REDISTRICTING IN THE WEST AND SOUTHWEST

Prepared by the Rose Institute of
State and Local Government

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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 West and Southwest, 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 Middle West) 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 West and Southwest. The thirteen 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.

ARIZONA 1/

J. L. Polinard

There is a certain elan--almost an ethic--about Arizona which affects the state's politics. It is difficult to capture this feeling on paper, but an attempt must be made, for the richness of Arizona's apportionment experience cannot be understood apart from a "sense" of the state itself.

Arizona is a young state, having joined the Union in 1912. This youth has contributed to the state's political conservatism; there still lingers the feeling of the pioneer, the frontiersman who eschews aid from, and is suspicious of, government. The flavor of the frontier has been retained, both in the rhetoric of the state's politics and in the ideology of many of the individuals who represent the electors. The state's foremost political figure, Senator Barry Goldwater, is perhaps the nation's best-known conservative, and the link to the past is sufficiently strong that most voters still recall the public service of Carl Hayden, who represented Arizona in Washington from its entry into the Union until his retirement just over ten years ago.

Arizona is also a dynamic state. In the post-World War II period it consistently has ranked near the top among the states in several leading indices of growth. It has enjoyed a rapid rate of population growth. Perhaps the most arresting characteristic of Arizona's population growth is its urban concentration. In 1940, 35 percent of the state's population was urban; today, the proportion exceeds 75 percent. And this population is located almost solely in two counties: Maricopa (Phoenix) and Pima (Tucson).

Rarely has the geography of a state more directly related to the politics of that state's reapportionment. On the eve of the 1960s reapportionment revolution,

Arizona was the epitome of a malapportioned state. Earl Warren notwithstanding, Arizona's legislators represented trees and acres, not people.

Arizona Reapportionment: 1910-1953

The Arizona apportionment experience began with the convention charged with drafting the state's first constitution. 2/ The issue of apportionment was discussed at length during the convention but was not a dominant issue during the proceedings.

The task of deciding upon the apportionment of the state legislature was assigned to the Committee on the Leglislative Department, Distribution of Power, and Apportionment. The committee recommended that the county be used as the basis for apportionment in the Senate, although the committee did make a small bow in the direction of population-based representation by granting the five most populous counties one additinal senator each. The Senate would be composed of nineteen members altogether: one from each county, and one additional senator each from Cochise, Gila, Maricopa, Pima, and Yavapai Counties. 3/

The committee also recommended that the House be composed of thirty-five members with each county assigned a fixed membership. The fixed membership from each county was determined on the basis of voter population (voter population had served as the basis for the apportionment of the territorial legislature, and of the constitutional convention itself). The committee recommended no constitutional provision for future apportionment.

Attempts to alter the committee's recommendations failed (the Maricopa and Pima County delegates unsucessfully sought increased representation for their counties), and the convention adopted the committee's report.

On the basis of the apportionment accepted by the convention, the five most heavily-populated counties of the state could control the legislature if they acted in concert. Together they possessed ten of the nineteen Senate votes and twenty-three

of the thirty-five House votes. Actually, had they wished, these five counties possessed voting strength in the convention to dictate an apportionment formula which favored big-county domination much more decisively then the formula eventually adopted. That they made no attempt to do so probably reflects the popular political ideas of the period; the notion of both houses of a state legislature apportioned according to population possessed little currency at that time. Then, too, the larger counties did not share very much in common, and consequently they may not have identified with each other.

Between 1910 and 1953, Arizona's apportionment pattern was modified twice. In the general election of 1918, the voters approved an initiative for a constitutional amendment altering the House apportionment so that each county would be apportioned its seats on the basis of votes cast in the preceding gubernatorial election (the formula was one representative for each 1,500 votes cast); however, no county's delegation could be reduced in size. Reapportionment was to occur within two years after every gubernatorial election; the reapportionment was the responsibility of the county governments. The Senate's apportionment remained unchanged.

In 1932, again through an initiative, the requisite number of votes to entitle a county to additional House representation was raised from 1,500 to 2,500. Unlike the 1918 amendment, the 1932 amendment said that the size of a county's delegation could be reduced. Again, the Senate apportionment remained intact.

The 1953 Amendment

Arizona's apportionment process remained stable for two decades. Then, in 1953, the apportionment process was altered radically. In his initial message to the 1953 legislature, Governor Howard Pyle requested an apportionment resolution which would limit the size of the House and establish a 28-person Senate apportioned on

the basis of two senators per county, thereby "correcting a 40-year injustice to many of our counties." 4/

Governor Pyle's resolution was designed to increase the strength of the less-populated counties, and there can be little doubt that the governor's motives in proposing the amendment were primarily political. 5/ The urban population concentration of the post-World War II period was a threat to the pre-war balance of political power held by the state's more rurally-oriented interests (e.g., mining, cattle, and agricultural interests, and the railroads and small-town banks). Thus, the new reapportionment may have been designed to maintain the power of the traditional political forces, most of which were located in less-populous counties.

Governor Pyle's resolution was adopted by the legislature and submitted to the voters for their approval in a special election. After a heated campaign, the voters accepted the reapportionment amendment by the narrow margin of 444 votes (30,157 for and 29,713 against). Of the original "big five" counties, only Maricopa approved the amendment, and then by less than a thousand votes. Still, the margin in urbanized Maricopa County was decisive for passage of the amendment--an irony when one considers that the reapportionment amendment diluted the representation of the urban counties.

The amendment's provisions: (1) apportioned the Senate on the basis of two senators per county; (2) fixed the House membership at eighty; (3) guaranteed each county at least one representative in the House; (4) allowed each county one additional representative for each 3,520 votes cast in the preceding gubernatorial election; and (5) required the secretary of state to reapportion the House every four years.

In 1958 no change was necessitated in the legislative apportionment by the number of votes cast in the 1956 gubernatorial election. In 1962, Maricopa and Pima Counties increased their legislative delegations, and four counties lost representation.

1962-1966

On the eve of the Supreme Court's most important reapportionment decision, Arizona's legislative districts, like those of almost every state in the Union, were malapportioned. Subtlety was not a characteristic of Arizona's malapportionment. In 1962, the Arizona Senate was the nation's third worst apportioned Senate. 6/ The Arizona House, while apportioned more equitably than most, still guaranteed each county at least one representative; this requirement prevented the lower chamber from conforming to the one person-one vote doctrine.

Arizona's malapportionment had a direct partisan impact. Although Arizona had been a solidly Democratic state for most of its history (no Republican won a statewide election from 1928 to 1950), the Republican party had been steadily gaining in strength. And, unlike many non-Southern states, the Republican strength in Arizona during the post-World War II period was concentrated in urban rather than rural areas. Republicans were especially strong in Phoenix; this was precisely the area most heavily underrepresented in the state legislature.

The reaction in Arizona to Baker v. Carr was muted. The legislature had adjourned prior to the announcement of the decision, and public comment from individual legislators was nil. The leading newspaper in the state, the Arizona Republic, expressed doubt that the decision would affect Arizona. 7/

The legislature's initial reaction to the Court's involvement in reapportionment was exemplified by the activities in the first regular session of the Twenty-Sixth Legislature, the first meeting of the legislature after the announcement of Baker v. Carr. Governor Paul Fannin made no reference to the Baker decision in his legislative message, and not one bill, resolution, or memorial relating to reapportionment was introduced into either house during the session.

The Supreme Court's announcement of Wesberry v. Sanders, in February 1964, also generated little excitement or activity. One apportionment bill was introduced in the Senate, but it died in committee. Four bills were introduced in the House, but only one even made it to a conference committee before dying.

The failure to address the reapportionment issue more directly may be attributed to the continued widespread belief that the Court would be lenient in applying the reapportionment decision to the states, and that, indeed, Arizona would be unaffected. At this point, the Court still had not established firm reapportionment guidelines.

On April 27, 1964, however, a young law student at the University of Arizona, Gary Peter Klahr, filed suit in a federal district court, asking that the Arizona legislative districts be reapportioned before the 1964 general election. The three-judge district court postponed any action pending the U.S. Supreme Court's decision on several repportionment cases then before the Court. Then, on June 14, 1964, the Supreme Court extended the one person-one vote concept to state legislatures. 8/

The reaction to the reapportionment decisions by Arizona public officials was overwhelmingly negative. Soon, however, a different sort of reaction began to occur. At the request of several members of the House and Senate, Governor Fannin appointed a "blue-ribbon citizens' committee" to study the reapportionment problem. The fifteen-member committee, composed of legislators, academicians, attorneys, retired judges, and leading citizens from other walks of life, was asked to report its recommendations before the beginning of the next legislative session.

The three-judge district court decided to postpone action on Gary Klahr's suit until after the legislature had had the opportunity to act. The district court stated that it would take no action until thirty days after the 1965 legislature had adjourned. The 1964 elections, therefore, would be conducted on the basis of the existing apportionment, and the legislators would be given one more opportunity to avoid court action.

The governor's blue-ribbon committee met from July to December 1964. The committee, officially known as the Governor's Committee on Legislative Reapportionment, held plenary meetings on July 27, October 16, November 13, and December 21. All meetings were open to the public.

The blue-ribbon committee finally submitted four recommendations. First, it recommended that the number of registered voters rather than total population be used as the basis for apportionment. Secondly, the committee recommended that the integrity of county lines as district boundaries be compromised in the drawing of congressional districts. Thirdly, the committee recommended a House of eighty-one members and a Senate of twenty-seven. Fourthly, the committee recommended that the function of redistricting be assigned to a State Board of Directors.

These recommendations were arrived at with little conflict, and the report of the committee aroused little comment from either the press or the politicians.

The recommendations of the blue-ribbon committee had little visible impact on the Twenty-Seventh Legislature, which convened in January 1965. Although a number of bills, resolutions, and memorials relating to apportionment were introduced into both chambers,9/ only one was actually adopted by the legislature. This was a memorial requesting Congress to call a constitutional convention for the purpose of amending the Constitution to allow the states to apportion one house of their legislatures as they pleased.

Governor Sam Goddard then called the first of four special sessions of the legislature that year. Anticipating the reason for the governor's call, the legislature appointed a joint Senate-House Redistricting and Reapportioning Study Committee to make legislative proposals.

The joint study committee was a harbinger of what was to occur during the four special sessions. For almost half a year the committee met without notable

success, its deliberations marked by constant conflict and disagreement. The committee finally adjourned without reaching any useful conclusions.

The final reapportionment attempt by the legislature during this period began on September 13, 1965, but this special session proved no more successful than previous legislative efforts. In the Senate, most of the senators were simply unwilling to reapportion themselves out of their legislative seats. Another problem for the legislature as a whole was the fear of Maricopa County's political strength. Most of the legislators stood adamant against any reapportionment plan which failed to preserve county integrity. Indeed, the outcome of the final special session was never really in doubt. Midway through the session, a newspaper poll revealed that only four senators believed there was any hope for a successful reapportionment plan.10/

And so, after four years of fruitless legislative reapportionment activity, the issue came before the three-judge district court.

