of the seats for the Democrats, clearly underrepresenting Democratic voters. In the 1964 election, based on the new apportionment, 57.3 percent of the vote for Democratic House candidates produced 65.1 percent of the seats, and 58.1 percent

of the vote for Democratic Senate candidates produced 60.5 percent of the seats. While this pattern might be expected to result from equal-population districts whose boundaries were drawn by Democrats, the effect did not carry over to a second election. In 1966, Republicans regained control of both houses. National political tides -- Democratic in 1964 and Republican in 1966 -- exerted their pull in Michigan as elsewhere, apparently outweighing districting. In 1968, however, the Democrats recaptured the House and in 1970 tied in the Senate.27/

Reapportionment In The Seventies

The 1970 census was the first population count to show the people in Michigan's suburbs outnumbering those in the cities. It was evident that Detroit's loss of population, resulting from urban renewal, the building of expressways, and the aftermath of the riots of the sixties, would reduce the city's representation in the legislature by at least five House and two Senate members. The redistribution of these seats to the Detroit suburbs and to outstate districts was the task of the Apportionment Commission.

The politics of redistricting in the 1970s involved ethnic and racial claims within the Democratic party as well as inter-party rivalry. In 1970, black legislators held fifteen of the 148 seats in the Michigan legislature, closely reflecting the 10 percent black proportion of the state's population. The one goal shared by the major parties was to maintain this ratio of black political power.28/ Because both party chairmen were publicly quoted to this effect, other groups in Detroit feared losses of influence. Polish incumbents in the legislature complained that there was "not one Pole on the Apportionment Commission," and Hispanic groups demanded more representation.29/

In meetings of the Apportionment Commission, nineteen different redistricting plans failed of majority approval. Twelve plans proposed by the four Democratic

members, and seven proposed by the four Republicans, were rejected by 4-4 votes after little or no discussion. On January 28, 1972, the final day it could lawfully act, the Commission spent the last two hours in continuous recess because neither party wanted it said that its members walked out first. At midnight the Commission adjourned, and the issue moved to the Michigan Supreme Court.30/

Throughout Commission proceeedings, it was known that the Democrats had the upper hand in the redistricting struggle. The secretary of state, Richard Austin, a Democrat, served as secretary of the Commission and had been a co-sponsor of the 1964 apportionment plan. Even more important was Democratic control of the state Supreme Court.

The Republican commissioners filed their redistricting plan with the state Supreme Court on February 18, 1972, with equal-population districts that varied in population by less than one-tenth of one percent. The following day the Democratic commissioners filed their proposal, a plan which had not been submitted to the Commission and which reduced population variances to less than one-hundreth of one percent.31/

Republicans charged that the Democratic plan (called the Hatcher-Kleiner plan, after its sponsors) was illegal and unconstitutional because it had neither been submitted to the Commission nor been checked for the accurary of its population data. The Democrats argued that the Republican plan was inferior in its fidelity to the principle of population equality, as well as "deficient in detail and ignorant of other criteria."32/ Not surprisingly, the Michigan Supreme Court upheld the Democratic plan by a 4-3 vote.33/ Republican Governor Milliken assailed the court's decision as "a politically motivated attempt to gerrymander the state to assure Democratic control of the legislature,"34/ a charge which indicated that the partisan confrontation over apportionment would continue.

As expected, Detroit lost five House seats and two Senate seats in 1972. The Democratic party solved its internal political problems by rearranging the city

districts in such a way that "Poles (would) run against Poles, blacks against blacks, women against women, and Irishmen against Irishmen to settle which five (House members) will 'retire'." Two Democratic legislators who had voted frequently with the opposition were deprived of their districts.35/ In the 1972 election, which was based on the new apportionment, the House Democratic majority increased from fifty-eight to sixty out of 100 seats.36/ In 1974, the House majority increased to sixty-six seats while the Senate, which had been tied at 19-19 between the two parties for four years, was converted to a 24-14 Democratic majority. The Democratic party was to maintain control of the legislature for the remainder of the decade.37/

In 1973, a new element was injected into the ongoing debate by the U.S. Supreme Court's opinion in Mahan v. Howell,38/ which allowed a 16.4 percent variation in Virginia's state legislative apportionment. The Republican Apportionment Commissioners, encouraged also by a slight shift in the partisan alignment of the state Supreme Court,39/ tried to reopen the debate that had preceded the 1972 decision. They filed a suit in the state Supreme Court asking that the 1972 Republican plan be substituted for the Hatcher-Kleiner plan on the ground that the GOP plan, which violated fewer political boundaries, constituted a "rational policy" supportable under the standards of Mahan v. Howell. However, by a vote of 4-3, the Court rejected the suit.40/

A second challenge in the courts was mounted by a disgruntled independent voter and by a number of minor-party candidates, who contested the structure of the Apportionment Commission itself. In August 1973, the plaintiffs filed a suit in federal district court alleging that Michigan's constitutional provision requiring minor-party candidates to win 25 percent of the statewide vote for governor in order to win seats on the Apportionment Commission violated the First and Fourteenth Amendments to the United States Constitution. The plaintiffs also

challenged the right of political parties, which have a vested interest in the outcome, to appoint the Commission's members. Finally, they argued that the Commission itself was unconstitutionally malapportioned, since its members were appointed from districts of grossly unequal population.41/

Early in 1975, a three-judge federal district court upheld the constitutionality of the Apportionment Commission against all claims,42/ a judgement upheld by the U.S. Supreme Court later in the year.43/

Having failed to overturn the state's apportionment process in the courts, Republican leaders, joined by foes of the partisan character of the process, returned to the legislature for relief. In 1978, House Republican leader Dennis O. Cawthorne introduced a constitutional amendment to make the Apportionment Commission "independent and nonpartisan." He proposed that one member each be selected by the majority and minority leaders of the two houses of the legislature; these four members would in turn choose a chairman. The Commission would be assigned the tasks of both legislative and congressional districting; prompt review would be available in the state Supreme Court. The key feature of the Cawthorne plan was the tie-breaking chairman, who would have to be acceptable to both sides and therefore could presumably mediate conflict. Common Cause supported the proposal, but there were not enough votes in the legislature to put it on the ballot.44/

In November 1978, an issue automatically placed on the ballot every sixteen years gave the voters an opportunity to call a constitutional convention. While this would have opened an alternative path to changing the structure of the Apportionment Commission, it was rejected by an overwhelming 76.7 percent of Michigan's voters, who were apparently reluctant to open up the general constitutional revision process.45/

Prospects For 1982

As Michigan faces a new round of reapportionment, partisan considerations outweigh population changes in their likely influence on the outcome. Michigan's competitive party system persistently produces divided government. Republican Governor Milliken continues to face Democratic majorities in both houses of the legislature. Republicans consider themselves the victims of gerrymandering, but the statewide victories of two Democratic U.S. Senators in 1976 and 1978, and wide margins of victory for the Democratic attorney general and secretary of state in 1978, demonstrate that districting is not entirely responsible for Democratic electoral successes in Michigan.

The key role of the state Supreme Court is reapportioning the state in 1982 is widely recognized. The Apportionment Commission is now assumed to be irrelevant because its members, evenly divided between the two parties, are expected to deadlock automatically. Furthermore, both state and federal court decisions of the seventies upheld the power of the state Supreme Court to put into effect a plan which had not even been submitted to the Apportionment Commission.46/ The court is presently composed of three Democrats, three Republicans and one Independent -- Justice Charles L. Levin, who has formed his own Nonpartisan Judicial Party.47/ Justice Levin and Republican Chief Justice Mary S. Coleman, the two members of the court whose terms expired in 1980, were both reelected in November. Justice Levin therefore appears to hold the key to the shape of Michigan legislative politics for the eighties.48/

The major line-drawing problem will be to allocate Detroit's surplus representation to suburban and outstate districts without creating political havoc. In choosing between Democratic and Republican plans, this state Supreme Court may place less emphasis on strict adherence to mathematical standards of population equality and more emphasis on maintaining political subdivisions as representational

units. At the very least, the parties, candidates, and voters face an uncertain prospect.

NOTES

1/ U.S. Dept. of Commerce, Bureau of the Census, Estimates of the Population of Counties and Metropolitan Areas, July 1, 1977 and 1978, Current Population Reports, Series P-25, no. 873 (February 1980), pp. 29, 55 (hereafter cited as Estimates of Metropolitan Areas).

2/ U.S. Dept. of Commerce, Bureau of the Census, 1977 Population Estimates for Counties, Incorporated Places, and Minor Civil Divisions in Michigan, Current Population Reports, Series P-25, no. 835 (November 1979), p. 18.

3/ Estimates of Metropolitan Areas, p. 27.

4/ On April 2, 1980, in the first lawsuit of this type filed against the Census Bureau, the city of Detroit asked the federal district court to order the Bureau to add undercount estimates to the official population count. The city alleges that as a result of the 4.2 percent undercount in 1970, Detroit lost $52 million in state and federal moneys during the subsequent decade, as well as representation in the legislature. Detroit News, April 3, 1980, sec. A, p. 1; Young v. Klutznick, 49 LW 2235-36 (U.S.D.C., E. Mich., 1980).

5/ Karl A. Lamb, "Michigan Legislative Apportionment: Key to Constitutional Change," in The Politics of Reapportionment, ed. Malcolm E. Jewell (New York: Atherton Press, 1962), p. 269.

6/ Richard M. Scammon, ed., America Votes, vol. 13 (Washington, D.C.: Elections Research Center, Congressional Quarterly Inc., 1979), p. 177.

7/ S. Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," in Judicial Behavior, ed. Glendon Schubert (Chicago: Rand McNally, 1964), pp. 280-85. The 1963 constitution reduced the number of justices from eight to seven, and allowed incumbents to renominate themselves by filing an affidavit of candidacy. Michigan, Constitution (1963), art. VI, sec. 2.

8/ Joseph La Palombara, Guide to Michigan Politics (Lansing: Michigan State University, 1960), p. 22.

9/ Charles W. Shull, Legislative Apportionment in Michigan, Memorandum No. 206 (Detroit: Citizens Research Council of Michigan, December 1961), p.1. Michigan was one of nineteen states admitted to the Union in the nineteenth century which provided for equal-population districts in both houses. Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures (Washington, D.C., 1962), p. 10.

10/ Michigan, Constitution (1850), art. XIX, sec. 4. Moiety, or greater part, was interpreted to mean one half of the ratio plus one person.

11/ Karl A. Lamb, William J. Pierce, and John P. White, Apportionment and Representative Institutions: The Michigan Experience (Washington, D.C.: Institute for Social Science Research, 1963), p. 125.

12/ Michigan, Constitution (1908), art. V.

13/ Shull, Legislative Apportionment, pp. 4-5.

14/ Michigan, Constitution (1908, as amended in 1952), art. V, secs. 2, 3, 4.

15/ Scholle v. Hare, 360 Mich. 1, 104 N.W. 2d 63 (1960).

16/ 369 U.S. 186 (1962).

17/ The history of these efforts is recounted in Lamb, "Michigan Legislative Apportionment," pp. 271-75.

18/ Four members of the commission would be chosen by each major party, from constitutionally-defined geographic regions of the state. Southeastern Michigan, with a majority of the state's population, was thereby awarded two of the eight members. Michigan, Constitution (1963), art. IV, secs. 2, 3, 4, 6.

19/ Scholle v. Hare, 369 U.S. 429 (1962).

20/ Marshall v. Hare, 227 F. Supp. 989 (1964).

21/ Id. at 1005-7.

22/ Marshall v. Hare, 378 U.S. 561 (1964).

23/ Scholle v. Hare, 367 Mich. 197, 116 N.W. 2d 350 (1962); In re Apportionment, 372 Mich. 418, 128 N.W. 2d 350; 373 Mich. 247, 128 N.W. 2d 721; 373 Mich. 250, 128 N.W. 2d 722 (1964).

24/ In re Apportionment, 376 Mich. 410, 137 N.W. 2d 495 (1965); 377 Mich. 396, 140 N.W. 2d 436 (1966); Badgley v. Hare, 385 U.S. 114 (1966).

25/ K. L. Barber, "Partisan Values in the Lower Courts: Reapportionment in Ohio and Michigan," Case Western Reserve Law Review 20 (February 1969): 401-421.

26/ A correlation of the "vote-value" (a measure relating the mean population of all districts to the population of a particular district) and the metro/non-metro character of the district provides statistical confirmation. See K. L. Barber, "Reapportionment in Ohio and Michigan: Political Revolution Reconsidered" (Ph.D. dissertation, Case Western Reserve University, 1968), pp. 125-39.

27/ See Appendix A for the percentages of Democratic votes and seats in the Michigan legislature, 1962-78.

28/ Detroit News, May 9, 1971, sec. B, p. 4.

29/ Ibid., August 31, 1971, sec. B, p. 2.

30/ Ibid., January 29, 1972, sec. A, p. 8.

31/ The Republican plan provided maximum differences among House districts of seventy-nine persons from the average district population of 80,751, while Senate districts showed maximum variation of ninety-two persons from the average of 233,753. The Democratic plan made twenty-five the highest variation in the House, twenty-one in the Senate. Ibid., February 18, 1972, sec. A, p. 1.

32/ Ibid., February 26, 1972, sec. A, p. 6. Because Lillian Hatcher, one of the Democratic Commissioner-sponsors, was a Detroit UAW official, the Detroit News commented editorially that the plan had been "ghostwritten at UAW's Solidarity House." Ibid., March 4, 1972, sec. A, p. 4..

33/ In re Apportionment of State Legislature - 1972, 387 Mich. 442, 197 NW 2d 249 (1972). One Democratic justice dissented on procedural grounds. Dissenting Republican Justice Thomas E. Brennan wrote that the population differences between the Democratic and Republican plans were "so infinitesimal as to be meaningless." One plan couldn't be "more constitutional than another. Constitutionality is like pregnancy. Either you is or you ain't." Id., 387 Mich. 460, 197 NW 2d 255. Independent Justice Eugene Black dissented separately, charging that "never have so few done so much and so fast for any political party." He stressed the fact that the court majority was comprised of two former Democratic governors and two former Democratic attorneys general. Id., 387 Mich. 462, 197 NW 2d 256.

34/ Detroit News, May 5, 1972, sec. A, p. 3.