Klahr v. Goddard 11/

The three-judge district court began hearing Klahr v. Goddard on November 18, 1965. By this time the case had acquired a distinctly partisan flavor; Klahr was represented by the leading Republican law firm in Arizona, while the state, under a Democratic governor, was represented by attorneys associated with the Democratic party.12/ Klahr was not a Republican activist and, indeed, had approached the Democrats to ascertain their interest in representing him in court. However, they had declined, so Klahr turned to the Republicans, who were only too happy to become actively involved in the proceedings. In return for allowing the GOP to represent him, Klahr expected help in finding employment following graduation from law school.

The hearings lasted three days. Essentially, Klahr's attorneys argued for the adoption of a "3-30-90" plan (three congressional districts, thirty single-member

Senate districts, and ninety single-member House districts), while the state asked the court to depart from a strict application of the one person-one vote principle and recognize that Arizona's malapportionment was largely the result of rational decisions reflecting the unique characteristics of the state.

The court announced its decision on February 2, 1966. The ruling was an enormous surprise. Neither Klahr's nor the state's proposals were accepted. Instead, the court presented Arizona with its own reapportionment plan and, consequently, with a new legislature as well.

What the court said was this: The Arizona legislature was malapportioned. All efforts by the legislature to reapportion itself failed to conform to the one person-one vote principle. Therefore, the district court itself was assuming the task. Using an ususual combination of population figures and voter registration figures, the court designed eight legislative districts containing thirty Senate and sixty House seats. Two districts, number seven (Pima County) and number eight (Maricopa County), were established on the basis of population and then subdivided according to voter registration. Maricopa County would elect fifteen senators and thirty representatives; Pima County would elect six senators and twelve representatives.

In an unusual move, the district court asked the parties to the suit to submit plans subdividing Maricopa and Pima Counties. The court expressed its hope "that the parties might find it possible to agree upon a plan for defining these sub-districts."13/

This request concerning Maricopa and Pima Counties stimulated the most partisan aspect of Arizona's 1966 reapportionment. Although the parties to the suit were Klahr and the state of Arizona, their attorneys were working directly for the Republican and Democratic parties. Klahr agreed to accept whatever proposal the Republican party recommended for each county. Governor Goddard asked the

Maricopa County Democratic chairperson to develop the state's plan for that county, and a Democratic party activist in Pima County to draw a reapportionment map for the Tucson area.

For the next four weeks the representatives of the two political parties worked with each other in an attempt to satisfy the court's request while, at the same time, they attempted to maximize the respective opportunities of their parties to control Arizona politics.

Negotiations between the two parties were concluded successfully as regards Maricopa County. The lack of friction which marked the meetings between the GOP and Democratic negotiators was due in no small measure to a startling lapse on the part of the Democrats. It was widely known in Arizona politics that there was a large discrepancy between voter registration figures and partisan voting behavior. The state had been solidly Democratic in local politics since 1920; therefore, Republican immigrants to Arizona often registered as Democrats in order to participate in local elections where frequently no Republicans sought office (these GOP voters registered in the opposition party were called "pinto Democrats"). Consequently, voter registration and voter behavior often were very different.

The Democratic negotiator in Maricopa County, a relative newcomer to county politics, relied on voter registration figures in developing the Maricopa sub-districts. The "error" was noticed by the GOP negotiator, who recognized that the Democratic map, which seemed to offer the Democrats an advantage in eight of the fifteen Senate districts based upon voter registration, in reality gave the GOP an 11-4 advantage on the basis of voter behavior. Not surprisingly, the Republican negotiator accepted most of the Democratic proposals.

No such agreement was achieved in Pima County, and the district court had to choose from differing proposals submitted by the parties to the suit. The governor's proposal clearly favored the Democrats. Klahr's proposal, however, had been agreed

to by both a Republican and a Democratic representative (this particular Democrat often voted with the GOP coalition in the House) and, therefore, had a bipartisan appearance. The court chose Klahr's proposal for subdividing Pima County.

It is uncertain whether the three-judge district court was aware of the partisan flavor of the negotiations. Only one of the three judges was an Arizona resident. However, he was a life-long friend of the Democrat representative whose name was attached to the "bipartisan" plan submitted for Pima County by Klahr, and likely would have known of her involvement. Also, the three judges certainly were aware of the political importance of reapportionment, so it is unlikely that they would have been surprised to learn of the partisan activities.

Thus the state's reapportionment and redistricting problems in the 1960s were resolved, in effect, by two different bodies. The court redistricted the state legislature, but the sub-districting of Mariposa and Pima Counties was done by the parties to the suit, and actually by the Republican and Democratic political parties.

1966-1970

The outcome of Klahr v. Goddard provided the districts for the 1966 elections. These elections confirmed the Democrats' worst fears about the new apportionment scheme. The GOP swept the state, electing two of the three congressional representatives and, for the first time in the state's history, a majority of both houses of the state legislature.

Following the 1966 election, the legislature was again faced with the task of reapportionment. The district court had handed down its 1966 decision as a temporary measure, and had retained jurisdiction over the matter while requiring that the legislature finally draw up an acceptable reapportionment plan.

In June 1967, Republican Governor Jack Williams called the legislators into special session, urging them to "set your own house in order rather than pass the

burden to the courts."14/ The GOP-controlled legislature adopted an apportionment bill on a vote that was divided along partisan lines. The Democrats countered this action by circulating petitions to place the reapportionment proposal on the 1968 ballot as a referendum measure. The district court announced in December 1967, that no decision would be made on the legislative proposal until the people had indicated their wishes through the referendum. The 1968 legislative elections were therefore held using the 1966 court-ordered reapportionment.

In November 1968 the voters accepted the legislature's reapportionment scheme. But eight months later the district court declared the 1967 legislative proposal unconstitutional, largely because some districts deviated considerably from the ideal size based upon equal population. The legislature went back to the drawing boards.

In late 1969 another joint legislative committee was named to prepare a reapportionment plan for the 1970 election. The joint committee was unsuccessful, necessitating yet another special session in January 1970. Again, the Democrats found themselves largely shut out of the proceedings, and again a reapportionment proposal was adopted on a partisan vote. The proposal was submitted to the district court, which ruled in May 1970, that the legislation, while falling short of constitutional standards, could be used for the 1970 elections--but not for any elections thereafter. The 1970 plan did not differ significantly from the court-ordered reapportionment which had been used in 1966 and 1968. The court also directed the legislature to develop a new apportionment plan following receipt of the 1970 census figures.

The 1970s

The legislature met in special session in the fall of 1971. As had been the case in the previous two sessions, the Republican majority largely ignored the Democratic

minority in dealing with reapportionment. The legislature adopted, again on partisan lines, a new proposal which utilized population as the apportionment base and reduced the deviation percentage so that no district deviated in population by more than one half of one percent from the ideal size.

The district court held hearings on the new proposal, during which leaders from the Hopi and Navajo Indian tribes addressed the court. In the spring of 1972, the court accepted the legislature's plan for congressional districts, but rejected the state legislative apportionment scheme because it diluted the voting powers of the Indian tribes, and therefore violated the Fifteenth Amendment.

The court than altered the legislature's proposal, placing the Indians in one senatorial district and modifying three senatorial districts in northern Arizona, but essentially leaving the rest of the legislative proposal untouched. This plan was the basis on which the 1972 and 1974 elections were conducted.

Following the court's decision, the legislature drew a new map in the spring of 1972. Basically, the map resembled the court-drawn proposal, except that the Hopi Indian tribe was removed, at the request of tribal leaders, from the predominantly Indian senatorial district. The legislature's scheme also provided for a district that included virtually all members of the White Mountain Apache Indian tribe.

The plan was not submitted to the court immediately, and 1973 passed with neither the state legislature, the executive, nor the court taking action to change the 1972 court-ordered plan. The 1974 elections were held on the basis of the court-ordered plan, but in December 1974, the court accepted the 1972 modifications made by the legislature. The modified plan formed the basis on which the 1976, 1978, and 1980 elections were held.

The 1980s 15/

The 1980s will, no doubt, produce further reapportionment activity in Arizona. The state probably will gain a fifth congressional district, and such population centers as

Mesa and Tempe have become underrepresented in the state legislature.

The impact of the reapportionment revolution on Arizona is marked in many ways. Perhaps most obvious is the fact that the urban centers of the state are no longer underrepresented in comparison to the rural areas. Secondly, Republicans have controlled at least one house of the state legislature at every session since 1966; prior to 1966 the GOP had never claimed a majority of either house. And the partisan lines are more clearly defined now; the old coalition of conservative Republicans and "pinto Democrats" is no longer a force. Thirdly, the smaller counties, which have always been wary of the urban counties, are now even more alienated (although there is little evidence that the shift of power to the cities has had a major impact on public policy).

Reapportionment will continue to be a major issue in Arizona in the 1980s. The state's quest for a fair system of representation has not been smooth in the past, and there is little reason to anticipate that it will be smooth in the future.

NOTES

1/ The research for this project was funded in part by the Institute of Government Research, University of Arizona, and the Pan American University Research Council, Pan American University.

2/ The most comprehensive examination of Arizona's early apportionment history is David A. Bingham's "Legislative Apportionment: The Arizona Experience," Arizona Review of Business and Public Administration II (October 1962): 1-22. Professor Bingham generously made his research notes available to me.

3/ Although Arizona only had thirteen counties in 1910, Greenlee County was being formed out of Graham County, a fact of which the framers were aware. Therefore, they acted on the basis of fourteen rather than thirteen counties.

4/ Journal of the House, 21st State Legislature, 1st Regular Session (1953), p. 20.

5/ However, the proposal to limit the size of the House had a practical side; unless the size was reduced, the physical facilities could no longer accommodate the membership.

6/ Congressional Record, 89th Cong., 1st Sess., pp. 28, 186-88 (October 22, 1965).

7/ Arizona Republic (Phoenix), March 27, 1962.

8/ Reynolds v. Sims, 377 U.S. 533 (1964).

9/ Among the more interesting was a Senate concurrent resolution which would have divided Arizona into three states: Maricopa, Pima, and a third state comprised of the rural counties. See Journal of the Senate, 27th State Legislature, 1st Regular Session (1965), p. 67.

10/ Arizona Daily Star (Tucson), September 29, 1965.

11/ 250 F. Supp. 537 (D. Arizona, 1966).