35/ Ibid., February 23, 1972, sec. A, p. 22.

36/ See Appendix A. Senators, who have four-year terms, were not scheduled to run for election until 1974. The New Democratic Coalition brought suit to force a Senate election based on the new apportionment in 1972, arguing that the Senate would be unconstitutionally malapportioned for two years, and that eighteen-year-olds would be deprived of their newly-won right to representation in the Senate until 1975. A three-judge panel of the Michigan Court of Appeals rejected the complaint. New Democratic Coalition v. Secretary of State, 41 Mich. Appl. 343, 200 NW 2d 749 (1972), leave to appeal denied, 387 Mich. 800.

37/ See Appendix A.

38/ 410 U.S. 315 (1973).

39/ Democratic Justice Adams, who had voted with the majority in the 1972 apportionment decision, retired, as did Independent Justice Black. Elected to the bench in 1972 were Independent Justice Charles Levin and Republican Justice Mary Coleman. Detroit News, March 4, 1973, sec. B, p. 3.

40/ Ibid., June 13, 1973, sec. A, p. 10; ibid., September 27, 1973, sec. A, p. 15.

41/ Michigan, Constitution, art. IV, sec. 6; Detroit News, August 22, 1973, sec. B, p. 6.

42/ The federal court had postponed action to avoid disrupting the 1974 election. Its unpublished 1975 opinion rejected the challenge by a 2-1 vote. In the majority were Circuit Judge Wade McCree and District Judge J. Philip Pratt. Dissenting Judge J. John Feikens, a past chairman of the Michigan Republican State Central Committee, said he could find "no compelling interest" for the state to place the 25 percent hurdle in the way of minor party participation in apportionment decisions. Ibid., April 26, 1975, sec. A. p. 13.

43/ Dodge et al. v. Austin, Secretary of State of Mich., aff'd on appeal from D.C.E.D. Mich., 423 U.S. 886 (1975).

44/ Detroit News, February 7, 1978, sec. D, p. 7.

45/ Michigan Dept. of Management and Budget, Official Canvass of Votes (1978), pp. 97-98. The 1963 constitution required the question of calling a constitutional convention to be submitted to the state's electors in 1978 and in each sixteenth year thereafter. art. XII, sec. 3.

46/ In re Apportionment of State Legislature-1972, 387 Mich. 442, 197 NW 2d 249 (1972).

47/ Detroit News (northern ed.), January 15, 1980, sec. B, p. 2.

48/ Ibid., November 6, 1980, sec. B, p. 3.

APPENDIX A

MICHIGAN LEGISLATURE *

Percent Democratic of Votes and Seats, 1962-80

	HOUSE **		SENATE ***	
Election Year	Dem. Votes	% Dem. Seats	% Dem. Votes	% Dem. Seats
1962	55.9	47.2	51.7	33.3
		Reapportionment I		
1964	57.3	65.1	58.1	60.5
1966	48.6	50.0	48.7	47.3
1968	52.6	52.7	____	____
1970	55.4	52.7	54.4	50.0
		Reapportionment II		
1972	51.1	55.4	____	____
1974	54.9	60.0	60.1	63.2
1976	55.7	61.8	____	____
1978	57.6	64.5	56.9	63.2
1980+	51.0	58.2	____	____

*Calculated from Official Canvass of Votes, published biennially by the Michigan Department of Management and Budget (formerly the Department of Administration).

**The House was restructured by the 1963 Constitution from eighty-six districts with 110 members to 110 single-member districts. Art. IV, sec. 3.

***The Senate was enlarged by the 1963 constitution from thirty-four to thirty-eight single-member districts. At the same time, the senators were given four-year terms, concurrent with the governor's term. Art. IV, sec. 2.

+Based on unofficial results, reported in the Detroit News, November 6, 1980, p. 3.

MINNESOTA

Charles H. Backstrom

The Minnesota constitution since its drafting in 1858 has always required districting by population only in both houses. It even provided that a special state census should be taken in mid-decade to keep the districting current. (This latter provision was never carried out, however, and the provision was made optional by a constitutional amendment in 1964.) Redistricting occurred with regularity until 1913 by the relatively painless process of adding new members without taking any away, although urban areas were systematically underrepresented anyway. After the 1913 redistricting, district lines remained the same until the courts compelled a new plan to be produced in the late 1950s.

Resistance to reapportionment in the first half of the century was primarily the expression of rural desires to maintain rural domination of the legislature when the rural population no longer justified such domination. An ideological dimension was also present, however, in that conservative businessmen in the urban and suburban areas recognized that their interests were well protected by certain conservative rural legislators; these business interests therefore supported the refusal of the legislature to consider a redistricting plan, even though the state constitution clearly required redistricting in order to bring the legislature into line with population changes.

The state Supreme Court was complaisant in the face of legislative inaction, even ruling in 1914 that the constitution did not in fact require uniformity of population as long as the legislature had made a good-faith effort to give a fair apportionment "without ulterior or improper motives."1/ Moreover, the Court ruled

in 1945 that a once-valid districting act could not be held unconstitutional by reason of subsequent changes in relative population of the districts.2/

In 1957, well before the U.S. Supreme Court articulated the one man - one vote standard, reformers in Minnesota brought a case to federal court, successfully arguing that reapportionment was indeed justiciable.3/ The judge did not provide a judicial remedy, but he did charge the legislature with redistricting more equitably, and he kept the case under advisement in the event that the legislature failed to heed his order.

The legislature responded to the judicial action in 1959 by enacting a redistricting law that brought legislative districts closer to equality of population, but still left the largest House district with seven times the population of the smallest one, as revealed by the 1960 census. This redistricting act was a partisan compromise worked out by a legislature in which the Senate was dominated by the "Conservative" caucus--largely Republicans--and the House was controlled by "Liberals"--members of the Democratic-Farmer Labor (DFL) party, as the Democratic party is know in Minnesota. (Lesiglators were not party-designated on the ballot between 1914 and 1973, although party organizations often endorsed candidates.)

The principal result of this 1959 redistricting, which took effect in 1962, was to move five and one-half Senate districts and eleven House districts from rural areas to the Minneapolis-St.Paul metropolitan area--mostly to the suburbs, where in the next election Republicans won every new seat. The Twin Cities gained one seat apiece, but their period of real population dominance in Minnesota had already peaked earlier. Several small rural districts, all under DFL control, were allowed to remain in existence despite population losses, so as not to give declining rural Minnesota the full shock treatment that complete population equality in legislative district populations would have entailed.

The post-Baker v. Carr decisions of the U.S. Supreme Court led a DFL governor in 1964 to convene a "bipartisan" reapportionment commission to suggest further action in Minnesota toward greater population equality. The legislature ignored the commission's recommended districting plan, but meanwhile another court case had been filed, successfully challenging the 1959 reapportionment.4/This judicial finding spurred the legislature in 1965, now under complete Conservative (Republican and non-party interest group) control, to pass a new districting plan. The authors of this plan at first claimed that there was a maximum ±20 percent deviation among district populations in their plan, but when the DFL governor learned that the population disparity was actually 100 percent, he vetoed the act. The state Senate lost a state court challenge to the governor's action.5/ (The constitution authorizes redistricting to be done by "the legislature," but the state Supreme Court ruled that this meant by regular law-making procedures.) A special session of the legislature then compromised with the governor on a new plan the following year. Four and one-half additional Senate districts and nine more House districts were taken from rural areas and given to the metropolitan suburbs; again, most of the new districts were captured by Republicans.

The census of 1970, only four years later, triggered a third federal court suit, also successful.6/ This time the Conservative-controlled legislature and the DFL governor could not agree on a compromise districting scheme, and the federal district court ended up drawing new district lines. The district judges overstepped themselves, however, by cutting the size of the legislature by almost one-fourth. The U.S. Supreme Court, on appeal by the Minnesota state Senate, agreed that this action was unnecessary to achieve equality of population, so the district court had to draw yet another plan, for a 67-seat Senate and a 134-seat House.7/ (The legislature is constitutionally entitled to set any size for the legislature that it sees fit, and the reapportionment plan of 1959 had added four House seats.)

The court-drawn plan (it had actually been designed by three special masters the court appointed to do the work) brought another five Senate and ten House districts into the Twin Cities metropolitan area, giving this area the one-half of the legislature that it deserved. From a population standpoint, the court's plan was very strict: it allowed no more than a two percent deviation between districts. The plan was thought by the Republicans to be a DFL gerrymander (two of the three judges were former DFL politicians), although an analysis by the present author found the plan quite fair, in fact actually underrepresenting the DFL by a single seat.8/ But whatever the estimated partisan potential of the plan, the DFL party gained control of both houses of the legislature after this redistricting--perhaps less because of the redistricting plan than because of superior organization, strategy, and financing that enabled them to capitalize on their 50 percent to 30 percent lead in party identification among the electorate. There was also a factional fight within the Republican party at this time, further aiding the DFL.

No redistricting has occurred in Minnesota since 1972. Population continues to shift away from the central cities, and population is now even moving away from the inner suburbs, toward exurbia and the "amenities crescent," a 200-mile sweep west and north of the Twin Cities into lake country, which is fast becoming a place for people (many of them migrants from other states) to dwell year round.

A long-sought constitutional amendment to remove the power to redistrict from full legislative control and to put it in the hands of a special nine-member Reapportionment Commission was submitted to the voters in November 1980. Although approved by a 58 percent majority of those voting on the question, the amendment fell about 3,000 votes short of gaining the required majority of all persons voting at the election. Seemingly non-controversial itself, the reapportion ment commission proposal fell victim to spirited campaigning on both sides of a companion amendment that would have installed initiative and referendum provisions in the constitution.

If the reapportionment commission proposal had passed, not all legislators would have been out of the picture, because the majority and minority leaders of both houses were each to have appointed one member to the commission (they probably would have picked either themselves or other legislators), and these first four members were to have chosen the other five by unanimous vote. The Independent-Republican party (as it is now officially named in Minnesota) has been on the upswing in Minnesota, and Republicans had reasonable hopes of capturing control of the legislature in 1980, thus enabling them to dominate the redistricting process (the governor is a holdover Republican) if the commission referendum lost. But the DFL managed to hold both houses of the legislature in 1980, setting the stage for another legislative-executive confrontation on redistricting.

Current population estimates indicate that half of the Minnesota legislative districts deviate by more than 10 percent from equality.9/ One-third deviate by more than 20 percent. But since most of the districts showing these large disparities are either in the still-declining central city areas or in the still-growing outer suburbs, in the rest of the state only minor adjustments will be required. And this is what is likely to be done in 1981, as the legislators start with the existing districting plan so as to disturb the fewest possible incumbents and constituents, rather than drawing a fresh map using different criteria, as a separate reapportionment commission might do. A legislative leadership committee has been studying computer-assisted redistricting for some time, and is preparing data for the use of the map drafters, whoever they may be.

The Minnesota constitution requires that no Senate district lines be cut by House district lines. This means that the state can have only one districting scheme, rather than two. Traditionally the Senate districts are drawn first, and then merely divided in two to form House districts, but there is no reason House

districts could not be plotted first and then combined in pairs to make Senate districts. In the past, the two houses have initiated separate plans and then compromised between themselves. Often a special reapportionment committee will be named in each house, consisting of the most powerful members, but of course each member tries to insure his own survival by asking for adjustments in the borders of his home district, which may require redrawing of a great many districts in the state in order to bring about population equality again. This process of bargaining and compromise affects all substantive legislation during the session, which is what led outside observers, and many legislators themselves, to work for a separate reapportionment commission.

The legislature has jealously guarded its initiative in reapportionment regardless of the political affiliation of the governor, who can only react to a final plan by veto rather than being able to offer input at an early stage. Nor has the public ever had input into legislative redistricting in Minnesota, as hearings have never been held on a redistricting bill, and the final bill usually appears only on the day before it is passed. This time, however, with an "open meetings" law in effect, perhaps outsiders will at least be able to watch the process.

NOTES

1/ Meighan v. Weatherall, 125 Minn. 336 (1914).

2/ Smith v. Holm, 220 Minn. 486 (1945).

3/ Magraw v. Donovan, 163 F. Supp. 184 (D. Minn. 1958).

4/ Honsey v. Donovan, 236 F. Supp. 8 (D. Minn. 1964).

5/ Duxbury v. Donovan, 272 Minn. 424, 138 N.W. 2d 692 (1965).

6/ Beens v. Erdahl, 336 F. Supp. 715 (D. Minn. 1972).

7/ Sixty-Seventh Minn. State Senate v. Beens, 406 U.S. 187 (1972).

8/ See Minnesota Law Review 62 (July 1978): 1121.

9/ Office of State Demographer, "Population Estimates for Minnesota Legislative Districts, 1978," State Planning Agency, June 1980. (Mimeographed.)

MISSOURI

David A. Leuthold

John Carter

At one time, the two chambers of the Missouri legislature contrasted sharply in the equity of their apportionments. In 1960, the Missouri House of Representatives was one of the five least equitably apportioned lower chambers in the nation, while the Missouri Senate was one of the five most equitably apportioned state upper houses. The Missouri House was malapportioned because every constitution since statehood had guaranteed every county, regardless of population, at least one seat in the House. The current constitution, adopted in 1945, provided for additional seats for the larger counties, but the inequities in district populations were still very substantial. In 1965, eighty-two rural counties, containing less than one-fifth of the state's total population, controlled a majority of seats in the House of Representatives.

The comparatively equitable apportionment of the Senate was the result of a new procedure mandated by the 1945 constitution. The Senate had not been reapportioned from 1901 until 1945. During that period of time, the two metropolitan areas--St. Louis and adjoining St. Louis County, and Jackson County (Kansas City)--had gained almost one million in population, while the rest of the state had actually lost population. The two metropolitan areas represented 26 percent of the state's population at the turn of the century and 46 percent by midcentury.

The State Senate

The Missouri constitution of 1945 established a bipartisan commission system for apportioning the state Senate based on population. Under this system (which is still in use today), the Democratic and Republican state central committees both submitted lists of ten proposed nominees to serve on the Senatorial Apportionment Commission. The governor then selected five individuals from each list to compose the ten-member commission. At least seven votes were required for commission approval of a Senate redistricting plan. If agreement was not reached in six months, the task of redistricting was assigned to the commissioners of the Missouri Supreme Court, a group of full-time professionals who assisted the Supreme Court in deciding cases.