12/ There was some irony in this division of counsel. Neither of Klahr's attorneys agreed personally with the Supreme Court's one person-one vote decision, yet both came to the district court urging the application of the principle. The state's

attorney did accept the one person-one vote concept, although he would approach the bench to try to prevent its acceptance.

13/ Klahr v. Goddard, 250 F. Supp. 537, 548.

14/ Arizona Daily Star (Tucson), June 1, 1967.

15/ Here I am indebted to Professor Bruce Mason's generous help. Professor Mason is justly recognized as one of the leading experts on Arizona politics.

CALIFORNIA

T. Anthony Quinn

To many Americans, California is something of a state of mind, a harbinger of tomorrow, a social and cultural land of enchantment. Viewed in political terms, though, California is, in a sense, two states. The northern two-thirds of the land area, with about 46 percent of the population, adheres to the progressive political tradition of the other Pacific coastal states. The southern third, with a majority of the population, is an appendage of the Sun Belt, with politics closer to those of Arizona and Texas.

The California schism dates from the early years of this century, when the once dominant north lost its population edge to the south. By World War I, Los Angeles had passed San Francisco as the state's largest and most important city. Though the people were in the south, however, the rains still fell in the north; and in a state where water is the lifeblood, a bitter regional conflict over water developed.

Until the 1920s, Californians were satisfied with a two-house legislature in which both houses were elected on a population basis. But the population bulge gave southern California control of both houses, and in 1926 the north rebelled. Farm groups, the San Francisco Chamber of Commerce, and northern water users qualified a ballot initiative to create a "federal" legislature, with the Assembly based on population but the Senate apportioned on a geographic basis. The plan was approved by the voters, and the California Senate was redistricted so that no county had more than one senator, and no more than three counties were in any one Senate district.

That reapportionment solved the regional problem; thirty of the forty Senate seats were located in the north, while the south controlled the Assembly. The 1926

measure eventually led to an extreme representation imbalance, however. Los Angeles County grew to the point that, by 1960, its one senator represented six million people; at the same time, there was one northern senator whose district contained three rural counties with a total population of fewer than 15,000 people. Urban interests and organized labor tried to repeal the federal Senate on four occasions, in 1928, 1948, 1960, and 1962; but each time the public voted against equal population and in favor of the federal plan.

The regional divisions in California gradually abated as the state became more diverse. Rural California and the Los Angeles suburbs found they had much in common with one another on issues of taxation and government spending, while urban San Francisco and Los Angeles recognized their own common ground. Partisanship began to replace regionalism as the dividing line in California politics. Until the 1930s, the Progressive reforms of Hiram Johnson set the tone for state politics, establishing a "nonpartisan" government which was actually dominated by the state's Republican party. Cross-filing, the system whereby candidates were allowed to run in both party primaries, kept the Democrats from achieving legislative majorities even when they took the lead in registered voters, since the cross-filing system obviously favored incumbents, and most of these were Republicans. California did elect a one-term Democratic governor at the height of the New Deal; but during the war years, California returned to its Republican moorings under the immensely popular Earl Warren.

Democratic strength continued to grow, however, with the steady influx of population into the state. In the late 1940s an aggressive and liberal Democratic party began seriously challenging the Republican establishment. When California reapportioned its Assembly and congressional districts in 1951 (the federal Senate districts were not substantially altered between 1927 and 1965), frightened Republicans, their majority now in danger, gerrymandered the state.

The law then required congressional districts to contain whole Assembly districts in the urban counties, and whole counties in the rural areas. Republicans had a healthy majority in both houses of the legislature in 1951, but Republicans were a distinct minority among registered voters. The solution of the GOP leadership was to concentrate Democratic voters in overpopulated Democratic districts, while spreading out Republican neighborhoods in underpopulated GOP districts. The state constitution required rough population equality among the districts, but left room for maneuvering. Based on its population, Los Angeles County deserved twelve congressional districts, to be formed out of its thirty Assembly districts. The GOP map drawers placed three Assembly districts in most Democratic congressional districts, but just two in most Republican congressional districts. The result was that Republicans could elect a majority of congressmen with a minority of the two-party vote.

The success of this gerrymander was abundantly clear in the 1954 elections. Statewide, the GOP won 60 percent of the Assembly seats with 50.5 percent of the vote, and 63 percent of the congressional districts with 48.5 percent of the vote. In Los Angeles County, the Democrats won a slight majority of the two-party vote for Congress, but only four of the twelve districts.

But the 1951 Republican gerrymander was too clever by half. In the process of imposing a partisan redistricting, the GOP undermined the historical "nonpartisan" system of Hiram Johnson, which in essence protected Republican majorities even in heavily Democratic counties. Cross-filing declined as an instrument of GOP control throughout the 1950s, and the Republican strategy of giving themselves the marginal districts left too many targets for the Democrats. In 1958, a Democratic landslide wiped out the GOP majorities, and when the next reapportionment rolled around in 1961, an angry Democratic party took its revenge for the gerrymander of 1951.

The 1961 redistricting set the pattern for the districts in existence today.

Republican neighborhoods, particularly in southern California, were concentrated into very safe districts, while the growing Democratic base, especially in Los Angeles, was spread out among as many districts as possible. California picked up eight congressional districts as a result of population growth in the 1950s, and the Democratic legislature managed to draw the lines so that Democrats won seven of the eight new seats. The 1951 Republican gerrymander had left most of the Assembly districts alone, but the Democrats in 1961 redrew the lines to eliminate weak GOP incumbents and maximize their own chances for winning a majority in the Assembly.

The 1961 Democratic gerrymander worked marvelously -- for one election. In 1962, the Democrats carried twenty-five of the thirty-eight congressional districts and fifty-two of the eighty Assembly districts. In the Assembly, Republicans were reduced to just twenty-eight seats, their all-time low. The Democrats accomplished this sweep with just 54 percent of the two-party Assembly vote, and 52 percent of the congressional vote.

But gerrymandering is an effort at translating last year's election returns into next year's seats, and almost immediately the 1961 Democratic lines began breaking down. The Republicans added Assembly and congressional seats to their meager totals in 1964, despite the Goldwater debacle. In 1966, a resurgent Republican party, flying the Reagan banner, nearly brought even the congressional and Assembly representation, and in 1968 the GOP won control of the Assembly. The 1966 election, besides marking a major step in the Republican comeback, was important for another reason: both parties had another target to shoot at, the newly reapportioned Senate.

The Supreme Court's 1964 one man-one vote ruling ended the geographically-based state Senate. In 1965, the legislature reapportioned the forty Senate districts on an equal-population basis. Three counties, Los Angeles, San Diego, and Orange,

which had had only three districts under the old plan, found themselves dividing up nineteen new districts. The redistricting of the old rurally-dominated Senate was a particularly painful exercise for many northern senators who found themselves thrown into districts with their friends. The Assembly drew the urban districts, and not surprisingly the new urban Senate districts bore a striking resemblance to the existing Assembly districts. Eleven Los Angeles County assemblymen ran for the Senate in 1966, and nine of them won. Thus the 1961 Democratic Assembly gerrymander was carried over into the new Senate districts, although without as great an effect. The 1966 election gave the GOP nineteen of the forty Senate seats, and in 1969 Republicans won a majority in the Senate. But their time in the sun lasted only two years; in 1970 the Democrats narrowly won back both houses of the legislature, preparing the way for the most bizarre and partisan reapportionment battle in California's history.

A highly partisan Democratic legislature, a highly partisan Republican governor, and the newly developed wizardry of the computer industry, combined to bring about a lengthy stalemate when the legislature attempted to redistrict itself in the summer of 1971. Computers served to open up the process; no longer were districts drawn in secrecy and deals cut in the back room. The two parties -- the Democrats with their legislative majority, the Republicans with their governor -- entered into long and often acrimonious negotiations. At one point a bipartisan agreement was worked out, only to fall apart the next day when Republicans unexpectedly won a Democrat-controlled Assembly seat in a special election.

The parties battled for two years. The Democrats were able to push their redistricting plan through the legislature, but they could not overcome gubernatorial vetoes. The basic Democratic plan took the gerrymander to new heights, with oddly shaped districts and tortuous lines; often, however, incumbent Republican legislators demanded even worse configurations. The governor's veto of the 1971 legislative

plan cited one district that featured two sections "connected by a corridor the width of a street," and another district that divided more than a dozen cities in two counties.

The failure of the legislature and the governor to agree on a plan prior to the 1972 elections brought the courts into the picture. Reluctantly, the California Supreme Court mandated that the 1972 election utilize the 1961 and 1965 Assembly and Senate districts; as for the congressional election, the Court temporarily imposed a congressional plan previously vetoed by the governor. This was necessary, the Court explained, because the state had gained five new congressional districts as a result of the 1970 census. The Court told legislators to try to pass a new plan in 1973.

Although Democrats increased their numbers in the Assembly in the 1972 election, they still lacked the votes to override a veto by Governor Reagan, and again the redistricting process ground to a halt. Now the Supreme Court stepped in again, and appointed three "special masters," all retired judges, to draw up a plan. The masters hired a technical staff with no known ties to legislative interests, and this staff drew up a plan which the Court eventually accepted in the fall of 1973. California's reapportionment crisis came to an end, but with districts that differed radically from those proposed by the incumbents of both parties in the legislature. The 1973 plan included an entirely new provision that Senate districts be composed of two contiguous Assembly districts.

The beauty of a redistricting is in the eye of the beholder. Republicans claimed they were satisfied with the Court lines, but Democrats shouted from the rooftops that this was better for them than any of the legislative plans. The 1974 elections seemed to prove the Democrats correct: they won fifty-five of the eighty Assembly seats and twenty-eight of the forty-three congressional seats. This amounted to 69 percent and 65 percent of the seats, respectively, with 56 percent of

the two-party Assembly vote and 58 percent of the congressional vote. One can argue that the partisan imbalance created in the 1961 gerrymander remained in force even after adoption of the Court plan, because Democrats were able to win a larger share of the seats than their share of the two-party vote. But it should also be pointed out that the election of 1974 was the Watergate election, and the GOP had the misfortune to be contesting new districts under the most adverse of circumstances.

Looking back on the results of the 1973 redistricting, it can be said that the Court plan accomplished two things: it created a large number of marginal districts, and it created safe districts for racial minorities. The black and Hispanic core in Los Angeles is carefully divided into four Senate districts and eight Assembly districts, and minority candidates have managed to win most of these seats. A recurrent criticism of the 1951 and 1961 reapportionments concerned the fracturing of minority neighborhoods. At least in the urban centers, the Court redistricting avoided such a result.

Several legislative seats have changed hands since 1974. Republicans lost a number of their safest districts in the Watergate election, and not all of them have returned to GOP hands. Democrats now control half the Orange County seats. But a GOP candidate ousted the Democratic dean of the legislature from his supposedly safe Assembly district in 1978, and two other Republicans won seats that had previously been considered safe for the Democrats.