The commission procedure was used fairly sucessfully in 1945, 1951, and 1961, with the Senatorial Apportionment Commission adopting a plan each time. In each of these instances, the success of the commission apparently was based on the role of the governor. Traditionally, Democratic governors have controlled their own party's central committee, so that the governor was assured of five friendly Democratic nominees, and thus five votes. One key to success was the ability of the governor to pick five Democratic members capable of negotiating a compromise with at least two of the Republicans. The governor's position may have been further strengthened by his ability to pick from among ten Republican nominees and by the other powers of his office, such as his power to provide patronage to those who agreed with him, or to sign or veto legislation sponsored by the friends of those who agreed or disagreed with him.

In determining districts, the constitution allowed the commission a variance in district population of 25 percent from the average population. The commission had a tendency to draw larger urban and smaller rural seats, resulting in a slight urban

underrepresentation. While the 25 percent variance seems high by today's standards, the 1951 commission failed to meet even that. Paul Preisler, a Washington University biochemistry professor who was to become Missouri's reapportionment gadfly, brought suit challenging the 1951 districts in St. Louis City. In 1955, the Missouri Supreme Court upheld Preisler's challenge and ordered the St. Louis Board of Election Commissioners to adjust the lines. Another constitutional violation occurred after the 1961 apportionment, with a Kansas City district being 26.2 percent larger than the average, but in this case no legal challenge was raised.

In the wake of the 1964 Reynolds v. Sims ruling, a federal district court in Kansas City held that the apportionment of both houses of the Missouri legislature violated the "one man-one vote" rule. A new Senatorial Apportionment Commission was established to redraw the Senate districts, and a redistricting plan was delivered to the secretary of state in September 1965. The largest variance in any district was five percent. In order to achieve this level of equality, however, the commission had split two counties between Senate districts, which was forbidden under the provisions of the 1945 state constitution. This constitutional barrier was eliminated by the passage on January 14, 1966, of an amendment to the state constitution allowing counties to be divided between two senatorial districts. A special three-judge federal court subsequently held that the Senate redistricting plan was valid, and the new disticts were used for the 1966 elections.

The Senate bipartisan redistricting procedure worked well again in 1971. However, one district exceeded the population norm by five percent, giving Paul Preisler grounds to challenge the entire plan. A state circuit court upheld Preisler's challenge, but the Missouri Supreme Court overturned that ruling and upheld the Senate districts.

The State House of Representatives

The various federal court reapportioment rulings of the 1960s required constitutional changes for apportionment of the Missouri House. Prior to 1964, the state constitution had contained a formula dictating the number of seats for each county and requiring a local body to draw lines within the county if the county was entitled to more than one seat.

In response to the invalidation of its districts, the 73rd General Assembly (1965) proposed an amendment to the state constitution that would allow the General Assembly to reapportion the House, while preserving the bipartisan commission system for Senate redistricting. Anticipating voter approval, the House had developed a plan to reapportion itself that would have gone into effect with adoption of the amendment. However, the amendment was rejected by the voters. Under considerable pressure from the governor as well as from the federal judiciary to complete a redistricting plan in time for the 1966 elections, the General Assembly agreed to a Bipartisan Redistricting Commission for the House roughly similar to that already being used for the state Senate. The proposed constitutional amendment was ratified by the Missouri electorate in January 1966.

The House redistricting structure differs from the Senate structure in two important ways: the number of members is twenty instead of ten, and two nominations must be made by each of the ten Republican and ten Democratic Congressional District Committees. The governor then selects one of the two nominees submitted by each committee. These differences were probably written into the law in order to keep the governor from controlling the reapportionment of both houses, since the governor would have less influence over Congressional District Committees than over his party's central committee. As with the Senate Commission, a seven-tenths majority of the House Commission is required to approve a redistricting plan, and the task was to be assigned to the Supreme Court commissioners if the Bipartisan Redistricting Commission cannot agree on a plan.

A commission was formed in 1966 and quickly adopted a plan that was somewhat similar to the plan laboriously developed earlier by the Missouri House. This plan was used for the 1966, 1968, and 1970 elections.

The 1971 commission was much less successful, however. The commission promptly, and hopelessly, bogged down over the question of whether one chairman or two co-chairmen should be selected. The question was never resolved, and the task of redistricting fell by default to the commissioners of the Missouri Supreme Court. This body submitted a plan to the secretary of state on September 7, 1971, in which the most variant district exceeded the population norm by only 1.3 percent.

The failure of the 1971 House Commission was probably related to the reduced formal influence of the governor. In addition, Governor Warren Hearnes' informal influence was reduced. He was far less popular in 1971 than he had been in 1966, and was in the last year of his term and ineligible for re-election. Finally, the large size of the House Commission--twenty members--reduced the opportunity for informal interaction of the members and increased the likelihood that the commission would split along partisan lines.

U.S. Congressional Districts

During the nineteenth century, Missouri gained at least one congressman following every census. This situation was reversed during the twentieth century, with Missouri losing three congressmen in 1930, two in 1950, and one in 1960. Traditionally, the state legislature has redistricted the congressional seats every ten years, with the House of Representatives taking the leadership role. In recent years, the redrawing of districts has often resulted in partisan gerrymanders. For example, in the period from 1954 through 1972 Republican congressional candidates received 37 to 46 percent of the statewide vote in every election, yet fewer than 20 percent of the congressmen actually elected were Republicans.

The 1960s was a decade of frequent court challenges to congressional districts and four congressional redistrictings. The plan adopted by the 1961 legislature was challenged by Paul Preisler, but the challenge was denied. New lines were drawn by the legislature in 1965 to conform with the Supreme Court requirements in Wesberry v. Sanders. A federal district court ruled this redistricting unconstitutional in 1966, but allowed use of the districts for the 1966 election because of the legislature's inability to draw new lines before the election. New districts were drawn by the 1967 legislature, but a panel of federal judges invalidated this plan. The U.S. Supreme Court agreed to hear the resulting appeal and in the meantime authorized use of this 1967 redistricting for the 1968 elections. The Court ultimately ruled against the plan, and the legislature redistricted again in 1969.

The 1970 census required yet another redistricting, in 1971. This time a dispute arose between the Missouri Senate and the Missouri House of Representatives over the districts in St. Louis City and St. Louis County. The Senate wanted both the 1st and 2nd Districts to include central-city as well as suburban areas, while the House wanted each to be homogeneous. The House version would have provided more protection to the incumbent congressmen. Unable to resolve the dispute, the legislature adjourned without adopting a plan. Paul Preisler then filed suit, demanding that all ten congressmen be required to run at large in the 1972 election. The Eighth U.S. Circuit Court of Appeals had earlier appointed a three-judge panel, which had drawn up lines much like those proposed by the House of Representatives; these districts were finally put into effect by the courts, and they served throughout the 1970s.

Redistricting in the 1980s

Estimates by the Census Bureau in 1977 1/ indicated for the 1970s a continued decline in the population of the central-city areas of Kansas City and St. Louis,

contrasted with increases in the outer suburban areas and in southwest Missouri, which has become a popular retirement and recreation area.

Reapportionment of the Missouri House of Representatives is likely to be very difficult, given the comparatively small population of about 30,000 for each district. St. Louis City was entitled to 21.7 legislative districts in 1970, but only to an estimated 17.5 in 1977--a loss of four seats. Similarly, Kansas City was entitled to 17.8 districts in 1970, compared with an estimated 15.5 in 1977, for a loss of two seats. In contrast, suburban areas of St. Louis County will gain one seat, the outer ring of St. Louis suburbs--St. Charles, Franklin, and Jefferson Counties--will gain two seats, and the combined outer ring around Kansas City will gain one seat. Springfield and the counties immediately south of it will gain one seat.

The failure of the 1971 Bipartisan Redistricting Commission for the House casts doubt on the ability of the 1981 commission to complete its task. A new backup procedure will be in effect in 1981. A 1970 reorganization began to phase out the Supreme Court commissioners who had previously served as the backup. A 1976 judicial reorganization amendment to the constitution provided that the Missouri Supreme Court should appoint a commission composed of six judges of the court of appeals, with two judges being appointed from each division of that court. No requirement of bipartisanship was included. This is the procedure that will be used if the House or Senatorial Apportionment Commission fails to reach agreement.

Redistricting the Missouri Senate should be less difficult, in part because districts are larger, with an average of 140,000 people. The greatest loss of representation will be in St. Louis City, which had a population justifying 4.5 Senate seats in 1970, but justifying only an estimated 3.5 seats in 1977. The St. Louis suburbs will successfully claim most, if not all, of the losses of St. Louis City. This may mean that elsewhere in the state, redistricting can be accomplished with only

minor shifts. Only slight changes will be needed, for example, in the 19th District in central Missouri, which was 1.7 percent above the population average in 1970 and an estimated 6.2 percent above the average in 1977, according to the Census Bureau estimates. The 31st District, just south of Kansas City, was 2.5 percent below average in 1970 and an estimated 3.5 percent above average in 1977. The past successes of the Senatorial Apportionment Commission augur well for the 1981 commission.

Redistricting of congressional seats may once again be a serious problem. The legislature has not displayed significant ability at drawing plans acceptable under today's standards. Certainly the legislative redistrictings of 1961, 1965, and 1967 failed to win court approval, and in 1971 the legislature could not even agree upon a plan. Part of the difficulty is the personal ambition of various state legislators. Half the members of Missouri's congressional delegation served previously in the state legislature. A legislative survey in the mid-1960s revealed that twenty-five of the 197 legislators had a desire to serve in Congress if they could win election. The 1971 experience with a panel of three federal judges suggests an appropriate backup if the legislature fails once again in 1981 to redistrict congressional seats.

Congressional redistricting will be especially difficult because Missouri is losing a congressional seat. The legislature will be controlled by Democrats who may try to draw lines eliminating one of the Republican congressmen. The two most vulnerable Republicans will be Wendell Bailey in the 8th District and Bill Emerson in the 10th District, both of whom in 1980 won districts formerly held by Democrats. The legislature's task will be complicated by the fact that the 1st and 3rd Congressional Districts, both in St. Louis City and held by Democrats, have lost population. Attempts to maintain these districts for Congressmen William Clay and Richard Gephardt may require the addition of strong Democratic enclaves now represented by Democrat Robert Young.

NOTES

1/ U. S. Dept. of Commerce, Bureau of the Census, 1977 Population Estimates for Counties, Incorporated Places and Minor Civil Divisions in Missouri, Current Population Reports, Series P-25, no. 838, (November 1979).

NEBRASKA

Robert Sittig

The redistricting of seats in Nebraska's legislature has been directly affected by a unique institutional change implemented in 1936--a unicameral legislative body which is non-partisan.1/ The legislature was switched from partisan to non-partisan for the election, organization, and operation of the new single chamber; this has blunted, if not eliminated, perhaps the most persistent thorn in the side of legislatures during reapportionment proceedings--partisan majorities seeking to maximize their electoral strength in ensuing elections. Legislative unicameralism and non-partisanship have influenced all aspects of state government in Nebraska; this paper will focus on the history and impact of legislative apportionment efforts within this unique institutional framework.

In the past half-century, the population growth rate in Nebraska has moved from being significantly below the national population growth rate (1930s-1950s) to being near the national rate (1960s-present). Within the state there has been for some time a movement of people from the countryside to the urban areas, and from the rural west to the more urbanized east. These population shifts have, of course, kept the question of equitable reapportionment on the reform agenda. One benefit that derived from the successful campaign to replace the existing two-house, partisan legislature with a one-house, non-partisan body was that the change provided a timely opportunity for the reallocation of seats. The new legislature consisted of a single chamber of forty-three members, whereas previous legislatures had been made up of a House with 100 members and a Senate with thirty-three. The marked reduction in size that occurred in 1936 led to an election "scramble" far more intense than those which normally attend reapportionment shuffles. When the

electoral game of musical chairs ended after the 1936 election, thirty-two of the 122 legislators with prior service who had sought "renomination/re-election" were successful. Thus, we have a clear indication of the vote-drawing appeal of legislative incumbents even under a non-partisan system.

The districts in the first unicameral legislature were quite well balanced (at least compared to the districts in some other states at this time) as to population; they averaged about 32,000 population, with the largest district having about 12,000 more persons than the smallest. Some of the variation in district size stemmed from a constitutional provision, frequently found at this time in other state constitutions, giving preferred representational consideration to local units of government; in Nebraska, the constitution prohibited the crossing of county lines in the setting of legislative district boundaries.

As to redistricting, the state constitution required only that the legislature reapportion itself "from time to time" using the most recent federal census data, and this indefinite provision was certainly a boon to incumbent legislators who were happy with their districts. Since the 1940 census followed so closely the advent of the unicameral legislature, there was little incentive to reapportion at that time, especially in the absence of a specific constitutional mandate. When a similar lack of action followed the 1950 census, there again was not enough public interest or concern to activate the legislature. During the 1950s, however, the situation began to change, as population movements to the eastern urban areas quickened and as litigation in other states was instituted in attempts to get judicial remedies where legislatures were resisting or ignoring the urban spokesmen clamoring for legislative reapportionment.

The Era of Judicial Intervention

In Nebraska, the legislature moved toward reapportionment before the U.S. Supreme Court handed down its decision in Baker v. Carr. Given the absence of political

party constraints, and the presence of a constitutional provision authorizing a legislature of up to fifty seats, reapportionment could proceed in Nebraska without direct judicial prompting. The legislature was also moved to action by the huge disparity that existed in district populations by the time of the 1960 census; the census revealed a disparity of more than 500 percent, for example, between the largest and the smallest districts, the largest having a population of just over 100,000 and the smallest a population somewhat under 20,000. Instead of dealing with reapportionment directly, however, the legislature in 1961 proposed a constitutional amendment to the voters containing an unusual area (appealing to rural dwellers) and population (appealing to urbanites) formula to cover future legislative reapportionments; area was to be assigned at least 20 percent but not more than 30 percent of the weight in the formula. The proposed amendment did provide for mandatory ten-year redistricting, but it retained the ban on the crossing of county lines. Most voters evidently accepted the argument that the amendment was an urban/rural "compromise," since it passed handily, although the county with the largest population (Douglas County, which included Omaha), and a few others adjacent to it, voted to reject the proposal.

Armed with this popular mandate, the 1963 legislature summarily approved a reapportionment plan with area weighted at 20 percent and population at 80 percent.2/ Regardless, the urban interests were by now well organized, and under the leadership of the League of Municipalities they initiated a court challenge to the new plan, which had been easily approved by the legislature, 34-7. The federal district court agreed with the challengers and rejected the plan due to its wide population disparities (the largest district had a population of 36,000, the smallest only 28,000). Given election-year time constraints, the plan was allowed to stand for the 1964 elections only. The court decision did not deal specifically with the crossing of county lines, so this question continued to be a source of contention.

The 1965 legislature, responding to the earlier court order, turned again to the apportionment matter. The rural representatives argued that considerable population disparity was inevitable, given the state constitutional ban on crossing county lines; the urban position was that equality of population was more important in districting than this constitutional provision, and that some county lines would have to be crossed in order to gain final federal court approval. However, in actual voting, the rural interests prevailed overwhelmingly (40-5), with the legislature approving a fifty-district plan which kept county boundaries intact; the population disparity in this plan between the largest and the smallest districts, however (35,800-22,300), represented only a slight improvement over the ill-fated earlier effort.

The urban forces turned again to the courts, and the legislature's latest attempt was also deemed unacceptable, both because of high population variance and because it was, in the words of the judges, "apparent that the districts have been created to . . . keep the present members from having to contest with each other at the polls."3/ With time running short in the 1965 session of the legislature, another reapportionment bill quickly cleared the various floor tests and was enacted (34-12); it created a body with forty-nine seats, with districts that did cross county lines in a few instances; the maximum population disparity between districts was reduced to slightly less than 20 percent (32,400-26,900). Litigation dealing with this third effort was initiated by various parties in both the state and federal courts. The state Supreme Court held that the crossing of county lines did not violate the Nebraska constitution, and within weeks the federal judges found that their increasingly well-defined one man-one vote standard had been satisfactorily met in Nebraska. This ended a nearly five-year "merry-go-round" involving legislative and judicial jousting over an acceptable reapportionment law.

The approved act had the immediate effect of switching considerable voting power in the legislature to the urban areas of the state, with a concomitant reduction of rural strength. The size of the legislature was increased by six seats, with all six going to urban areas; additionally, three seats were reassigned from basically rural outstate areas to urban areas. The net gain for the urban areas, therefore, was nine seats, broken down as follows: Omaha-six; Lincoln-two; Bellevue/Sarpy County-one. Thus, a forty-year drift toward greater and greater urban underrepresentation was finally corrected by judicial insistence on a reallocation of legislative districts based substantially on population.

The first elections (1966) using these population-based districts had a minimal impact on incumbent legislators even though major territorial alterations had occurred in most districts. In the three districts where incumbents were initially thrown together, an incumbent retired in one, an incumbent was eliminated in the non-partisan primary in another, and in only one instance did two incumbents face each other in the general election. Of course, the incumbents' lot was made easier by the legislature's having added six new districts to accommodate much of the increased representation awarded the urban areas; this saved many incumbents from having to run against one another. Thus, with but a slight impact on incumbents' careers, the Nebraska legislature assembled in 1967 with much higher urban, and slightly lower rural, representation.

A more complete picture of the clash between rural and urban interests in the legislature over reapportionment was revealed in a subsequent analysis which focused on those measures generating a high degree of conflict in the legislature during the years 1961-69. According to this study, reapportionment ranked first among eighteen issues in regard to the frequency and intensity of floor debate, and first also in regard to the degree of cohesion among rural and urban legislators on all contested roll-call votes.4/ The rural legislators prevailed easily in the early years

of the struggle, but eventually the courts affirmed the viewpoint of the urban representatives, and an equitable reapportionment plan was adopted. After losing the battle in Nebraska, some rural legislators continued the war on the national level by supporting efforts to remove state legislative apportionment jurisdiction from the federal courts, and/or to allow states to use a basis other than population in the apportionment of one house of a state legislature. These efforts ultimately failed, and the "reapportionment revolution" finally triumphed in the states and in the nation.

State Legislative Apportionment Since 1970

The debate within the legislature on its own reapportionment after the 1970 census was subdued compared to the previous disputations between rural and urban legislators. The census data indicated that there had been slight population shifts toward the two major urban centers, Omaha and Lincoln, especially Omaha. Two more seats were shifted to the Omaha metropolitan area; surprisingly, however, the legislators did not try to mitigate the political impact of these moves by raising the size of the legislature by one to the constitutionally allowable maximum of fifty. No incumbents ended up running against each other where districts had been altered significantly, since two timely retirements occurred. In the plan ultimately given legislative approval, a nearly 300 percent spread between the smallest (outstate) district and the largest (Omaha suburbs) district was reduced to just over six percent.

The preliminary census figures for 1980 reveal familiar population movements in the state: from rural areas to urban areas and from west to east. It also appears that two other significant population changes have occurred. First, the central or core area of Omaha has declined sharply in population, while the overall growth of the metropolitan area continues apace. This movement from central city to

suburbs, seen often in other American cities, had not previously occurred in any Nebraska city. Commercial and industrial growth in suburban areas, court-ordered busing for racial integration, and the recent imposition by voters of a property tax lid on the Omaha public schools are evidently factors in the declining population of the city proper. It appears that two additional legislative seats are destined for the Omaha suburbs, and that one will probably be taken from the central city and the other from the outstate/rural area.

The second major population change in Nebraska in the past ten years involves the outstate communities along Interstate 80 and the Platte River; these areas have enjoyed a slightly higher-than-average population rise, and district lines will have to be changed accordingly. Again, the legislature could avoid some of the anxiety caused by these shifts by increasing the size of the chamber by one seat.

Congressional Redistricting in Nebraska

Nebraska's rapid population growth after statehood resulted in a U.S. House of Representatives delegation of six after the 1890 census. Economic setbacks suffered by farmers in the last decade of the nineteenth century and again in the 1920s, 1930s, and 1950s, and the resultant low population growth rates in Nebraska, resulted in losses of one seat each after the 1930, 1940, and 1960 federal enumerations. After the last reduction, the 1961 legislature, by now non-partisan, was faced with a delicate problem due to the partisan lineup of the existing House delegation: all four incumbents were Republicans, and all made it clear that they intended to seek renomination. Given the preponderance of rural legislators in the legislature at this time, the question seemed to reduce itself to this: should the geographical orientation for the three realigned districts be along east-central-west lines or should it be along north-central-south lines? After an extensive solicitation of viewpoints, a legislative committee proposed a plan incorporating the latter

approach; but an outstate rural coalition put forth its own plan incorporating the former approach, since this plan seemed to insure that the farming interests in the western protion of the state would control one, and perhaps two, of the three seats. The rural plan was the one enacted, and it pitted a three-term moderate congressman against a freshman conservative. Some claimed that ideological motivations had been uppermost in the minds of rural and conservative members of the legislature when they drew the new districts, especially after the moderate was upset in a close primary contest. However, evidence is not available to fully substantiate this charge.5/

The population range after the 1961 redrawing of Nebraska's U.S. House districts resulted in a disparity of about 30 percent between the largest district (the central area and Lincoln, population 531,000) and the smallest district (Omaha, population 405,000). The 1965 legislature, probably in anticipation of a court challenge, attempted to remedy this variance somewhat by statute, but the bill's managers could not find enough counties "willing to be tossed into the Omaha district," and a stalemate resulted. Subsequently, a Democratic party official successfully challenged the existing districts, and the court ordered the legislature either to reapportion on a population basis or to conduct at-large elections in 1968. With this incentive, the legislature in 1967 was able to reduce the population variation to acceptable levels.

The 1970 census showed that continued population relocations toward the urban areas necessitated another readjustment of congressional districts, and a few counties were moved from one district to another. This restored nearly precise population parity among the three districts; in fact, the state's population disparity of only .15 percent between the largest and the smallest district gave Nebraska the sixth best ranking among the forty-four states with more than one congressional district.6/ Current population figures, as they are emerging in the 1980 preliminary

census reports, indicate that Nebraska does not have to be concerned about any further reduction of its congressional delegation, since growth rates in the state nearly parallel national growth rates. One can expect the final census results to reveal continued slight shifts of population toward the urban areas of the state however, and these shifts will no doubt necessitate a minor reshaping of district boundaries in the 1981 legislative session.

Whatever the minor difficulties that may arise in redistricting in 1981, it appears that the deeply contentious period of reapportionment in Nebraska has passed, and that the state's legislators will be able to take the next reapportionemt easily in stride. This optimistic prediction is based largely on the unique, non-partisan nature of Nebraska state legislative affairs; in Nebraska, there should be few of the partisan-inspired charges and the claims of favoritism that are normally directed at partisan majorities in states where party leaders remain in solid control of the reapportionment process.

NOTES

1/ For a history of the unicameral movement in Nebraska and an analysis of the campaign led by the prominent progressive U.S. Senator George Norris, see Adam C. Breckenridge, One House For Two (Washington, D.C.: Public Affairs Press, 1957).

2/ In the actual implementation of this amendment, each county's population and land area in square miles were assigned ratios equivalent to the county's share, respectively, of the total state population and the state land mass. Population was then weighted four times heavier than area for each county's "representational multiple," and the districts were awarded accordingly. In rural areas a number of counties had to be combined to form single districts, and in urban areas the sub-county location of lines for the districts was left up to the county's incumbents.

3/ League of Nebraska Municipalities v. Marsh, 242 F. Supp. 357.

4/ Edward J. McPartland, "A Study of Rural-Urban Conflict in the Nebraska Legislature" (Ph.D. dissertation, University of Nebraska-Lincoln, 1970).

5/ Marvin E. Stromer, "Congressional Redistricting in Nebraska--1961" (M.A. thesis, University of Nebraska-Lincoln, 1962).

6/ Toward a System of "Fair and Effective Representation" (Washington, D.C.: Common Cause, 1977), p. 15.

NORTH DAKOTA

Anne Ames

Legislative apportionment has been a topic of perpetual conflict in North Dakota since territorial days. Reapportionment has been completed only sporadically and inconsistently. Numerous litigations, contesting both malapportioned new districting plans and unrepresentative old plans, were heard in various courts over a long period of time, yet with no satisfactory solution. This situation reached a climax in 1975, with the U.S. Supreme Court case, Chapman v. Meiers. The Court's decision in the case clarified areas of uncertainty that had hampered North Dakota's reapportionment process for many years.

Delegates to the state's first constitutional convention met in Bismarck, North Dakota, from July 4 to August 17, 1889. Among the problems facing the delegates were the apportionment issues of determining basic guidelines and procedures for legislative apportionment and of creating the legislative districts for the first state election. "Debate in the convention centered around the issue of whether or not to allocate legislative seats solely and substantially on a population basis." 1/ Virgil B. Nobel, a delegate from Bottineau, believed that each county should be assured at least one representative. In opposing this idea, Martin N. Johnson of Lakota said:

> Is there anything fair--any justice--in a system that would give 44 men in Billings County the same representation as the 1,035 voters of Nelson County? . . . What constitutes a state? Not area. It is men--high-minded men--men whom (sic) their duties know. . . In the name of justice, why is not a man in the Red River Valley as good as a man in the Badlands? . . . We are here to make laws for people, and not valleys, and rivers and inanimate objects. 2/

The convention supported the philosophy of Mr. Johnson when constructing the constitution, although the issue of equal representation was a recurring topic of debate throughout later years.

The final document adopted by the convention placed the power of legislative reapportionment in the hands of the legislature, requiring that the "districts, as nearly as many be, shall be equal to each other in the number of inhabitants entitled to representation." 3/ This constitutional provision was included in section 29 of the second article, along with the stipulation for single-member Senate districts of compact and contiguous territory that respected county boundary lines. Section 35 provided for at-large election of representatives within the senatorial districts, a state enumeration of inhabitants every ten years (alternating with the federal census, so that one would occur every five years), and for the legislature "at its first regular session after each such enumeration, and also after each federal census, to proceed to reapportion itself." 4/ The number of senators was to be no fewer than thirty and no more than fifty, according to section 26. Under section 32, the number of representatives was set at no fewer than sixty and no more than 140. After the initial apportionment, the exact number of seats in each house was left to be determined by the legislature itself.

The constitutional framers became aware of the complexities involved with the actual creation of an apportionment plan when the 25-member convention apportionment committee struggled to devise a plan based upon obsolete statistics from the 1880 federal census and the 1885 territorial census. The final plan encountered little debate, however, and was adopted as section 214, providing for thirty-one senators and sixty-two representatives.

This was the original foundation for apportionment in North Dakota. Under these constitutional provisions, the legislature was able to move towards accommodating the state's booming population growth. The population was 152,652 in 1885 and 187,719 in 1890. After the 1890 census, new districts were added in both houses, and old districts were split, causing the total number of legislative seats to

increase. Areas underrepresented in the Senate were given additional House seats in an attempt to compensate for the considerable disparities in Senate district populations. The 1890 census showed that the Senate district populations varied from 3,187 inhabitants in the smallest district to 10,751 in the largest. 5/

Because of the failure of the 1895 legislature to perform a state census, there was no new apportionment until 1901, when the Senate size increased by nine seats and the House gained thirty-eight seats. In 1907, the size of the Senate increased from forty to forty-seven seats, while the House membership decreased from 100 to ninety-five. The Senate gained two more seats in 1909, and the House gained eight, when an unrequired reapportionment plan was enacted to accommodate county divisions and the organization of new counties.

In 1911, the legislature enacted a reapportionment law that was to remain almost untouched for more than fifty years (thirty-eight of the fifty districts that it established did not change in all this time). The House size was increased to 111 members. The plan included one questionable aspect: due to its small population (being the smallest district, with 6,357 people), the 50th District was given statutory life only until the end of 1914. 6/ This provision was made so that state Senator C. W. Plain of Milton, the sitting, third-term representative from the region, would not be removed until his entire four-year term had elasped. Based on the 1910 census figures, Senate district populations in the new plan ranged from 6,357 to 19,954.

Few districting changes were made by the 1915 legislature. The area of the former 50th District in eastern Cavalier County was again made into a single district, but Senate membership was kept at forty-nine by combining Sioux County with other counties. The House had 113 members.