To a degree unappreciated by most politicians, California has again become a state in which the political behavior of the voters is largely nonpartisan. Republicans have shown that they can win in districts where 70 percent of the registered voters are Democrats, and Democratic candidates have been able to win in the heart of conservative Orange County. As the reapportionment experts divide up the state in 1981, they will find that there is far less "safe" political territory

than existed a decade ago. Democrats are really assured of election only in San Francisco and Oakland, and in the black, Hispanic, and Jewish neighborhoods of Los Angeles -- and all these areas are losing population. The drift of population to the suburbs over the past decade, however, has made these once Republican areas far more competitive. Republican candidates are safe today only in a very few districts.

Court mandates and considerations of practical politics seem to assure the continuation of minority-dominated, Democratic districts in certain parts of California, but most of the rest of the state is politically marginal. New language written into the constitution in 1980 should limit the dividing of cities and counties in 1981. The desire to gerrymander may still be there, but the ability to effect the kinds of plans imposed in past redistrictings may be lacking. The 1981 reapportionment could lead to another long, acrimonious struggle, but the end product might, for a change, serve the people's interest.

COLORADO

R. D. Sloan, Jr.

This discussion covers recent redistrictings of the U. S. House of Representatives seats in Colorado, as well redistricting of the state legislature (the General Assembly). The discussion includes brief speculations about the possible consequences of reapportionment in the 1980s, and it introduces the unusual Colorado Reapportionment Commission which will carry out the next redistricting of the General Assembly.

Since World War II, Colorado's rate of population growth has been more rapid than the national growth rate. In summary, the state population increase has been as follows:

1950	1,325,089	(18.0% increase over 1940)
1960	1,753,947	(32.4% increase over 1950)
1970	2,207,259	(25.8% increase over 1960)
1980 (final)	2,877,726	(30.3% increase over 1970)

Basically, the state's suburbs and middle-sized towns have grown rapidly in the past thirty years, while most rural areas and small towns have grown slowly or even lost population. As for Denver, the state's largest city, it has had a slow growth rate over the past thirty years, and has apparently lost population since 1970. Another interesting demographic feature of Colorado is that the state's population is very unevenly distributed. Most of the population is concentrated in just 5-10 percent of the total area of the state, with about 80 percent of the people living in a narrow strip lying just east of the Front Range. This strip is about 175 miles long on

a north-south axis, and varies in width from less than ten miles to as many as forty miles.

U. S. House of Representatives

One consequence of Colorado's rapid population growth in the 1960s was that the state's delegation in the U. S. House of Representatives increased from four to five. In the resulting redistricting, most of the congressional district lines changed considerably.

Before the 1970 census, the four congressional districts were:

#1 basically Denver (Democratic);

#2 a "donut" district consisting mainly of the suburbs on all sides of Denver (Republican);

#3 southeastern and eastern Colorado, including the two large cities of Colorado Springs and Pueblo (a swing district);

#4 all of sparsely populated western Colorado (the "West Slope"), as well as six more populous counties in northeastern Colorado (a swing district, but represented for many years by Wayne Aspinall, a Democrat).

The 1970 census showed uneven growth patterns in the state; suburbs grew rapidly, while some rural areas lost population. This growth pattern, together with the increase from four to five congressional districts, made changes in district lines inevitable. The present districts are:

#1 most of Denver (Democratic);

#2 the suburbs west of Denver, as well as a portion of west Denver (a swing district, but currently represented by a Democrat);

#3 all of southern Colorado, from Utah on the west to Kansas on the east, and including Pueblo and part of Colorado Springs (leans Democratic);

#4 northern Colorado, including ten counties west of the continental divide

(on the West Slope) and ten counties east of the continental divide, and with the largest concentrations of population in the northeast: Fort Collins, Greeley, Loveland, and some northern suburbs of Denver (Republican);

#5 the "new district," encompassing most of the southern and eastern suburbs of Denver, most of Colorado Springs, and some rural counties in eastern Colorado (Republican).

Redistricting for the U. S. House of Representatives in Colorado after the 1970 census was done by a Republican-controlled General Assembly, and partisan considerations certainly played a role in the process. However, the Republicans were not especially astute in their calculations. During most of the 1970s, only two of the state's five congressional districts have regularly elected Republican candidates. Since the two major parties are about equally strong in Colorado, it seems likely that the Republicans who drew the last redistricting plan could have assured GOP control of at least three of the five districts if they had been more careful in their reckoning. One can only assume that after the 1980 census, the Republicans will try to calculate with greater accuracy than they did a decade earlier.

Census bureau projections for 1980 estimated that Colorado was on the borderline between (1) retaining its five congressional seats or (2) increasing its delegation from five to six. The actual census count now indicates that the delegation will increase to six.

Several interesting options can be considered for the upcoming congressional redistricting, and the potential for political conflict is high. There are Republican majorities in both chambers of the state legislature, but they confront an incumbent Democratic governor who would probably veto any blatant gerrymandering. (It is not entirely clear that the governor has the constitutional authority to veto a reapportionment measure, but most students of the question seem to feel that the

governor does have this authority.) The possibility of a deadlock between the Republican legislature and the Democratic governor will probably restrain the GOP from overly ambitious efforts to win partisan advantage from the redistricting. However, opportunities for advantage will still exist, and certainly the Republicans will take these opportunities into account as they try to draw "favorable districts."

With six congressional districts replacing the present five, about the only certainty of the upcoming redistricting is that most -- or all -- of the new districts will bear little resemblance to the old districts. Obviously, one entirely new district will be created; and while some congressional boundary lines may remain the same, most will have to be shifted, some drastically. In addition to the complications created by the additional district, present lines will have to be changed to account for the state's uneven population growth in the past ten years; the basic pattern has been rapid growth in suburban areas and in some middle-sized towns contrasted with slow growth or decline in Denver, in Pueblo, and in many small towns and rural areas.

There are many options at this time for redistricting Colorado's seats in the U.S. House of Representatives, and any speculation is so preliminary that it would be futile to offer detailed analysis of the available choices. However, a few brief observations are in order. Metropolitan Denver will have three entire congressional districts and a portion of a fourth. It is likely that the present Denver district will be retained in somewhat recognizable shape, since the present Democratic incumbent from that district describes the possibility of dismembering Denver as "despicable," and such action would almost surely generate a lively political squabble. Nonetheless, it is possible that the Republican General Assembly will be tempted to split apart Denver and attach various sections of the city to the surrounding, Republican-oriented suburbs. On the other hand, the Republicans may decide to structure an urban Denver district so overwhelmingly Democratic that

Democratic votes would be "dumped" or wasted there. Under this strategy, the Republicans would write off Denver as overwhelmingly Democratic; but in sacrificing this one seat, they would all but assure that the other two to three metropolitan seats would be Republican.

Historically, the western (mountain) portion of Colorado has preferred to be in a single district. At present, it is divided between two districts, and pressure will be exerted on the legislature to reconstitute the West Slope as a single district. If a West Slope district is drawn, however, some counties from east of the mountains will have to be included in order to bring the district's population into line with the other five districts.

Reapportioning Colorado into six congressional districts will raise many controversial issues. The General Assembly may begin the task in 1981 and complete its efforts before the end of the year. However, it is more likely that the redistricting plan will not be seriously addressed and finished until the spring of 1982.

The General Assembly and the Colorado Reapportionment Commission

While congressional district lines are drawn by the General Assembly, a special Colorado Reapportionment Commission (CRC) is responsible for reapportioning the General Assembly itself. The CRC was authorized by an amendment to the Colorado constitution, approved by the voters in 1974. The vote was 386,725 (60 percent) for and 255,725 (40 percent) against the amendment. The amendment reflected dissatisfaction with the efforts of the General Assembly to reapportion itself following the 1970 census. Advocates of the amendment argued that the General Assembly could not draw its own redistricting plan in a disinterested manner; the process was too political and divisive, and the members had too much personally at stake.

The Colorado League of Women Voters was the principal sponsor of the 1974 amendment, which also had considerable support among Democrats and independents. Republicans, who controlled the General Assembly, naturally tended to oppose the amendment. Since the amendment's adoption, some Republicans have considered repealing or revising it, but they have not acted. So the Colorado Reapportionment Commission will have its first test in 1981 and 1982, as it tries to draw a redistricting plan for the General Assembly on the basis of 1980 census figures.

A brief and somewhat simplified description of the composition, functions, and schedule of the CRC includes the following main points:

(1) Membership: eleven members, of which

  (a) four are appointed by the legislative department --specifically, by a group including the speaker of the House (or designee), the minority leader of the House (or designee), the majority leader of the Senate (or designee), and the minority leader of the Senate (or designee);

  (b) three are appointed by the executive branch (the governor);

  (c) four are appointed by the judicial department (the chief justice of the Colorado Supreme Court).

(2) Restrictions on membership:

  (a) no more than four commissioners can be members of the General Assembly;

  (b) no more than six members can be of the same political party;

  (c) no more than four members can be residents of the same congressional district;

  (d) each congressional district must have at least one member;

  (e) at least one member must reside west of the continental divide.

The timing of the appointments is specified so that the legislative representatives

make their selections first, then the governor acts, and finally the chief justice makes his appointments. This schedule allows the restrictions on appointments (designed to foster a political and geographical balancing act) to be observed without much difficulty.

(3) Time schedule of action by the CRC:

(a) No later than August 1, 1981, the governor must convene the CRC.

(b) Within ninety days of convening or ninety days from the time census data are available (whichever is later), the CRC must publish a preliminary plan of reapportionment.

(c) Within forty-five days after publication of the preliminary plan, public hearings must be held in several places throughout the state.

(d) Within forty-five days after completing hearings, the CRC must complete the proposed reapportionment and submit it to the Colorado Supreme Court for review as to compliance with Article V, Sections 46 and 47, of the Colorado constitution (see below).

(e) The Colorado Supreme Court may approve the reapportionment plan or return it to the CRC with reasons for disapproval. If the plan is returned, the CRC must revise it and return it to the Supreme Court within twenty days.

(f) When finally approved by the Court, the reapportionment must be filed with the secretary of state for implementation by March 15, 1982.

(4) Constitutional standards for General Assembly districts (from Article V, Sections 46 and 47, of the Colorado constitution):

(a) Districts should have nearly equal population, with no more than a 5 percent deviation between the most populous and the least populous districts.

(b) Districts should be compact and contiguous.

(c) Except when necessary to meet the equal population requirement, "no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible."

(d) Consistent with (a), (b), and (c), "communities of interest (including ethnic, cultural, economic, trade area, geographic, and demographic factors) shall be preserved within a single district whenever possible."

The constitutional provisions for equal population, compactness, and contiguity have normally caused few difficulties in drawing district lines in Colorado. Likewise, the instruction not to divide counties and municipalities "except when necessary" has not been a major problem -- largely because it is not an absolute requirement.

Somewhat more unusual in the Colorado constitution, and much more productive of conflicting interpretations, is the command that "communities of interest. . . shall be preserved," consistent with the requirements for equal population, compactness and contiguity, and undivided political subdivisions. The CRC is bound to face considerable difficulty just in defining some of the terms involved, let alone in applying those terms to the actual redistricting. Which ethnic groups, for example, merit preservation in single districts? What relative weights should be assigned to "demography" and "geography" in determining district lines, and to "cultural" factors and "trade area" considerations? It is likely that the CRC will find itself badly split on some of these questions; on the other hand, we may be speculating about problems which can be resolved relatively easily.

The CRC will keep the Republicans from drawing General Assembly lines to their liking. However, some demographic trends (e.g., growth in the suburbs)

indicate that Republican domination of the General Assembly could very well continue throughout the 1980s, unless there is a drastic shift of political currents in Colorado. Not all Democrats are pessimistic (nor all Republicans optimistic), but the odds seem to be that the Republicans will control the Colorado General Assembly during most of the decade to come.

HAWAII

Richard H. Kosaki

Introduction

Hawaii became the fiftieth state of the Union in 1959 after having been a U. S. territory since 1900. Hawaii's experience with reapportionment generally reflects the experience of the other American states, although Hawaii's history and geography provide unique challenges to the application of reapportionment criteria in the state. In a 1965 reapportionment case, a U. S. district court stated:

> Hawaii is unique in many respects. It is the only state that has been successively an absolute monarchy, a constitutional monarchy, a republic, and then a territory of the United States before its admission as a state. Because each was insulated from the other by wide channels and high seas . . . and historically ruled first by chiefs and then royal governors, after annexation the seven major, inhabited islands of the State were divided up into the four counties of Kauai, Maui, Hawaii and the City and County of Honolulu. 1/

More than in the other forty-nine states, geography plays a crucial role in any reapportionment plan for the state of Hawaii. Hawaii is not only separated from the other states by a large expanse of ocean, but the major populated islands within the state are themselves separated from each other by international waters. The grouping of the inhabited islands into the four counties of Hawaii, Maui, Honolulu, and Kauai is politically significant and has been used to form the basic units for all reapportionment plans.

The major population movement of this century, from rural to urban, is clearly seen in Hawaii as the population has shifted rapidly from the rural counties of Hawaii, Maui, and Kauai to the urban City and County of Honolulu (island of Oahu).

Population Distribution in Hawaii, 1900 to 1970

Year	Honolulu	(H %)	All other counties	(H%)	Total
1900	58,504	(38%)	95,497	(62%)	154,001
1920	123,496	(48%)	132,385	(52%)	255,881
1940	257,696	(61%)	165,074	(39%)	422,770
1960	500,409	(79%)	132,363	(21%)	632,772
1970	630,528	(82%)	139,385	(18%)	769,913

(Source: U. S. Census Reports)

Thus, the major reapportionment problem for Hawaii has been one of providing the rapidly growing urban area with its proportionate share of legislative representatives, and this problem has been highlighted even more dramatically by the fact that Hawaii's basic districts are islands with obvious and fixed boundaries, separated from each other by ocean waters.

The Territory of Hawaii, 1900-1959

The Organic Act, creating the Territory of Hawaii in 1900, provided for a popularly elected legislature consisting of a Senate of fifteen members and a House of Representatives of thirty members. Four multi-member Senate districts and six multi-member House districts were designated; the boundaries of the Senate and House districts were coterminous, with the first senatorial district (island of Hawaii) and the third senatorial district (island of Oahu) divided into two representative districts. The initial apportionment reflected the population distribution at that time.

1900 Apportionment, Hawaii Territorial Legislature

Counties of:	Honolulu	Hawaii	Maui	Kauai	Total
Senate	6	4	3	2	15
House	12	8	6	4	30
(H%)	(40%)	(27%)	(20%)	(13%)	

The Organic Act also provided (Sec. 55) these specific words on reapportionment: "The Legislature, at its first regular session after the census enumeration shall be ascertained, and from time to time thereafter, shall reapportion the membership in the senate and house of representatives among the senatorial and representative districts on the basis of the population in each of said districts who are citizens of the Territory." That the Territorial Legislature ignored this provision and never initiated any action to reapportion itself should not come as a surprise to the student of American politics.

In Hawaii, this ignoring of the law on reapportionment did not go unchallenged. The Hawaii Supreme Court in 1942 followed the then well-known precedent and said of reapportionment that "the question is political and not justiciable." 2/ The Court further explained: "By section 15 of the Organic Act it is provided that each house of the legislature shall be judge of the elections, returns and qualifications of its own members. This power, coupled with the well-recognized independence of the legislative branch of the government, forbids our interference with legislative expediency. The duty of reapportionment rests upon the legislature and with the expediency of its observance the judiciary has no concern." 3/

But in 1955 a citizen's suit to require reapportionment was filed in the federal district court. 4/ The federal court took jurisdiction of legislative reapportionment by making a distinction between a territory and a state, and then applied the federal statutes and found that the legislature's failure to reapportion "has deprived the plaintiff of certain constitutional rights. We have held that the defendants'

(legislators') conduct has violated the equal protection of the laws and due process." 5/

This decision was appealed, and the U. S. Court of Appeals dismissed it as moot, 6/ for, in the meantime, Congress had amended the Organic Act to reapportion the legislature in the manner set forth in the then proposed state constitution for Hawaii.

The Constitutional Convention of 1950

As part of the drive to attain statehood, the citizens of the Territory held a constitutional convention in 1950 to draft a "hope chest" constitution. Among the major items for discussion were the composition and apportionment of the legislature. The convention increased the size of the legislature, the Senate growing from fifteen seats to twenty-five and the House from twenty-five seats to fifty-one. While it reapportioned the House according to "population" and assigned thirty-three (or 65 percent) of the seats to the City and County of Honolulu, the convention assigned only ten (or 40 percent) of the Senate seats to Honolulu; thus the rural counties were assured of retaining their dominance in the Senate. In fact, to assure continuance of an outer-island majority in the Senate, the 1950 constitution contained a proviso (later to be declared unconstitutional) that no change could be made in the Senate reapportionment formula unless "approved by a majority of the votes tallied upon the question in each of a majority of the counties" (1950 Constitution, Art. XV, Sec. 2).

The 1950 constitutional convention paid much attention to the population base that should be used for reapportionment purposes. It noted that one of the reasons the Territorial Legislature never reapportioned itself was because the Organic Act directed that reapportionment be determined on the basis of "citizen population," and such statistics were not readily available. The convention considered "total

population" and other variations and finally settled upon "registered voters" as the best basis for reapportionment. This use of "registered voters" was later to be upheld in the courts due to certain unique conditions in Hawaii, especially the large numbers of military personnel and tourists in the islands. 7/

It was this 1950 constitutional convention proposal for reapportionment which was enacted into law by Congress as an amendment to the Organic Act. Thus, Hawaii's legislature was reapportioned for the first time since 1900, effective with the elections of 1958 -- a year before statehood.

In 1959, as a state under the provisions of the constitution drafted in 1950, Hawaii's House of Representatives was further reapportioned so that the City and County of Honolulu gained three more seats--one from each of the other counties. The Senate apportionment remained the same.

The 1960s

Reynolds v. Sims had its repercussions in Hawaii. 8/ Three weeks after that decision, Hawaii's attorney general offered opinions stating that the apportionment of both houses of the legislature was unconstitutional. Several citizens brought action in the state Supreme Court, and it ruled that the Senate apportionment was invalid. 9/

The governor attempted to take the lead and offered his own reapportionment plan to a special session of the legislature, but the legislature could not agree on any plan. There then followed a series of complex events, in which the courts, while retaining jurisdiction, discreetly attempted to persuade the legislature to lead itself out of the reapportionment thicket (Holt v. Richardson and Burns v. Richardson). The results were an interim Senate reapportionment plan (first disapproved by the federal district court but later approved by the U. S. Supreme Court) adopted for the 1966 elections, and eventually the calling of a constitutional convention to formulate a permanent plan. 10/

The 1968 Constitutional Convention

The principal task of the 1968 constitutional convention was reapportionment; thus it is not surprising that, of the eighty-two delegates, forty-two (or 51 percent) were either legislators or ex-legislators. Much time was taken on the floor of the convention in discussions over where specific district lines should be drawn.

The apportionment recommendations of the convention were presented to the voters as three separate proposed amendments to the constitution. 11/ These concerned: (1) apportionment and districting of the legislature; (2) provisions for future reapportionment; and (3) minimum representation for basic island units. All three amendments were ratified.

Using registered voters as the population base, the convention instituted a two-tiered apportionment process. The members of each house were first apportioned among the four basic island units coinciding with the counties of Hawaii, Honolulu, Maui, and Kauai. The second step involved the drawing of district lines within each basic island unit, the districts of each island to contain an approximately equal number of registered voters.

The resultant apportionment plan, based on the distribution of registered voters at the time of the 1966 general election, showed the population dominance of the City and County of Honolulu, which ended up with nineteen (or 76 percent) of the Senate seats and thirty-eight (or 75 percent) of the House seats. The most unsettling effect of Hawaii's application of the one man - one vote edict, however, was that the least populated island, Kauai, was in danger of being reduced to only one -- or even just a fraction of one -- representative. With this in mind, and out of sympathy for Kauai's incumbent legislators, the 1968 constitutional convention provided (in legally separable clauses) that: (1) no basic island unit should receive less than one member in each house, and (2) each basic island unit should be represented by at least two senators and three representatives, even if this meant

that each of these legislators would exercise only a fractional vote. These provisions were later struck down by the U. S. district court. 12/

The district court, in reviewing the work of the 1968 constitutional convention, approved of the major aspects of the apportionment plan, including the use of registered voters as a population base, the division of the state into four basic island units, and the use of the two-tiered method to distribute the legislators therein. 13/

A major contribution of the 1968 convention was the establishment of an appointed reapportionment commission to handle the redistricting task in the future, under the following constitutional criteria:

a. No district shall extend beyond the boundaries of any basic island unit.

b. No district shall be so drawn as to unduly favor a person or political faction.

c. Except in the case of districts encompassing more than one island, districts shall be contiguous.

d. Insofar as practicable, districts shall be compact.

e. Where possible, district lines shall follow permanent and easily recognized features, such as streets, streams, and clear geographical features, and when practicable shall coincide with census tract boundaries.

f. Where practicable, representative districts shall be wholly included within senatorial districts.

g. Not more than four members shall be elected from any district.

h. Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

The reapportionment commission was to have nine members. The president of the Senate and the speaker of the House appointed two members each. The opposition party members in both houses also appointed two members each. These eight members in turn selected a ninth member, who became the chairman of the commission. The commission was to convene every eight years, and it was given 120

days to complete its work; its recommended plan, after publication, would become law.