In 1921, the Nonpartisan League, dominating the Senate, and the Independents, securing the House majority, were unable to reach a compromise on a reapportionment plan. 7/ In 1923 the Independents, who had gained control of both houses,

passed a reapportionment bill that encountered much criticism. "This kind of gerrymandering is not only vile and vicious and infamous, it is absolutely contemptible . . . ," 8/ was one representative's comment about the plan. Under the bill's provisions, Stutsman County, which had 24,575 inhabitants, was divided into two Senate districts, while McKenzie and Williams Counties, accounting for 27,624 people, were combined into one district. (Needless to say, the Independents were strong in Stutsman County, while the Nonpartisans were strong in McKenzie and Williams Counties). The bill was vetoed by Independent Governor R. A. Nestos, who said, "A careful investigation of the provisions of the act reveals the fact that while there have been fair and proper changes in a few districts, the act has failed to correct inequalities existing in other districts, and is therefore not just and equitable throughout." 9/ No new reapportionment plan was enacted during the 1923 legislative term.

The 1925 census was the last state census to be performed. After 1925, the legislature refused to carry out a census, and finally, in 1961, the constitutional provision requiring a census was repealed. In 1931, the Independents succeeded in passing a reapportionment plan, having compromised with the Nonpartisans by splitting McKenzie and Williams Counties and making several other slight alterations in the existing plan. This new plan remained in effect until 1965. Proposed reapportionment bills in 1941 and 1951 failed to get through the legislature because of conflicts between rural and urban interests.

The impact of the movement of people from rural to urban areas was felt to a considerable degree in North Dakota during the 1950s, even as the total state population declined. By 1960, the smallest Senate district had only 4,698 residents, while the largest had 46,857. Responding to pressures for a new way of handling the apportionment problem, the legislature drafted a proposal for a constitutional amendment and presented it to the people in 1960. "Sections 26, 29, and 35 were to

be amended in order to freeze the existing senate districts in perpetuity, assure every county at least one representative, require the legislature to reapportion the remaining house seats according to population after every federal decennial census, and provide for a five-member commission to do the job if the lawmakers failed." 10/ (The commission was to be composed of the Supreme Court chief justice as chairman, the secretary of state, the attorney general, and the majority and minority leaders of the House.) The amendment was approved in the 1960 primary election. "At that time, Senate districts varied in population from 4,698 to 46,857." 11/

The commission provided for by the new amendment went into action in 1961, when the legislature failed to perform its reapportionment duties. The rurally-dominated commission foresaw the battle that its rurally-slanted plan might encounter (the eight most populous districts, containing 35.5 percent of the state's population, were granted only 27 percent of the House seats), and therefore waited to file its plan until just prior to the submission deadline date, in hopes of forestalling a legal action. Aware of the nature of the plan, representatives of the state's infuriated urban citizens appealed to the North Dakota Supreme Court for judicial intervention, but to no avail. The Court refused to take action, on the grounds that the commission had not yet formally submitted its proposal. 12/ The grievance received no sympathy at the federal district court, either, 13/ but the plan was finally rejected when brought before the North Dakota Supreme Court again in 1962. 14/ The apportionment plan created by the 1931 statute continued to be the law.

Just seventeen days after North Dakota's Supreme Court struck down the commission's plan, the United States Supreme Court made its historic decision in Baker v. Carr, thus removing all doubt as to whether the courts rightfully belonged in the political thicket of redistricting. This spurred the North Dakota federal

district court into action, as the federal court mandated that the 1963 legislature must reapportion the House seats. 15/ While the urban faction of the legislature was in the midst of appealing this next plan favoring rural interests in 1963, the United States Supreme Court made its next influential redistricting decision, Reynolds v. Sims. This 1964 case called for apportionment on a one man-one vote basis in both houses of the state legislatures. As a result, the North Dakota apportionment system (sections 26, 29, and 35 of the constitution) was held in violation of the equal protection clause by the federal district court, and the 1931 apportionment, under which the incumbent legislators had been elected, was also held invalid. 16/

The 1965 North Dakota legislature inherited the task of reapportioning both houses. Unfortunately, the best the legislature could do was to select and enact as law (without the governor's signature) the "worst plan of several considered." 17/ The federal district court then nullified the legislature's plan 18/ and implemented one of its own. Described by one scholar as "a radical departure from previous plans," the new court-ordered plan

> created five predominant (sic) urban multi-senator districts and attached parts of 12 counties to others to form single senator districts. Based on the 1960 census, population per senator ranged from 11,339 to 14,214. 19/

When the multi-member Senate districts were challenged in the state Supreme Court for allegedly violating the state constitution, multi-member districts were held to be not illegal, since section 29 of the constitution had been invalidated by federal judical action. 20/

The North Dakota legislature found itself in an unusual predicament in 1971. The Reynolds v. Sims decision had invalidated the state's constitutional provisions for redistricting, so technically there was a question as to whether the North Dakota legislature had a responsibility to reapportion. "The Legislature, however, felt obliged to try to reshuffle its seats in line with the 1970 census." 21/

The Republican legislators, who held fourteen out of fifteen Senate seats and twenty-seven out of thirty House seats in the five urban districts, wanted to maintain use of the multi-member districts included in the court-drawn plan. The Democrats, and many rural interest groups, favored splitting up these districts. Also contributing to the courtroversy in 1971 were the issues of representation for persons living on military bases and the failure of the 1970 census tracts to follow county boundaries. Faced with these problems, the legislature once again failed to reapportion North Dakota in 1971.

As a result of the 1971 legislature's failure to reapportion, a federal action was instituted, 22/ the plaintiffs claiming that the 1965 court-drawn plan no longer complied with the requirements of the equal protection clause, due to population shifts since the time it was put into effect. The federal district court responded by appointing a commission whose plan (the Dobson plan) continued the use of multi-member districts and had "substantial" population disparities. The court no longer approved of the use of multi-member districts, but temporarily accepted the Dobson plan (for the 1972 election only) because there was not sufficient time to devise a substitute before the 1972 election. The 1973 legislature then devised a plan that the governor vetoed, because it included five multi-member senatorial districts. The legislature overrode the governor's veto. Before the new plan could go into effect, however, it was suspended by a referendum petition and defeated in a special election. A constitutional amendment, creating a commission to reapportion the state and requiring mandatory single-senator districts, was also defeated in the special election. The 1972 Dobson plan was then permanently reinstated by the three-judge district court. 23/

This decision was appealed to the U.S. Supreme Court on November 13, 1974, in Chapman v. Meiers. It its 1975 ruling, the Court strengthened past decisions and

helped to provide North Dakota's legislature with redistricting guidelines for the future. Mr. Justice Blackman delivered the Court's opinion:

> Absent persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid the use of multi-member districts and must ordinarily achieve the goal of population equality with little more than de minimus variation; if important and significant state considerations rationally mandate a departure from such standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted. 24/

The ruling also stressed that a court-rdered plan was expected to meet higher standards than a state's own plan. The argument of the defendants, that the lack of racial or political discrimination was sufficient justification for a maximum 20 percent population variance and for multi-senatorial districts, was not regarded as proper justification. The Supreme Court struck down the 1965 apportionment plan and remanded the case back to the district court. The district court then imposed a new reapportionment plan, which was first used in the 1976 election. The plan has minimal population disparities and has met with little conflict.

The 1975 Supreme Court decision and resulting district court apportionment plan seem to have brought stability to the apportionment picture in North Dakota. Few grumbles over legislative apportionment have been heard since 1975. A proposed legislative article that included an amendment regarding reapportionment (essentially, the amendment would have written recent Supreme Court decisions into North Dakota law) was voted down in the 1980 election.

There have been only minor population changes in the state since 1970. The rural-to-urban migration is continuing at a slow pace, and the state's overall population has gone up by about 35,000, from 617,000 to 652,000.

The North Dakota Republican party, following the national trend, gained strength in the 1980 election, picking up nine additional Senate seats (for a total of forty-one in the fifty-member body) and twenty-three additional House seats (for a total of seventy-three in the 100-member lower chamber).

Since Chapman v. Meier, the reapportionment arena has remained relatively calm in North Dakota. The future also looks serene, as the 1981 reapportionment approaches. Having strengthened their majority status in the legislature under the existing plan, and with state Governor Allan Olson being a party member, the Republicans are bound to have the dominant influence in the creation of the new apportionment plan. The 1981 redistricting plan of North Dakota will probably be very similar to the existing plan and should face very few obstacles to enactment.

NOTES

1/ Richard Dobson, "Reapportionment Problems," North Dakota Law Review 48 (Winter 1972): 282.

2/ Debates and Proceedings of the North Dakota Constitutional Convention (Bismarck, 1889), p. 238.

3/ North Dakota, Constitution (1889), art. II, sec. 29.

4/ Ibid., sec. 35.

5/ Dobson, "Reapportionment Problems," p. 283.

6/ North Dakota Session Laws (1911), chap. 256.

7/ In 1916, the Republican party split into two factions, the Nonpartisan League and the Independent Voters' Association. The Nonpartisans, being the more liberal of the two, later (1956) merged with the Democratic party.

8/ Journal of the House of the Eighteenth Session of the Legislative Assembly (Bismarck, 1923), p. 1415.

9/ North Dakota Session Laws (1923), chap. 541.

10/ Dobson, "Reapportionment Problems," p. 285.

11/ Ibid.

12/ State ex rel. Aamoth v. Sathre, 110 N.W. 2d 228 (N.D. 1961).

13/ Lein v. Sathre, 201 F. Supp. 535 (D.N.D. 1962).

14/ State ex rel. Lein v. Sathre, 113 N.W. 2d 679 (N.D. 1962).

15/ Lein v. Sathre, 205 F. Supp. 536 (D.N.D. 1962).

16/ Paulson v. Meier, 232 F. Supp. 183 (D.N.D. 1964).

17/ Brief of Applicants for Intervention in Support of Plaintiffs Return to Defendant's Motion, filed in Docket No. 618, U.S.D.C., N.D., 1965.

18/ Paulson v. Meier, 246 F. Supp. 36 (N.D. 1965).

19/ Dobson, "Reapportionment Problems," p. 286.

20/ State ex rel. Stockman v. Anderson, 184 N.W. 2d 53 (1971).

21/ Dobson, "Reapportionment Problems," p. 287.

22/ Chapman v. Meier, 372 F. Supp. 363 (1972).

23/ Id. at 371 (1974).

24/ Chapman v. Meier, 95 S. Ct. 751 (1975).

OHIO

Kathleen L. Barber*

As Ohio approaches the 1981 reapportionment of the General Assembly, significant changes are occurring in the growth and distribution of the state's population. While the population of the state grew by 9.7 percent in the decade of the sixties,1/ its estimated growth from 1970 to 1978 was only 0.9 percent.2/ Although the share of population residing in metropolitan areas increased slightly in the seventies, from 77.7 percent to 79.7 percent of the total, Ohio's three major cities actually lost population between 1970 and 1978.3/

Seats in the Ohio Senate and House of Representatives are fixed constitutionally at thirty-three and ninety-nine members respectively, elected from single-member districts, with each Senate district composed of three contiguous House districts. The Apportionment Board (whose composition is described later in this essay) will be compelled in 1981 to shift some seats from urban to suburban areas. Before analyzing the political problems anticipated in the forthcoming redistricting, however, it will be useful to review the highlights of Ohio's past redistricting experience, which at times has been tumultuous.

Partisan conflict has marked the history of apportionment in Ohio. The sharp struggle which followed the opening of the federal court system to equal-representation claims in Baker v. Carr 4/ aligned political forces in the state along traditional, even pre-Civil War lines. Vigorous party competition in Ohio has

---

*The author wishes to thank Judith J. Hritz for assistance in the collection of data.

followed original patterns of settlement of ethnic and social groups, cutting across the urban/rural cleavage which dominated the rhetoric of reapportionment. The New Deal realignment of party forces had a major impact on the Ohio political system, particularly by polarizing the populous, industrial, Democratic northeastern section of the state and the more conservative, Republican southern and western counties. But even in the 1970s, pockets of strong Democratic voting persisted in the old Virginia Military Reserve in rural southern Ohio, while populous urban areas such as Cincinnati and Columbus sent Republican representatives to the state capitol and to Congress.5/

Partisan conflict over apportionment merely reflects the closely-divided character of the Ohio electorate. In statewide voting during the period from 1962 to 1980, Ohio voters favored three Republican and two Democratic presidential candidates, chose a Republican governor four out of five times, and elected a Democratic senator four times out of six. The Ohio judiciary is elected on a nonpartisan ballot, but the candidates are nominated in partisan primaries. This semi-partisan system has generally produced a Republican majority on the state Supreme Court, but Democrats occasionally win control, as they did briefly from 1960-62 and again in 1978.

Historical Background

Under the original constitution of 1802, apportionment was the duty of the state legislature. Fierce conflict between Democrats and Whigs in the General Assembly characterized reapportionment for much of the first half of the nineteenth century. While population was the yardstick of representation (based on the number of white adult males living in legally designated districts), the county was the basic representational unit, and additional legislative seats were accorded to urban counties as the population grew.6/

With the legislature closely divided between the parties, the Whigs, as the minority party in Hamilton County (containing the then most populous city in the state, Cincinnati), sought subdistricting of multi-member counties with the goal of enhancing their strength in the Assembly. Apportionment became the main issue of the constitutional convention of 1850, which featured a majority of Democrats. In the new constitution, adopted in 1851, the Democrats succeeded in maintaining the county as the unit of representation, with multi-member districts in populous counties. The new constitution also removed responsibility for apportionment from the General Assembly and created the Apportionment Board, composed of the governor, the auditor, and the secretary of state, all separately elected officials. The new apportionment formula was not based solely on population: the new constitution built in an advantage for low-population districts by allowing a county with half the ratio of representation one representative in the House; with one and three-fourths ratio, two representatives. At three ratios and above, the advantage ceased. Senate districts provided a lesser bias in favor of low-population counties: there, three-fourths of a population ratio entitled a district to one senator.7/ The practice of a more equitably apportioned upper chamber persisted until the court-approved reapportionment of 1965, which applied standards of Reynolds v. Sims.8/

In 1851, when Ohio's present constitution was adopted, the state was 12 percent urban, 88 percent rural. By 1900, the urban share of the population had grown to 48 percent, with the rural maintaining a slim majority of 52 percent. U.S. Senator Mark Hanna, the state's Republican leader, sought to protect the state against what he perceived as the depredations of the approaching urban majority by amending the constitution to guarantee every county one representative in the lower house, regardless of population. The Hanna Amendment, approved by the voters in 1903, created a constitutionally-mandated malapportionment in Ohio which tended to insulate the Assembly against twentieth-century social and economic pressures.