The 1973 Reapportionment Commission

Hawaii's first reapportionment commission convened in 1973, and handled its assignment well. After numerous meetings, public hearings, and consultations with constitutionally-mandated county advisory councils, the commission adopted the following reapportionment plan for the four basic island units, based on the number of registered voters at the time of the 1972 general election.

	Senators (V %)	Representatives (V%)
Honolulu	19 (76%)	39 (76%)
Hawaii	3 (12%)	5 (10%)
Maui	2 (8%)	4 (8%)
Kauai	1 (4%)	3 (6%)
Total	25	51

The only change from the 1968 plan that occurred in this initial allocation among the four basic island units was that Maui lost a representative to Honolulu. It was again necessary to "balance" Kauai's underrepresentation in the Senate by an overrepresentation in the House.

The most troublesome aspect of the commission's work in 1973 was the drawing of lines for new districts -- particularly House districts -- within each basic island unit. The commission considered the problem of single-member versus multi-member districts, and ended up following Hawaii's tradition of multi-member districts. Only one (Kauai, a basic island unit) of the eight Senate districts is single-member; of the twenty-seven House districts, only five are single-member.
decennial census. Knowing this, the U.S. Bureau of the Census has not given high priority to completing its census figures for Idaho. Officials of the Idaho Legislative

Council, which provides research assistance to the Idaho legislature, do not expect to receive final census figures for Idaho until late in the 1981 legislative session, or even after the 1981 session. They expect to do the staff work for reapportionment during the summer of 1981. This staff work will be facilitated if the Bureau of the Census, as promised, produces census figures by precinct for more than two-thirds of Idaho's counties.

The Idaho legislature is expected to redistrict legislative boundaries either in a special legislative session in December 1981 or at the beginning of the 1982 legislative session. The legislators are expected to work in district caucuses as they did in 1971 and 1972. The major conflicts are not expected to be partisan battles, but rather disputes between legislators from adjoining districts, as each legislator tries to work out district boundaries that will be to his own political advantage.

Partisanship, Ethnicity, and Redistricting

While the urban (City and County of Honolulu) versus rural (the counties of Hawaii, Maui, and Kauai) conflict has played a prominent role in Hawaii's reapportionment efforts, partisanship has also been a factor. Hawaii's political party history is an interesting one of extremes--from 1900 to 1955 Hawaii was consistently and predominantly Republican; then, after a very brief period of two-party competition, Hawaii since the early 1960s has been very heavily Democratic.

A recent report on the voting behavior of Hawaii's electorate classified the election districts in terms of partisan voting. On the basis of the 1976 election returns, twenty-two of the twenty-seven House districts were classified as "Democratic" or "Heavy Democratic," only three were classified as "Republican," and the remaining two were classified as "Marginal Democratic." 16/ The validity and persistence of this pattern seem to be confirmed by the fact that, in the 1980 elections, the Republican party offered no candidates in thirteen House districts

classified as "Heavy Democratic" or "Democratic," and the Democratic party in turn did not field candidates in two House districts which were identified as "Republican." This suggests that the political parties are well aware of their areas of voting strength, and that the reigning Democrats, recognizing the easily identifiable pockets of Republican concentration, have neatly circumscribed and isolated them as self-contained units.

But there remains in Hawaii a persistent tendency toward "personality" as opposed to "party" politics. This can most readily be observed in statewide elections. Republican Hiram Fong's success in being elected to the U. S. Senate is an example of this phenomenon. And while Hawaii was the only Western state to cast its electoral votes for Jimmy Carter in 1976, the victory over Gerald Ford was by a margin of only 7,372 votes, or two percent of the votes cast for President.

Thus, the Republicans have reason to pay special attention to congressional districting. Hawaii sends two members to the U. S. House of Representatives. The 1st Congressional District, in which Republican candidates tend to fare better, encompasses most of urban Honolulu. 17/ The rest of the City and County of Honolulu is combined with the other three counties to constitute the 2nd Congressional District. The larger population increases outside of urban Honolulu necessitated changing the congressional district boundaries in 1976. The Democratic party, in control of redistricting, chose to add the heavily Democratic districts in Central Oahu rather than the Republican districts of Windward Oahu to the 1st Congressional District. The Republicans promptly labeled this a "gerrymander." The battle will be renewed in 1981, as further changes in the congressional district lines will be required.

The population of Hawaii is ethnically the most diverse among the fifty states, and ethnic factors also play a role in Hawaii's politics. But ethnicity has rarely been mentioned as a factor in redistricting. No ethnic group has a majority in Hawaii,

and ethnic mixtures are common. The two largest groups, with approximately 30 percent each of the total population, are classified as "Caucasian" and "Japanese." The Caucasians are dominant in the Republican party; the Japanese and other "minorities" are identified with the Democratic party. As there have been relatively few complaints of partisan gerrymandering in Hawaii, even fewer have been those attributed to gerrymandering along ethnic lines. There is a conscious attempt to keep identifiable ethnic neighborhoods intact, and to observe the constitutionally-mandated criterion that: "Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided."

The 1980s

The reapportionment commission will convene and propose a new apportionment plan for Hawaii in 1981. It is likely that the new commission will continue to use registered voters as a population base. This being the case, we can determine what shifts are likely by comparing the 1978 registered voter distribution with that of 1972, the year used for the last reapportionment plan.

The reapportionment commission will for the first time have the task of redrawing congressional district lines. With only two congressional districts in Hawaii, it is necessary to assign a portion of the City and County of Honolulu to the other three counties to form the 2nd Congressional District. In the 1978 elections, the 1st Congressional District, which encompasses mainly Honolulu, had 10 percent fewer registered voters than the 2nd Congressional District. This was mainly due to the loss of population in the inner city and gains in the outlying areas. What portion of the present 2nd Congressional District will be assigned to the 1st Congressional District will be a sensitive issue in 1981, as it was in 1976, since the final determination will affect Republican hopes to win a congressional seat in Hawaii.

The evident reversal in the 1970s of the population drift from the rural counties (Hawaii, Maui, and Kauai) to the urban County of Honolulu will be significant to reapportionment in the 1980s. Whereas in 1972 Honolulu had 77.7 percent of Hawaii's total registered voter population, in 1978 it had 76.3 percent. During this same six-year period, there were appreciable population increases in the other counties. These gains for the rural counties may not be pronounced enough to take seats away from Honolulu, but they do indicate a reversal of the demographic trend by virtue of which Honolulu repeatedly gained legislative seats at the expense of the other counties.

The other major demographic change in Hawaii (as evidenced by registered voter figures) is in the City and County of Honolulu itself, where the inner-city districts show a loss of population and the suburban districts show significant increases. An analysis of the 1978 voter registration figures by House districts shows some absolute decreases in a few inner-city districts, and increases of over 50 percent in two suburban districts. Thus, the reapportionment commission of 1981 will probably have to draw new district lines for most of Honolulu's voting areas.

NOTES

1/ Holt v. Richardson, 238 F. Supp. 468, 470-71 (1965).

2/ Territory v. Tam, 36 H. 32, 35 (1942).

3/ Ibid., p. 36.

4/ Dyer v. Abe, 138 F. Supp. 220 (1956).

5/ Ibid., p. 233.

6/ 256 F. 2d 78 (1958).

7/ Holt v. Richardson, 238 F. Supp. 468 (1965); Burns v. Richardson, 384 U. S. 73 (1966); and Burns v. Gill, 316 F. Supp. 1285 (1970).

8/ For a view critical of the effect of Reynolds v. Sims on Hawaii's legislative process, see Robert Horwitz, "Reapportionment in the State of Hawaii --Considerations on the Reynolds Decision," in Representation and Misrepresentation, ed. Robert A. Goldwin (Chicago: Rand McNally, 1966), pp. 21-52.

9/ Guntert v. Richardson, 47 H. 662 (1964).

10/ For an analysis of events of this period, see the Norman Meller and Harold S. Roberts chapter on "Hawaii" in Impact of Reapportionment on the Thirteen Western States, ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), pp. 113-135.

11/ For a more detailed discussion, see Norman Meller, With an Understanding Heart: Constitution Making in Hawaii (New York: National Municipal League, 1971).

12/ However, the present state constitution continues to carry these provisions; the 1978 constitutional convention intended to delete these provisions, but the Hawaii Supreme Court ruled that, due to deficiencies in presenting to the public the proposed amendment to delete these provisions, the amendment was not validly ratified. Kahalekai v. Doi, 60 H. 324 (1979).

13/ Burns v. Gill, 316 F. Supp. 1285 (1970).

14/ Hawaii, Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission, Honolulu, July 16, 1973.

15/ Hawaii, 1978 Constitutional Convention, Standing Committee Report No. 46, Honolulu, August 23, 1978, p. 10.

16/ Daniel W. Tuttle, Jr., 1976 Hawaii Voting Behavior: A Background Guide to Some Significant Characteristics of Hawaii's (State) 234 Precincts (Honolulu: Public Affairs Advisory Services, 1978). The classification categories were: "heavy party" - 65 to 100 percent; "party" - 55 to 64 percent; and "marginal party" - 50.1 to 54 percent.

17/ Hawaii reverses the traditional linkage of the two major parties to urban and rural constituencies; i.e., the Republicans do better in urban Honolulu and the Democrats are strongest in the rural counties of Hawaii, Maui, and Kauai. The heavy unionization of agricultural workers in Hawaii by the International Longshoremen and Warehousemen's Union (ILWU), and the union's identification with the Democratic party, account for much of this voting pattern.

IDAHO

Neil D. McFeeley

H. Sydney Duncombe

History of Redistricting in the State

The 1863 Organic Act, which created the territory that included Idaho, read in part:

> An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be.

This idea of equality of representation continued in the framing of the state consitution in 1889, as the two-house legislature was apportioned according to the number of votes cast in the last election. Seats were not strictly allocated according to county boundaries, but no county was to have less than one representative to the lower house.

In 1890 the first state legislature met and reapportioned the state. However, the Idaho Supreme Court declared that reapportionment unconstitutional in 1893 because it denied fair representation to certain counties.1/ Starting in 1895 the legislature enacted new laws reapportioning the state; these laws were a change from the original apportionment by population because the Senate was now allocated by county.2/ This one-senator-per-county rule was made a constitutional requirement in 1912 (and not invalidated until a federal district court decision in 1965). The House of Representatives was to be apportioned generally according to population, first by a 1917 formula based on voting strength and then by 1933 and 1951 formulas based on population, but in all cases with a minimum of one seat per county. Although formally population-based, in reality the House until the 1960s

was largely representative of counties. The legislative redistrictings of the period managed to change the apportionment formula but retain the same number of seats per county, even though several urban centers were rapidly increasing in population.