While only ten counties fell below the half-ratio and therefore failed to qualify for a separate representative in the 1901 apportionment, by 1960, forty-eight of the eighty-eight counties lacked the half-ratio required before 1903, and seventy-one counties fell below a single ratio but still had a representative due to the Hanna Amendment.9/

The Ohio Apportionment Board faithfully reapportioned the state after every decennial census from 1851 through 1961, but the partial-ratio provisions of the 1851 constitution, together with the Hanna Amendment, guaranteed a continuing rural majority in the lower house. In 1960, the state was 73.4 percent urban. Since counties continued to be the basic unit of representation, Ohio was protected against gerrymandering of district lines by the three-person Apportionment Board. Instead, a rural and to some degree Republican bias was written into the state constitution.

The Sixties

Like urban residents across the country, underrepresented voters in the cities of Ohio sought population-based apportionment. In every session of the legislature from 1919 to 1964, reapportionment proposals were introduced and buried in committee. Not until the federal courts entered the political thicket did action occur. The first court challenge to the Hanna Amendment and to the half-ratio provision of the apportionment clause of the Ohio constitution was filed in 1961, prior to the U.S. Supreme Court action in Baker v. Carr.10/

A federal district court upheld the Hanna Amendment and the half-ratio for representation in 1963, as a typical "federal plan,"11/ but following Reynolds, the decision was reversed and remanded by the U.S. Supreme Court.12/ The lower court then found the Ohio apportionment provisions unconstitutional, and this decision was affirmed by the U.S. Supreme Court.13/

Several attempts were made by the legislature to submit a constitutional amendment to the voters to replace the now defunct apportionment provisions. The major issue became the question of subdistricting. In spite of election statistics showing evidence of significant numbers of rural Democratic and urban Republican voters in Ohio, political leaders of both parties expected a Democratic advantage to accrue from districts of equal population. Because of Democratic success in the multi-member districts of northeastern Ohio, Republicans, like the Whigs in the antebellum period, sought subdistricting of the urban counties to offset anticipated Democratic gains.14/

In 1965, under judicial order to reapportion before the 1966 election, the Republican-controlled legislature submitted a constitutional amendment to the voters which would have reapportioned the state and subdistricted the urban counties into smaller multi-member districts along congressional district lines. The amendment was defeated at the polls in the May primary, largely due to opposition from Democratic, labor, and urban interests.15/ The federal district court, which had retained jurisdiction in the matter, invited any interested person or group to submit a reapportionment plan. Although a number of plans were submitted by the judicial deadline, the Apportionment Board stunned the state by announcing on that day that it had reapportioned the state, and that its action would be legally binding unless overturned by the court. The Board's meetings had been held secretly in order to avoid "disturbing incumbents."16/

Significantly, the Apportionment Board subdivided the entire state into single-member districts for a 33-member House and 99-member Senate. County lines were breached to equalize population. All three members of the Apportionment Board, headed by Governor James Rhodes, were at that time Republicans, as was the attorney general who would defend the Board's action in court. This 1965 apportionment was attacked in the state Supreme Court both procedurally, on the

ground that the state constitution empowered the Board to act only once a decade (following the decennial census), and substantively, on the ground that the plan comprised an unconstitutional Republican gerrymander.17/ The federal district court permitted the 1966 election to be held under the new scheme, deferring to the state court for a decision on the plan's validity under the Ohio constitution. In 1967, the state Supreme Court upheld the right of the Board to act in mid-decade, and rejected the claim of a partisan gerrymander.18/

Throughout the litigation of the Ohio apportionment cases of the 1960s, partisan forces were as visible in the courts as they had been historically in the legislature. While it is not suggested here that the judges in the lower courts were reaching decisions at the bidding of their parties, it is nonetheless noteworthy that a majority of both state and federal judges who participated in the litigation voted their party's interest in the apportionment controversy. The 1965 Republican plan for reapportionment was ultimately validated by Republican majorities on the federal appeals courts and the Ohio Supreme Court, despite procedural irregularities. All but one of the Democratic judges dissented.19/

The state constitution was amended by the voters in 1967 to comply with the equal-population requirements for House and Senate seats. At the same time, the Apportionment Board was expanded to include one person chosen by the legislative leaders of each major party. While this expanded the Board to five members, it did not change the fact that its partisan majority would be determined by the voters when they elected the governor, auditor, and secretary of state.20/

Two results of the 1965 reapportionment are measurable and highly significant: correction of the malapportionment of urban and rural seats, and a change in the partisan balance in the Assembly. The first result was achieved by drawing districts in both houses that came closer to population equality. No district deviated from the average district population by more than 16 percent, and the

deviations bore no relationship to the urban or rural character of each district.21/ However, because partisan conflict has been more significant than the urban/rural cleavage in shaping the behavior of the Ohio Assembly,22/ the impact of the 1965 reapportionment on party representation was viewed at the time as of more importance than the plan's effect on the urban/rural balance. A significant Democratic surge in power was expected to flow from equalized representation for urban residents, but instead the subdistricting feature of the apportionment enabled the Republican party to retain control of both houses of the Assembly for the remainder of the decade.23/

One group that benefited significantly from subdistricting in Ohio was the black electorate. Black representation in the Ohio General Assembly increased from two to twelve members in the 1966 election because segregated housing patterns in the major cities provided the basis for the electoral success of black candidates in single-member districts. The three black members of the Senate and nine black members of the House constituted 9.1 percent of each chamber, reflecting the black proportion of the total state population.24/ Ten of the black members elected in 1966 were Democratic, two Republican.

Reapportionment in the Seventies

The 1970 census was not the only event to affect the 1971 reapportionment. Even more important was the voters' choice in 1970 of a Democratic governor and auditor, giving the Democrats a majority of the Apportionment Board.25/ Three factors--population decline, partisan considerations, and ethnic competition--shaped the outcome of the Board's work in 1971. The decline in Cleveland's population required elimination of a House district in Cuyahoga County, producing concern among Democratic incumbents about electoral security. Republicans feared lingering Democratic resentment toward the Republican subdistricting of 1965.

The Apportionment Board announced its plan on September 30, 1971, with districts drawn of virtually equal population. The greatest variance from the average population in both House and Senate districts was less than two percent. Republican unhappiness stemmed from the placement of Republican incumbents, including the House speaker and several committee chairmen, in districts with other Republicans. Two pairs of Republican senators and six pairs of Republican representatives were forced either to run against one other, move their residences, or retire from the Assembly. Ethnic rivalry characterized distress over the new districts of Democratic incumbents in Cuyahoga County, including two whose districts were combined.26/

The 1971 apportionment was quickly challenged in federal district court by a black Democrat from Youngstown, who alleged clerical errors and the purposeful dilution of black voting strength.27/ The court did not take up the racial question, but permitted the Apportionment Board to correct the clerical errors and ultimately validated the plan.28/ Repeated Republican efforts to litigate challenges in the Ohio Supreme Court, where Republicans held a 6-1 majority, were rebuffed by the federal district court, which retained jurisdiction over the case. Democratic Federal District Judge Frank J. Battisti fined two Republicans for failing to obey his order not to litigate the issue in state court,29/ and finally issued an injunction to permanently restrain and enjoin further litigation in either state or federal court.30/

The election of a Republican governor in 1974 led to a renewed attack on the apportionment. The Apportionment Board was once more in GOP hands, and Governor James Rhodes hoped to shape the districts more to the advantage of Republican candidates in time for the 1978 election.31/ Rhodes asked the federal district court to modify the injunction to permit him to question the constitutionality of the 1971 apportionment in the state courts. He argued that the U.S.

Supreme Court opinion in Mahan v. Howell 32/ changed the federal standards sufficiently to permit application of state constitutional requirements for districting along political subdivision boundaries.33/ The governor's argument was rejected by Judge Battisti, who found that the basic standards established in Reynolds v. Sims 34/ were not changed by Mahan v. Howell. The Sixth Circuit Court of Appeals, while finding that the district judge had not abused his discretion, permitted the governor to raise the substantive issues in the forum of a three-judge federal court.35/ The three-judge court divided along party lines. Chief Judge Battisti, joined by Circuit Judge Anthony J. Celebrezze, both Democrats, rejected reconsideration as unjustified either by the latest Supreme Court decisions or by changes in estimated population distribution.36/ Republican Judge Nicholas J. Walinski dissented, arguing that a court of equity should be able to adjust to changed conditions and should permit litigation of the state constitutional question in the appropriate forum, the Ohio Supreme Court. With the decade drawing to a close, litigation was finally concluded.

In evaluating the 1971 apportionment in Ohio, it is difficult to separate the political effect of the new district boundaries from the effects brought about by other variables of Ohio and national politics.37/ However, the redistricting was at least partially responsible for the turnover of the House to Democratic control in the 1972 election, and the Senate in 1974.38/ A high turnover of individual members resulted from the new districting: 59 percent of the Senate seats up for election and 39 percent of the total House seats were captured by newcomers in 1972. The urban/rural balance in the legislature was also changed, this time not by the drawing of districts featuring population equality, but simply by Democratic control of the legislature; because of the Democratic domination, leadership positions passed from rurally-oriented Republicans to urban-oriented Democrats. However, rural Ohio did not lose all of its influence in the legislative leadership, because small-town and

rural Democrats maintained a share of leadership positions.39/ The Democratic party maintained control of the legislature through the 1978 election, including two sessions with veto-proof Democratic majorities in both houses.40/ In 1980, the Republican party recaptured the Senate and reduced the Democratic majority in the House.

Prospects for the 1981 Reapportionment

The outcome of the 1978 state election was critical for both major parties in Ohio, because control of the Apportionment Board was to be determined for the 1981 redistricting. The legislature elected under the new apportionment in 1982 would then redraw congressional district lines--an especially difficult task in light of the fact that Ohio was expected to lose at least one seat in Congress after the 1980 census, and possibly two.

Secretary of State Ted W. Brown, seeking his tenth term at age seventy-one, emphasized the importance of his own race in 1978 because control of the Board would determine the shape of Ohio's politics for a decade. The state could be reapportioned, he told a reporter, "so it would be possible to elect a Republican majority" in the Assembly.41/ However, Brown was defeated by the Democratic candidate, Anthony J. Celebrezze, Jr., and control of the Board went to the Democrats.42/ Significantly for the anticipated controversy over redistricting, the Republicans also lost control of the state Supreme Court, which became 4-3 Democratic.

After these 1978 losses, the Ohio Republican party, joined by the Ohio Council of Churches and the Ohio Civil Liberties Union, organized a drive to change the Apportionment Board to a bipartisan commission which would use a mathematical formula and computer districting to select the "best" districting proposal from plans which anyone could submit. The new group, calling itself the Committee for Fair

and Impartial Redistricting (FAIR), summoned 150 Republican leaders from across the state in April 1980 to organize a petition drive to gather the 285,000 signatures needed to put the proposed constitutional amendment on the November ballot.43/ Although the Committee secured over 320,000 signatures, the proposal was ruled off the ballot due to technical defects in the petitions.44/

Issues which will be critical in the 1981 reapportionment battle include, as before, population equality and partisan advantage. The Ohio constitution requires the following standards to be applied to redistricting for both houses of the Assembly: 1) population not less than 95 percent nor more than 105 percent of the "ratio of representation"; 45/ 2) compactness; 3) contiguity; and 4) preference for county boundaries or, where the other three criteria cannot be met by following county lines, preference for the boundaries of townships, municipalities, and city wards, in that order.46/

The grounds for litigation will probably be those claimed by Governor Rhodes in his attempts to upset the 1971 apportionment: that Mahan v. Howell 47/ and Chapman v. Meier 48/ indicate the U.S. Supreme Court's willingness to accept greater deviations from population equality in legislative districts if the state can explain its districting policy rationally--as, for example, by adherence to political subdivision boundaries. Such subdivision boundaries are explicitly favored in the Ohio constitution, but the state constitution also permits a maximum disparity of only 10 percent between the smallest and the largest districts, a stricter standard than the 16.4 percent permitted by Mahan v. Howell. A conflict in application of state standards would have to be resolved in the state Supreme Court, where Democrats had a 5-2 majority after the 1980 election. Population standards and partisan advantage, it is clear, are intricately intertwined in Ohio.

One issue which will not arise in 1981 is the question of subdistricting. From the time of Ohio's entry into the Union in 1802 until 1965, county-based

apportionment, with multi-member districts where necessary, prevented the partisan gerrymander. But since 1965 single-member districts have become a fact of political life in Ohio. Both black, urban voters and suburban Republicans have been successful in electing representatives to their liking from the subdivided districts, and the 1965 and 1971 reapportionments showed that both parties could accommodate to this new electoral system. In Ohio, rather than a return to multi-member districts to prevent a gerrymander in 1981, the out-party and allied reformers are seeking a restructured districting institution to depoliticize the outcome of the redistricting.49/

NOTES

1/ U.S., Department of Commerce, Bureau of the Census, 1970 Census of Population, Ohio.

2/ U.S., Department of Commerce, Bureau of the Census, Estimates of the Population of Counties and Metropolitan Areas: July 1, 1977 and 1978, Current Population Reports, Series P-25, no. 873 (February 1980), pp. 29, 72.

3/ Cleveland's loss of population intensified, from 14.3 percent between 1960 and 1970 to an estimated 20.8 percent loss from 1970 to 1978. Cincinnati, which lost 10 percent of its population in the sixties, lost another 11.8 percent betwen 1970 and 1978. Columbus, which had gained 14.5 percent in population in the sixties, apparently stopped growing, and actually lost an estimated 2.8 percent from 1970 to 1978. U.S., Department of Commerce, Field Office, Cleveland, Ohio, Population Estimate, Major Cities of Ohio, July 1, 1978 (May 1980).

4/ 369 U.S. 186 (1962).

5/ Thomas A. Flinn, "Continuity and Change in Ohio Politics," Journal of Politics 24 (August 1962): 525-27.

6/ Myron Q. Hale, ed., Representation and Reapportionment, Political Studies No. 2 (Columbus, Ohio: Ohio State University 1965), p. 11.

7/ Fractional representation was assigned to accommodate districts with a fifth or more over a population ratio; a senator or representative could be added for one, two, three, or four legislative sessions of the decade. Because of this constitutional provision the number of members of the Assembly fluctuated from session to session from 1852 until 1967. Ohio, Constitution (1851), art. XI, as amended to January 1, 1963.

8/ 377 U.S. 533 (1964).

9/ Hale, Representation and Reapportionment, p. 18 n. 15.

10/ 369 U.S. 186 (1962).

11/ Nolan v. Disalle, Sive v. Ellis, 218 F. Supp. 953 (1963).

12/ Nolan v. Rhodes, 378 U.S. 556 (1964).

13 Nolan v. Rhodes, 251 F. Supp. 584 (1964), aff'd 383 U.S. 104 (1966).

14/ In five of the six elections from 1954 through 1964, Democrats won a majority of the Ohio House seats in the eleven MMD's, although only once were they able to win a majority of the total number of seats. In the first SMD election following reapportionment, the Democratic share of urban county seats was reduced to 45.9 percent. K.L. Barber, "Reapportionment in Ohio and Michigan: Political Revolution Reconsidered" (Ph.D. dissertation, Case Western Reserve University, 1968), pp. 19-20.

15/ Ted W. Brown, Secretary of State, Ohio Election Statistics: 1965-1966 (Columbus, Ohio: Columbus Blank Book Co., 1967), pp. 7-9. Butler and Hamilton were the only urban counties to give Issue 3 a majority vote. Statewide, Issue 3 was supported by 46.6 percent of the voters.

16/ Attorney General William B. Saxbe, quoted in The Plain Dealer (Cleveland), October 16, 1965, p. 7.

17/ State ex rel. King v. Rhodes, 11 O.S. 2d 95 (1967).

18/ Id.

19/ K.L. Barber, "Partisan Values in the Lower Courts: Reapportionment in Ohio and Michigan," Case Western Reserve Law Review 20 (February 1969): 401-421.

20/ Ohio, Constitution (1851), art. XI as amended November 7, 1967.

21/ Population data and calculations are reported in Barber, "Reapportionment in Ohio and Michigan," pp. 125-39.

22/ Thomas A. Flinn, "The Outline of Ohio Politics," Western Political Quarterly 13 (September 1960): 702-21.

23/ See Appendix A for table showing the partisan division of votes and seats in the Ohio Assembly, 1962-1980. In the first election after subdistricting, Republicans not only maintained their overall majorities, but also won a majority of the seats in the eleven metro counties which had formerly been multi-member districts.

24/ The black percentage of Ohio's total population was 8.1 percent in 1960, 9.1 percent in 1970, and an estimated 9.4 percent in 1976. U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 100th ed. (1979), p. 34.

25/ A Democratic attorney general was also elected, leading Assembly Republicans and the Republican secretary of state to attempt to hire a private Republican lawyer at taxpayers' expense to fight the anticipated remap of legislative districts. The Plain Dealer (Cleveland), September 28, 1971, sec. D, p. 6. This line item in the budget was vetoed by the Democratic governor. Ibid., December 7, 1971, sec. A, p. 7.

26/ The offending lines were drawn principally by the legislatively-appointed Democrat on the Board, Senator Anthony O. Calabrese of the county's 22nd District. Representatives Robert W. Jaskulski and Walter A. Rutkowski accused Calabrese of cutting up their districts "to get every Italian living in Cuyahoga County in his new senate district." "Another Yalta for the Poles," Jaskulski mourned. Ibid., October 1, 1971, sec. A, pp. 1,9.

27/ Jordan v. Mahoning County Board of Elections, C71-1130 (N.D., Ohio, December 22, 1971). While all election districts were included on the official maps, several towns, wards, and precincts were omitted in the descriptions of districts. Pre-1970 ward lines in Cleveland and some of its suburbs were used in drawing new district lines.

28/ Id. (March 13, 1972).

29/ The Plain Dealer (Cleveland), December 14, 1971, sec. A, p. 22.

30/ Jordan v. Mahoning County Board of Elections, C71-1130 (N.D., Ohio, June 11, 1973).

31/ The Plain Dealer (Cleveland), November 2, 1977, sec. A, p. 5.

32/ 410 U.S. 315 (1973).

33/ Jordan v. Mahoning County Board of Elections and Rhodes, Governor, C71-1130 (N.D., Ohio, September 23, 1976).

34/ 377 U.S. 533 (1964).

35/ Jordan v. Rhodes and Mahoning County Board of Elections, No. 76-2572 (CA 6, October 12, 1977), per curiam.

36/ Jordan v. Rhodes and Mahoning County Board of Elections, C71-1130 (N.D., Ohio, February 22, 1978).

37/ Relevant factors enhancing a Democratic trend in Ohio would include a Republican state loan scandal in 1970, involving the gubernatorial candidate, Roger Cloud, and the national effects of the Watergate corruption.

38/ Staggered terms in the Senate decrease the likelihood of major change in a single election. See Appendix A for table showing the partisan division of votes and seats in the Ohio Assembly, 1962-80.

39/ For example, 61.1 percent of the House leadership positions (speaker, speaker pro tem, and committee chairs) were held by non-metro legislators in the Republican-controlled 1967-68 session, the first elected under an equal-population apportionment. In the 1978-79 session, only 33.3 percent of these positions were held by non-metro (Democratic) legislators.

40/ The elections of 1974 and 1976 resulted in chambers more than three-fifths Democratic. The governor's veto in Ohio can be overridden by three-fifths of the members of both houses. Ohio, Constitution, art. II, sec. 16.

41/ The Plain Dealer (Cleveland), January 16, 1978, sec. A, p. 9.

42/ Governor Rhodes (R) and Auditor Thomas Ferguson (D) were both reelected.

43/ The Plain Dealer (Cleveland), April 26, 1980, sec. B, p. 24. A similar proposal by the Ohio Constitutional Revision Commission, submitted to the legislature on September 1, 1976, has not been considered. OCRC, What's Left Committee, "Report: Article XI," (1976), pp. 7-12. (Mimeographed.)

44/ The secretary of state's rejection of the petitions was upheld by the Ohio Supreme Court in a partisan split. The three Republican justices voted to put the issue on the ballot despite technical defects, while the four Democratic justices voted to disqualify the petitions. The Plain Dealer (Cleveland), September 24, 1980, sec. C, p. 5.

45/ Ohio, Constitution, art. XI, secs. 3, 4. The "ratio of representation" is the whole population of the state, determined by the decennial census, divided by ninety-nine for the House and by thirty-three for the Senate. Ibid., sec. 2.

46/ Ibid., sec. 7.

47/ 410 U.S. 315 (1973).

48/ 420 U.S. 1 (1975).

49/ After the "FAIR" proposal was ruled off the ballot in 1980, the Ohio Republican party announced that a new effort would be made to put the issue before the voters in 1981.

APPENDIX A

OHIO GENERAL ASSEMBLY[a/]

Percentages of Democratic Votes and Seats, 1962-1980

Election Year	HOUSE		SENATE[b/]	
	%Dem. Votes	%Dem. Seats	%Dem. Votes	%Dem. Seats[c/]
1962	52.9	36.8	51.3	42.1 (39.4)
1964	58.1	49.6	57.6	55.6 (48.5)
		Reapportionment I		
1966	46.7	36.7	45.6	30.3 (30.3)
1968	32.2	34.3	44.0	37.5 (36.4)
1970	50.9	42.4	51.0	41.2 (39.4)
		Reapportionment II		
1972	53.5	59.6	51.0	50.0 (48.5)
1974	56.5	60.6	53.9	64.7 (63.6)
1976	57.1	62.6	50.0	56.2 (63.6)
1978	55.5	64.6	54.0	52.9 (54.5)
1980		56.6		(45.4)

[a/] Calculated from Ohio Election Statistics, published biennially by the secretary of state of Ohio.

[b/] Due to staggered four-year terms, senators from odd-numbered districts and even-numbered districts are elected in alternating state election years.

[c] The percentages in the first column under % Dem. Seats (Senate) show the share of seats elected in the specified year. The percentages in parentheses show the percent Democratic seats of the total Senate after the specified election, including holdover senators.

SOUTH DAKOTA

Alan L. Clem

Before the reapportionment revolution signalled by Baker v. Carr in 1962, South Dakota's legislature was not severely malapportioned, although the state's two largest counties, Minnehaha (containing Sioux Falls) and Pennington (containing Rapid City) were underrepresented in the upper chamber. The main effect of the reapportionment act of 1965 was to equalize the population-per-member ratios of the districts of both chambers. The 1965 reapportionment did not significantly affect Republican control of the legislature, however, because the GOP was strong in both of the state's two largest counties.

The 1971 reapportionment made slight adjustments in the number of legislative seats, so that for every senator there would be two representatives. Previously, there had been thirty-five senators and seventy-five representatives; subsequently, there were to be thirty-five senators and seventy representatives. This new arrangement allowed the legislature the luxury of having to work out only one districting system, with each legislative district electing twice as many representatives as senators. The three most populous counties became multi-member districts with respect to representation in both chambers; Minnehaha County was assigned five senators and ten representatives, Pennington County three senators and six representatives, and Brown County (Aberdeen) two senators and four representatives. As a result of the 1971 redistricting, all representative districts and a good number of senatorial districts are multi-member districts, which has caused considerable distortion in the partisan composition of the large-county delegations, where small county-wide pluralities usually produce overwhelming and

unrepresentative majorities in the county legislative delegation for the party with the most votes. In Minnehaha County, for instance, each voter may vote for ten candidates for representative and five candidates for senator. There may be a move in the 1981 reapportionment deliberations to establish single-member districts throughout the state for both chambers.

In the past, the rivalry between the eastern portion of the state and the western portion has usually been more important than partisan considerations in legislative districting decisions in the state legislature. This was due in part to the dominance of the Republican party in state politics, which made for a lesser degree of party rivalry than might otherwise have been the case. There has been some rural reluctance to grant equity to Sioux Falls, the state's largest city and commercial and media center, although of course Sioux Falls has never had the population to dominate the state the way Denver dominates Colorado, Chicago dominates Illinois, or the Twin Cities dominate Minnesota.

The legislature itself is the districting agency in South Dakota. The state's constitution provides (Article III, section 5) that if the legislature fails to enact a reapportionment law in the year following the release of decennial federal census data, then reapportionment is to be accomplished by an ad hoc group consisting of the governor, the superintendent of public instruction, the presiding judge of the state's Supreme Court, the attorney general, and the secretary of state. This group must determine the new legislative districting system within thirty days of the adjournment of the legislative session (in 1981), and the results are to be proclaimed by the governor. The state's Constitutional Revision Commission (a group that recommended several constitutional changes; some were adopted, others rejected by the voters) proposed several years ago that the ad hoc group mentioned above be displaced by the Supreme Court. This provision was included in a proposed amendment to the constitution's legislative article, but the amendment failed to be

approved by the voters in the 1970s. The idea of using the Supreme Court as the state's districting agency is still being discussed by a number of prominent South Dakotans as a simpler and perhaps less "political" method of performing a legislative redistricting in the event that the legislature itself fails to act in 1981.

Stable population has been a condition of South Dakota life ever since the 1930s. The population revealed by the 1980 census is expected to be very close to the population credited to the state fifty years ago. One consequence of this fact is declining political power. The state lost one of its three U.S. representatives following the 1930 census, and it is expected to lose another seat in the wake of the 1980 census, so that in 1982 the state will be electing only one representative for the first time since statehood. South Dakota has experienced considerable out-migration. Population shifts within the state have favored urban centers (especially, in recent years, those with governmental or educational establishments).

Given the Republican dominance in state politics from the mid-'30s to the mid-'50s (in one session, there were only three Democrats in the entire legislature), there was little concern about partisan gerrymandering, though the occasional use of multi-county, multi-member arrangements, sometimes spiced with flotorial seats (one county electing one representative by itself, and also electing a second representative in conjunction with a neighboring county), does suggest that there may have been attempts to rig a few of the seats. For example, the state's three largest counties (Minnehaha, Pennington, and Brown) all served as multi-member districts, in which the Republican majority often elected all legislators from the county. There is little wonder, then, that the Democrats opposed retention of the multi-member districts.

In several legislative sessions of the 1970s, during Governor Kneip's eight years in the chief executive's chair, the South Dakota legislature was closely divided between Republicans and Democrats. Another indication of the more intense

partisan competition in the state in recent years is the fact that the number of registered Democrats is now very close to the number of registered Republicans. The state Democratic party is, predictably, more liberal than the Republican party, which shows signs of becoming more conservative than it has been traditionally.

The 1980 election appears especially crucial because the new legislature will draw the boundaries for state legislative districts for the 1980s. The main fault with the current legislative apportionment system is the small number of single-member districts. The state's large American Indian population (about five percent of the total) is especially eager to establish more single-member districts, since they blame the multi-member districting system for the failure of any Indian to win a seat in the current legislature.

If the state's legislative districting problem is not solved equitably and satisfactorily in 1981, a period of instability and ill-will may befall the state. It is worth noting that in the past decade, the state's voters have approved reorganization of the executive and judicial branches of state government and of the state's election system, but they have rejected efforts to change the constitution as it deals with legislative powers and processes. A majority of the people apparently are loath to change their legislative institution too quickly or radically. Most of the state's people seem to be satisfied with the way their legislature represents their interests, attempts to solve their problems, oversees their governmental agencies, taxes their wealth, and spends their money.

WISCONSIN

A. Clarke Hagensick

Reapportionment in Wisconsin, as in most states, has produced several tempestuous battles during the past three decades. Unlike many other states, however, these battles did not occur solely because of the series of U. S. Supreme Court cases beginning with Baker v. Carr. A major fight over legislative redistricting in the 1950s revolved around state constitutional interpretation. In the 1960s, divided partisan control of state government precipitated a stalemate ultimately broken by the Wisconsin Supreme Court. By comparison, redistricting in the 1970s was largely anticlimactic, as governor and legislature rose above partisanship to protect incumbents and ward off further intervention by the courts. It is likely that the scenario of the 1970s will be largely repeated when the maps are redrawn on the basis of the 1980 census.