County representation in both the House and Senate continued throughout the 1950s. The population of Ada County (Boise), the most populous in the state, had increased some 32 percent in the decade of the 1950s, and by the 1951 apportionment formula Ada County was allotted six seats in the lower house. Yet there were still great inequities in representation. The minimum percentage of the population needed to elect a majority in the Senate was 16.6 percent and in the House 32.7 percent. The maximum disparity of population from the population "ideal" for equal representation was 51.7 percent in the Senate; the largest Senate district had over 93,000 residents, while the smallest had 915. In the House, the disparity went to 91.2 percent, as the district populations ranged from 15,576 to 915.3/ As a result of these inequities, an Ada County resident brought suit in state court, alleging that this apportionment violated the state constitution by unfairly discriminating against populous counties. Although succeeding in the lower state court, which ruled that Ada County should have nine House seats, the plaintiff's claim was rejected in 1962 by the state Supreme Court by a 3-2 vote which upheld the 1951 formula.4/ However, opponents of the system of apportionment sought relief in the federal courts and began a case which wound up reaching the U. S. Supreme Court several different times. This case was Hearne v. Smylie, and it was brought by residents of Idaho counties with urban centers, who argued that their counties were unconstitutionally underrepresented according to the decisions of the Supreme Court in Baker v. Carr and Reynolds v. Sims.

While Hearne v. Smylie was proceeding through the federal courts, the 1963 Idaho legislature enacted a new apportionment formula which gave more weight to population in allotting seats for the lower house. It allotted one representative for

up to the first 5,000 persons in a county and one more for each additional 10,000. This increased the number of sets in the House, and gave more seats to populous counties, but still granted thirty-one of the forty-four counties (including thirteen with less than 5,000 people) one representative each.

The mid-1960s was a period of turmoil for Idaho reapportionment, just as it was a period of transition across the nation. The legislature elected in 1964 debated reapportionment not only in regular sessions, but also in three special sessions devoted to the topic. The major conflict continued to be between the urbanizing counties the rural counties with small populations, which were "legally" protected by the state constitutional requirement that the Senate should have one member per county and the House no less than one per county. Meanwhile, the Hearne v. Smylie case was proceeding in the federal courts. Early in 1964, a three-judge district court dismissed the case, arguing that there were no grounds to grant equitable relief; 5/ on appeal, however, the U.S. Supreme Court, a week after announcing its decision in Reynolds v. Sims, reversed the Idaho decision and remanded the case.6/ The district court then stayed the suit while waiting for the pending legislative reapportment. That 1965 redistricting law adopted the federal analogy and used counties as the basis of Senate membership while using population as the basis for the House. The House was more equally apportioned than it had been for many decades, although the population disparities at the extremes were 16.8 percent below the population mean and 24.1 percent above the mean. As for the Senate apportionment, however, the 1965 scheme "amounted to a more complicated method of achieving virtually the same unequal senate apportionment as previously. It was patently a delaying tactic."7/

The 1965 Senate apportionment plan was struck down by a three-judge district court on December 20, 1965, in a decision that declared the Idaho constitutional provisions requiring one senator per county to be unconstitutional as violative of the

equal protection clause. The court decreed that only at-large elections could be held until a new law was passed. A special legislative session soon was convened, and in 1966 the legislature passed the so-called "35-70 plan." This plan divided the state into thirty-five districts, roughly equal in population, from which one senator and two representatives would be chosen. Counties were divided, and some counties lost their Senate seats. Although there remained some population disparities, the plan approximated population equality, and the district court upheld the plan.8/

Besides the formal changes in districts, the 1966 reapportionment plan had some other effects on the legislature. For instance, it seemed to influence the occupational pattern of legislators, at least in the Senate. The percentage of farmers and ranchers remained about the same in the House but declined in the Senate, while the percentage of businessmen in the Senate increased considerably. However, the party composition of the legislature did not change much after 1965, and the Republican party remained in control of both houses. The policies and philosophhy of the legislature did not change greatly, either.

Redistricting in the 1970s

Idaho entered the 1970s with thirty-five legislative districts, each represented by one senator and two representatives. As the legislature met in its 1971 regular session, the major issue of reapportionment appeared to be how best to adjust legislative district boundaries to meet shifts in population. There was broad bipartisan support for redistricting but much concern about its effects on individual districts and hence on the re-election chances of incumbent legislators.

The U.S. Bureau of the Census made available the results of the 1970 Idaho census early in 1971, and the governor called a special session on March 22, 1971, to reapportion the legislature, redraw the congressional district boundaries, and bring county and state party organizations into line with the "one man-one vote"

principle.10/ The legislators met in area caucuses to redraw the district boundary lines so that the districts were as nearly equal in population as possible. Legislative staff assisted with population figures, but did not develop recommendations.

Problems developed in a few urban areas (Pocatello, Jerome-Twin Falls, and Boise) where redrawing district boundaries could seriously affect the re-election chances of particular legislators. Three incumbent Republican senators ended up in one legislative district in the Boise area, and the district lines were redrawn so that they did not have to run against one another. In several areas, including Pocatello and its surroundings, the redrawing of district boundaries seemed likely to affect whether Republican or Democratic legislators would win election in 1972. In the Pocatello area the redistricting preserved a safe Democratic district in the city but also preserved safe Republican seats in surrounding counties. There was a heated partisan battle over these district lines; the Republicans had the advantage of a majority in both houses of the legislature, but Democratic Governor Cecil Andrus threatened a veto if Republican legislators took too partisan a stand. In most districts, however, the boundary lines were agreed upon without partisan battles, and a redistricting bill was passed without much controversy. The population disparity among districts was 19 percent at the extreme, however, and Governor Andrus, concerned both with this disparity and with "accusations that the measure involves gerrymandering," allowed the bill to become law without his signature.11/

The question of population disparity, as well as a question concerning the inclusion of noncontiguous districts in the plan, were raised before a three-judge district court in Summers v. Cenarussa.12/ That court upheld the Idaho statute: the disparity did not contravene the one man-one vote requirement, nor did the inclusion of noncontiguous territory in the same district invalidate the plan. The case was appealed to the U.S. Supreme Court, but before a decision was reached the 1972 legislature acted to redistrict in H.B. 568. The district boundary lines between

Districts 6 and 7 were adjusted so that there was no longer a precinct in District 7 that was not contiguous to the rest of the district. The boundary between legislative Districts 33 and 35 was also redrawn, so as to reflect the increase in population in the Pocatello area.

However, the Supreme Court felt these changes were not sufficient. It reversed the district court decision in Summers v. Cenarussa, implying that the population disparity was too extensive.13/ The case was remanded to the district court, which retained jurisdiction until the Idaho legislature passed a revised reapportionment statute in 1974.

The U.S. district court had set a deadline of early 1974 for a new statute. The legislature in its 1974 session enacted H.B. 538, which addressed the concerns of the Supreme Court. There were too few people in legislative District 9, so the legislature transferred some of the people and territory from the growing District 14 into that district. Legislative District 22, which included Mountain Home Air Force Base, was too large in population because many of the servicemen had not been counted as residents of Idaho (as they should have been) in the previous apportionment. The 1974 legislature distributed this excess population among adjoining districts by redrawing district lines. The previous redistricting plan had not taken into account some of the student population at Ricks College in Rexberg, so the legislative district boundaries in that area were redrawn to take into account all students and to redistribute the area population.

Since 1974, there have been no further legislative district boundary changes in Idaho. According to the 1979-80 Book of the States, the average number of people per Senate seat is now 20,371, and per House seat 10,186. All legislative districts in 1979-80 deviated less than 5.5 percent from the average population per seat.

Redistricting in the 1980s

The redistricting process after the 1980 census will probably be much like the process after the 1970 census. There will probably not be an attempt to change the current system of thirty-five legislative districts with one senator and two representatives per district. Increasing the number of senators or representatives would require some costly refurbishing of legislative chambers. Decreasing the number of districts and, consequently, making significant boundary changes in districts, would be opposed by many legislators as hurting their chances for re-election.

Idaho does not have a deadline set by statute for reapportionment after each decennial census. Knowing this, the U.S. Bureau of the Census has not given high priority to completing its census figures for Idaho. Officials of the Idaho Legislative Council, which provides research assistance to the Idaho legislature, do not expect to receive final census figures for Idaho until late in the 1981 legislative session, or even after the 1981 session. They expect to do the staff work for reapportionment during the summer of 1981. This staff work will be facilitated if the Bureau of the Census, as promised, produces census figures by precinct for more than two-thirds of Idaho's counties.

The Idaho legislature is expected to redistrict legislative boundaries either in a special legislative session in December 1981 or at the beginning of the 1982 legislative session. The legislators are expected to work in district caucuses as they did in 1971 and 1972. The major conflicts are not expected to be partisan battles, but rather disputes between legislators from adjoining districts, as each legislator tries to work out district boundaries that will be to his own political advantage.

NOTES

1/ Ballantine v. Willey, 3 Idaho 496 (1893).

2/ Much of this history is drawn from Bernard C. Borning, "Idaho," in Impact of Reapportionment on the Thirteen Western States, ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), pp. 146-163.

3/ These data are taken from Robert G. Dixon, Jr., Democratic Representation (New York: Oxford University Press, 1968), p. 600, and National Municipal League, Compendium on Legislative Reapportionment (New York: National Municipal League, 1962), S.V. "Idaho,"

4/ Caesar v. Williams, 84 Idaho 254 (1962).

5/ 225 F. Supp. 645 (1964).

6/ 378 U.S 563 (1964).

7/ Borning, "Idaho," p. 148

8/ Order in Hearne v. Smylie, Civil No. 3815 (D. Idaho 1966).

9/ Taken from Borning, "Idaho," p. 159.

10/ The county party organizations at the time were composed of one committee person from each precinct. Precincts varied in population from twenty to 900 people, and rural residents from the sparsely populated precincts controlled many of the county assemblies and county central committees. The representives chosen by the rurally dominated county party organizations tended to dominate the state party organizations.

11/ Bernard C. Borning, "Equal Representation in Idaho," paper presented at the meeting of the Rocky Mountain Social Science Association, Laramie, Wyoming. April 1973.

12/ 342 F. Supp. 288 (1972).

13/ Summers v. Cenarussa, 413 U.S. 906 (1973).