Ground Rules and Battle Lines

The Wisconsin state constitution sets forth the following standard governing the apportionment of legislative districts:

> At their first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants, excluding soldiers and officers of the United States army and navy.

This population basis for both houses of the legislature has prevailed since Wisconsin became a state in 1848.1/ Responsibility for the task of redistricting clearly lies

with the legislature through the normal lawmaking process. Thus the governor is involved in redistricting through his authority to sign or veto legislation passed by the two houses. (There have been numerous suggestions to establish a reapportionment commission or some other body apart from the legislature to handle redistricting, but such suggestions have come to naught.) The constitution also requires single-member districts with "such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable."2/ In addition, the state Supreme Court in 1892 decreed that individual counties could be divided into two or more districts, or two or more entire counties could be combined as one district, but Assembly districts could not include parts of one county joined to another county or portion of another county.3/ These requirements necessarily modified somewhat the strict application of the population criterion.

Assembly districts cannot be split in forming Senate districts. The prevailing pattern is that three Assembly districts make up a Senate district. There was always a slight deviation in the three-to-one formula, however, since traditionally the state Assembly had 100 seats while the state Senate had thirty-three. Thus, under any districting scheme at least one Senate district would contain four Assembly districts.

The legislature dutifully reapportioned after each census until 1941, when it failed to take action based on the 1940 census. Thus by 1951 there had been a lapse of twenty years from the last reapportionment--a twenty-year period which included the Great Depression, the New Deal, World War II, and the postwar recovery, with all of the population shifts attendant upon those momentous events. Milwaukee, Madison, and other urban centers generally gained population in these years in relation to the rural areas of the state. From 1900 to 1950 the percentage of the state's population defined as urban increased from 38.2 percent to

55.5 percent. (That trend has continued; by 1970 the urban population had reached 65.9 percent. It is probably about 70 percent at present.)

Several important demographic and political cleavages have long influenced deliberations on reapportionment in Wisconsin. The urban/rural rivalry has been one--especially in light of the continual population shifts between those two sectors noted above. Typically, rural interests have been cast in the role of defending the status quo against the claims for increased representation by the growing urban areas.

Clearly, partisan competition has also been a major factor in Wisconsin reapportionment fights. Dating from 1946, when the Wisconsin Democratic party was "born again" in the wake of the demise of the Progressive party, Wisconsin has moved to a strongly competitive two-party system. The test of strength between the two major parties has had some, but not total, correlation with the urban/rural contest. On the basis of size of place, Republicans have been strongest in the small to medium-sized villages and cities in the state (up to 50,000 population); the Democrats, on the other hand, have been strongest in the cities with populations above 50,000--especially Milwaukee and Madison.

A third major influence on reapportionment, and again one that is related to the first two, is the city of Milwaukee's unique status as by far the largest and most prominent urban center in Wisconsin. This has fostered a tendency for political conflict to be structured as Milwaukee versus the rest of the state. Thus, some politicians may derisively refer to "the state of Milwaukee," while Milwaukeeans complain that the rest of the state is ganging up on them. In reapportionment battles a major focal point has often been the question of what Milwaukee would gain or lose under alternative approaches.

In both the 1950s and the 1960s Wisconsin underwent tumultuous battles over reapportionment. In each decade the Wisconsin Supreme Court played a critical role

in these battles. Of course, its involvement in the 1960s was buttressed by the landmark reapportionment decisions rendered by the U. S. Supreme Court. To be sure, many other political actors were also involved in the reapportionments of the fifties and sixties, but in each decade the state high court was the final arbiter.

The 1950s: State Court as Arbiter

In 1951, after the previously mentioned twenty-year hiatus, the Wisconsin legislature adopted a reapportionment plan which included substantial changes in legislative districts. Popularly known as the Rosenberry Act,4/ the plan basically adhered to population standards, except where influenced by the strictures noted above respecting jurisdictional boundaries. Milwaukee County went from twenty to twenty-four Assembly seats; Dane County (Madison) gained two seats; and five other counties, each containing a medium-sized city, gained one seat each. The big losers under this plan were rural counties in the northern and western portions of the state. The act was to take effect in 1954.

Concurrently, efforts were underway in the early fifties to amend the state constitution to incorporate an area factor into the determination of legislative districts. An advisory referendum posing that question was defeated by the electorate in November 1952. However, a constitutional amendment providing for consideration of area in Senate districting was approved by the electorate in April 1953. Both measures were pushed by Republican legislators. (At that time, Republicans had substantial majorities in each house of the legislature and also held the governor's office and all of the other statewide elective offices.) Following passage of the 1953 amendment, the legislature enacted a new redistricting plan consistent with provisions of the amendment. Basically, this meant that the Rosenberry provisions would apply to Assembly districts, while the area factor was built into Senate districts. This latest plan was to be implemented in the 1954 state elections.

However, the secretary of state, a maverick Republican from Milwaukee, let it be known that he would ignore the new plan and call the 1954 election on the basis of the Rosenberry Act. Legal action was brought in the state Supreme Court to force the secretary to accept the new plan, which, after all, was based upon the recently enacted constitutional amendment. The Court upheld the secretary on the unusual grounds that the amendment was invalid.5/ Accordingly, the Rosenberry districting was used for the 1954 election, and continued to be used for the rest of the decade. There was no further significant effort to reincorporate an area factor into redistricting in Wisconsin.

The 1960s: State Court as Draftsman

The 1950s were marked chiefly by Republican internecine warfare, as various factions of the then majority party took conflicting positions on redistricting questions. In the next decade, by contrast, all-out partisan warfare between Republicans and Democrats was the dominant factor. From 1961 to 1965 Democrats held the governor's office, but both houses of the legislature were firmly in Republican hands. The result? A bruising redistricting battle that lasted for nearly four years.

Actually, the stakes in this redistricting controversy were rather small, since population changes in Wisconsin were not extensive between 1950 and 1960. The principal issue was the number of seats to be accorded to Milwaukee County. Democrats argued for a plan which would increase the county's representation from twenty-four to twenty-six seats. Republicans countered with the claim that it should remain at twenty-four. Neither side could prevail in the exhausting round of legislative deliberations, gubernatorial vetoes, and litigation extending from early in 1961 through May 15, 1964. On the latter date, the state Supreme Court, acting on

an earlier ultimatum which failed to compel action by the legislature and governor, promulgated its own legislative redistricting plan for use in the 1964 election --and thereafter, unless the legislature enacted a valid plan.6/

The Court plan gave Milwaukee County twenty-five seats, thus effecting a compromise that the governor and legislature had been reluctant to make. While attempting to adhere closely to population criteria, the plan nevertheless followed the old rules respecting local boundaries and prohibiting the inclusion of part of a county with all or part of any other county. The result in mathematical terms was a redistricting which had considerable deviation from average district size. For example, in the Assembly the average deviation was ±11.3 percent, with the largest district having a population 32.5 percent above the average and the smallest having a population 43.7 percent below the average. It is unlikely that this plan would have survived federal court scrutiny, but no challenge to it was brought in federal court.

The Supreme Court's 1964 plan also drew adverse political reaction. Many legislators, Republicans and Democrats alike, did not consider it sufficiently sensitive to the interests of incumbents. There were also some districts which offended political sensibilities in other ways. For example, the city of Glendale, a Milwaukee suburb with a population of just under 10,000, was divided among three Assembly and three Senate districts. Despite these concerns, however, the legislature took no action in its ensuing sessions to replace the court-ordered redistricting. It even failed in a modest effort to straighten out the Glendale situation.

Two other redistricting actions of note occurred in the 1960s. The first was the redrawing of congressional district lines. Nothing had been done about those districts since 1931. By 1950, population discrepancies among the state's ten districts was considerable. The average deviation was almost ±15 percent, and the largest and smallest districts were close to 30 percent away from the average.

Although congressional districting was affected by many of the same partisan and factional considerations as legislative districting, the legislature nevertheless enacted a congressional plan in 1963 which the governor found acceptable. The resulting districts were within a ± 3.5 percent range.

The second notable redistricting action produced a fundamental change in representation on Wisconsin county boards. The traditional pattern of represen tation within most counties (Milwaukee was the major exception) was to have one board member from each town, village, or city ward. Variations in population among these units was often immense, especially in counties with sizeable cities. In 1965 the state Supreme Court struck down the prevailing pattern as a violation of equal protection.7/ Thus the Wisconsin Court anticipated the U.S. Supreme Court's decision of 1968, by extending the principle of "one man-one vote" to local elective boards.8/

The 1970s: Supremacy of "One-Vote" and Incumbency

In 1971, divided partisan control again characterized Wisconsin state government. A Republican majority in the state Senate counterbalanced Democratic control of the governor's office and the lower house. The framework for another deadlock was present, and in fact the legislature recessed in March 1972 without having enacted a redistricting bill. Armed with its own 1964 precedent and with the knowledge of the evolved federal standards regarding reapportionment, the state Supreme Court acted quickly. It again imposed a deadline, this one of April 1972, for legislative action on redistricting. The obvious implication was that the court would again do the job itself if the legislature failed to act. The legislature responded by adopting its own redistricting plan at a special session in April.

The 1972 legislative redistricting was a bipartisan effort. It adhered scrupulously to "one man-one vote" standards in that no district, Assembly or Senate,

deviated by as much as one percent from the norm of absolute equality of population among districts. The plan's bipartisanship was reflected in the fact that it protected incumbents. To the extent possible it avoided putting incumbents into the same district, and in general it strengthened the partisan advantages for the greatest number of incumbents, whether Democratic or Republican.

To accomplish these results a number of fundamental changes were made in the traditional redistricting ground rules. First, the legislature's plan reduced the Assembly from 100 seats to ninety-nine, thus ensuring that each Senate district would consist of three, and only three, Assembly districts. Second, the plan ignored the traditional rule forbidding the joining of a part of one county with all or part of another county. In some cases, it brought pieces of as many as five counties into a single district. Third, within Milwaukee County the plan redefined the smallest electoral units as "wards," so that maximum flexibility would be present in following the constitutional dictum that districts should follow ward lines. The state high court refused to hear a suit challenging this apportionment, thus in effect upholding its provisions.9/

As regards the substance of the 1972 plan, the long-term trend of declining representation of rural areas continued with this reapportionment. However, for the first time in this century, and perhaps since statehood, Milwaukee's representation also declined. From its high of twenty-five seats in the 1960s, the Milwaukee County delegation was reduced to the equivalent of somewhat less than twenty-four seats. (Exact comparisons are difficult because two of the districts included territory in adjoining counties.) The primary beneficiaries of the redistricting plan were suburban counties surrounding Milwaukee.

Congressional redistricting was enacted by the legislature with relative ease in 1971. Since the state's congressional delegation was reduced from ten seats to nine on the basis of the 1970 census, redistricting was imperative. A plan produced by

two congressmen--a Democrat and a Republican--was generally acceptable to the other incumbent congressmen from the state. Like the legislative redistricting, this plan drew criticism because of its alleged emphasis on protecting the interests of incumbents. Evidence from the elections during the decade supports the allegation. In only two of the nine districts were there changes in party control, and in most of the others incumbents consistently won more than 60 percent of the vote.

Redistricting in the 1980s

As in the last two redistricting controversies, Wisconsin in 1981 will once again have divided partisan control of its state government. The present Republican governor's term extends through 1982. In the November 1980 elections, Democrats retained majorities in both legislative chambers: 60-39 in the lower house and a 19-13 in the state Senate. These majorities fall far short in either house of the two-thirds majority necessary to override a gubernatorial veto.

Thus it is reasonable to expect that there will be considerable partisan fireworks as both Republicans and Democrats push for their preferences on redistricting. However, the spectre of judicial intervention is likely to make compromise palatable. The threat of court-drawn district lines clearly convinced governor and legislature to reach agreement in 1972. The same is likely in 1981.

It is also safe to assume that in any ultimate compromise, high priority will be given to the political interests of incumbents. That was a clear pattern in both legislative and congressional redistricting in the 1970s, and it is likely to occur again.

The U.S. Supreme Court's decision in 1972 that state legislative districts did not need to meet as rigorous population criteria as congressional districts should make it easier to arrive at an acceptable plan for redistricting.10/ It should also reduce the number of districts formed by bits and pieces of several counties which was a characteristic of Wisconsin's 1972 effort.

The trend, begun in the 1970s, of declining Milwaukee representation will in all probability continue in the 1980s. It is apparent that the city of Milwaukee's decline in population--in both absolute and relative terms--will translate into a loss of two or possibly three Assembly seats. Once again the adjoining suburban counties will be most likely to receive additional districts.

Congressional redistricting will be subject to the same political forces outlined above. However, it is unlikely that the state's number of congressmen will change as a result of the 1980 census. Hence the changes in district lines will be marginal, and not the wrenching changes that usually accompany the loss of one or more seats.

NOTES

1/ Wisconsin, Constitution, art. IV, sec. 3. Only minor changes have been made in this provision since 1848. In 1910 the requirement that redistricting be done at the first session after the federal census was specified. In 1961 the exclusion of "Indians not taxed" was removed from the reapportionment formula.

2/ Ibid., secs. 4, 5.

3/ State ex rel. Attorney General v. Cunningham, 81 Wis. 440 (1892).

4/ Marvin B. Rosenberry, a former chief justice of the Wisconsin Supreme Court, chaired the Legislative Council committee which developed the plan.

5/ State ex rel. Thomson v. Zimmerman, 264 Wis. 644, 60 NW 2d 416 (1953). The amendment was declared void largely on technical grounds. In addition, the Court decided that the second plan could not stand in any case because the legislature had exhausted its reapportionment powers for the 1950s with its passage of the earlier Rosenberry Act.

6/ State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 126 NW 2d 551; 23 Wis. 2d 606, 128 NW 2d 16 (1964).

7/ State ex rel. Sonneborn v. Sylvester, 25 Wis. 2d 177, 130 NW 2d 569 (1965).

8/ Avery v. Midland County, 390 U.S 474 (1968).

9/ Seefeldt et al. v. Zimmerman, 55 Wis. 2d 766 (1972).

10/ Mahan v. Howell, 35 L. Ed. 2d 320 (1973).