MONTANA

Ellis Waldron

The 1972 Montana constitution took the Treasure State one critical step beyond arrangements in other states that use commissions in decennial reapportionment. The Montana districting commission, having heard legislative reaction to its proposals, can simply promulgate its plans with no requirement of legislative approval. 1/

The constitution also requires election of all legislators from single-member districts. The commission can establish between eighty and 100 districts for election of representatives, with senators elected from paired House districts. The commission also defines the districts for election of the state's two U.S. representatives.

In these basic arrangements the Montana districting commission served as a prototype for the model reapportionment devices recommended for state adoption by Common Cause in 1977. 2/

Revision of Montana's 1889 statehood constitution became possible after judical reapportionment in 1965 greatly reduced rural political power in the legislature. An interim committee of the 1967 legislature found half of the state charter to be outdated; the 1969 legislature commissioned further studies, and the 1971 session submitted a call for a constitutional convention to popular vote. In 1972, urban voters overrode rural opposition to ratify a new state constitution by the narrowest of margins.3/ The new dispensation was meant to write an end to the state's long and bitter experience with the structural, systematic gerrymandering that had been built into the 1889 constitution and aggravated by statutory policy dating from 1895.

Prior to statehood, both chambers of the Montana Territorial Legislative Assembly (1864-89) were reapportioned each decade according to population of the counties. In the 1880s, railroads opened the silver and copper deposits of southwestern Montana to large-scale exploitation, and by the time Congress authorized a convention in 1889 to write a constitution for statehood, Butte, Helena, and the neighboring mining communities had come to truly dominate the politics of the territory.

The 1889 constitutional convention proposed taxation favorable to the mining interests, and in response delegates from the less populous agricultural counties demanded (and got) disproportionate legislative representation as their price for support of the statehood charter. As it turned out, Montana was the first state to write a "little federal" scheme of legislative representation into its constitution. 4/ Each county was to have a single senator, regardless of its population, but a state census midway between federal censuses was to permit two apportionments each decade, so that representation in the House of Representatives would be closely aligned to population. 5/

Fifth-year reapportionments for the lower chamber were, of course, impracticable. Instead, the 1895 legislature approved a statute regarding House membership that assured ever-deeper disproportion between population and legislative representation across the next seven decades, until the judicial reapportionment of 1965. 6/ The new law gave each county one representative regardless of its population; only the remainder of the representatives would be apportioned to the more populous counties, by a ratio that was revised from time to time. Ostensibly, the upper limit on House membership was the number for whom desks could be crowded into a chamber built to seat about seventy-five members.

The original sixteen counties of 1889 had divided into twenty-eight by 1910. Meanwhile, another railroad had crossed the state north of the Missouri River. Jim

Hill's "High Line" drew thousands of farmers from the Middle West and Europe to turn the virgin plains for grain culture just in time to take advantage of booming wheat markets during World War I. In 1911, the legislature forfeited control over its own future size by allowing local-option formation of new counties. 7/ Within a decade the number of counties increased from twenty-eight to fifty-four--each receiving a senator and at least one representative. By 1921 there were fifty-four senators and 108 representatives, with only half of the latter allocated to counties according to population. In these circumstances, the senator from the most populous county represented thirty times as many constituents as the senator from the least populous county, and senators representing only 21 percent of the population could muster a voting majority. Two more counties were created in 1925 before the number of counties was stabilized.

Montana gained a second U.S. representative in the 1911 congressional reapportionment. Progressivism had split Republican ranks in Montana as elsewhere, so failure of the legislature to divide the state into two districts for congressional elections of 1912, 1914, and 1916 amounted to an attempted Democratic gerrymander; it improved chances that statewide Democratic pluralities would elect both U.S. representatives. Nonetheless, one of the two House seats went to a Republican in 1914 and 1916, and a strongly Republican legislature in 1917 established districts for congressional elections whose boundaries remained unchanged until 1965.

Drought and the end of World War I brought a collapse of wheat prices and a protracted economic crisis to the fledgling agricultural counties of central, northern, and eastern Montana. Many of them were losing population even before their county courthouses were completed. But legislative malapportionment had been built into Montana's political system by the combination of constitutional provisions for the Senate and statutory policy for House apportionment, so those

who stayed on in the newer agricultural counties actually gained legislative representation with each reapportionment. They pressed their advantage still further in 1941 by reducing House membership from 102 to ninety. The number of representatives increased to ninety-four in 1953, but in the quarter-century before judicial reapportionment in 1965 no Senate seats and only two-fifths of the House seats were apportioned according to the population.

In 1960, twenty-one of Montana's fifty-six counties had fewer than 5,000 residents, while 40 percent of the state's population lived in the six most urbanized counties. By any measure of equitable representation, the Montana legislature was one of the most seriously malapportioned among the legislatures of the fifty states. On the eve of judicial reapportionment in 1965, the senator from Yellowstone County (Billings) represented eighty-eight times as many constituents as the senator from Petroleum County, which had fewer than 1,000 residents. Senators representing less than 17 percent of the population could muster a voting majority. In the House, members representing 37 percent of the population could put together a voting majority, and each representative of the most populous county spoke for fourteen times as many constituents as the representative from Petroleum County, the least populous. 8/

The fact that Montana's urban population was distributed among five to seven cities of modest size had important consequences for legislative policy. The modest urban presence in the legislature was seriously divided, with each urban delegation representing a different kind of community with distinctive problems and needs. No tradition of a common urban interest existed in the state or in the legislature. Difficulties with street maintenance, a lack of adequate funds for urban snow removal, and an inability to finance a variety of urban amenities were only the most obvious problems for which cities found little sympathy in the legislature. 9/

The Supreme Court's 1964 reapportionment cases struck down "little federal" arrangements in state legislatures; Montana's Senate was clearly unconstitutional, and malapportionment of the House exceeded allowable margins of variance from equitable representation.

A week after the 1965 legislature convened, a three-judge federal district court took judicial notice of "invidious discrimination" in the election of legislators and gave the legislators the balance of their sixty-day session to do something about it. 10/ Standing committees on reapportionment were established, with notably few members from urban centers. A constitutional amendment was proposed to clear away obstacles to eventual equitable reapportionment. 11/ Nearly a dozen reapportionment plans were introduced but none found favor by session's end. Federal district Judge W. D. Murray advised the legislative leaders in a conference telephone discussion that he would do the job for them if they failed. With palpable relief they forthwith adjourned the session. Two months later, in May 1965, the court announced its reapportionment of the state legislature. 12/

This 1965 Montana redistricting was the first actual judicial reapportionment of a legislature using a court-drawn plan. Fifty-five senators (one less than before) and 104 representatives (ten more than before) would be elected from thirty-one districts comprising one or more whole counties. The long-standing preponderance of single-member districts was abandoned, as thirty-five of fifty-five senators and ninety-three of 104 representatives would be elected from multiple-member districts. In the more populous counties, voters would choose from among twenty to thirty-six candidates on a "long ballot" for legislative seats. The 1967 legislature elected from these judicially-contrived districts found them good and enacted them into statute for elections of 1968 and 1970. 13/

In subsequent decisions the federal court equalized population of Montana's two congressional districts by shifting seven counties from the Eastern (2nd) to the

Western (1st) District. 14/ The court also ordered reapportionment of wards in Butte for aldermanic elections. 15/

Substantial executive reorganization and a move for general constitutional revision developed in the wake of the 1965 reapportionment. The 1967 legislature commissioned a study of the constitution which found only half of the charter to be "adequate." The 1969 legislature submitted a call for a constitutional convention to the voters in 1970 and created a commission to draft proposed constitutional changes. Voters approved a convention by a 65 percent majority, and the 1971 legislature struggled with the problem of reapportionment for election of convention delegates. 16/ The product of a first special session did not satisfy the federal district court, 17/ but the court accepted the reapportionment proposed by a second special session just days before the filing deadline for a constitutional delegate primary in September. 18/ One hundred delegates were elected from twenty-three districts, most comprising one or more whole counties; segments of five counties were attached to others; from two to twelve delegates were elected in each district. These districts also served for election of legislators in 1972; all representatives and all but ten senators were elected from multiple-member districts, with thirteen of the districts electing from two to six senators each. 19/

The multiple-member districts used to achieve equitable population ratios in the 1965 and 1971 reapportionments were criticized for two obvious features: the long legislative ballot in populous counties and the built-in gerrymander favoring the dominant party in many counties, some Democratic, some Republican. It was a systemic gerrymander rather than a deliberate partisan contrivance; Republicans in Billings and Democrats in Butte joined forces to defend the arrangement. Dissatisfaction with the multiple-member districts undoubtedly fostered the decision of the constitutional convention to resolve apportionment by the exclusive use of single-member districts.

The almost total failure of the legislature to reapportion itself equitably clearly contributed to the decision by the constitutional convention to give that responsibility to a five-member citizen commission. Under the new constitution, the majority and minority leaders of each legislative chamber designate a commission member who may not be a public official, and those four select a fifth person to serve as chairman--if they can. In 1973 and again in 1980 the four commissioners could not agree on a fifth, so the state Supreme Court by majority vote designated the chairman. In 1973 the chairman was a Great Falls attorney of moderate Democatic affiliation; in 1980 the chairman was an attorney and respected former Democratic state senator from Sanders County who had served on the commission that prepared for the 1971 constitutional convention.

The Montana districting commission is required to report its districting plans to the legislature "by the 10th legislative day of the first regular session after its appointment or after the census figures are available." 20/ Anticipating (correctly) that final census figures for enumeration districts would not be available in time for the commission to report to the 1981 legislature, the 1979 session failed to appropriate funds for operation of the commission, leaving the responsibility to the 1981 session. In the 1980 elections, Republicans gained majorities in both houses of the legislature for the first time since 1953, but this presumably will have little effect on the work of the commission that was constituted in 1979.

The preliminary census figures suggest that redistricting in the 1980s will have only a modest effect on partisan political strength in the legislature. Adjustment of the line between the two congressional districts may reinforce slightly the tendency of the Eastern District to elect a Republican and of the Western District to elect a Democrat to the U.S. House of Representatives. Two or three east-slope counties, with an aggregate population of about 15,000, will probably be shifted from the Western to the Eastern District, where they had been for a half-century until the redistrictings of 1965 and 1971.

For state legislative politics in Montana, it is useful to think of the state as comprising three regions, each having about a third of the 1980 state population. Assuming continuance of 100 single-member House districts, the results of the new plan are likely to be as follows for the three regions:

1) Eleven Pacific-Slope counties (Columbia River headwaters): mountainous, scenic, livelihood diversified in timber products, mining, tourism, and mixed agriculture: net gain of about 37,000 population since 1970. This region should retain its present thirty-two House seats and gain one by the 1980 reapportionment. Within the region, the historic mining centers of Butte and Anaconda, both strongly Democratic, will lose three or four seats to Missoula, Ravalli, Flathead, and Lake Counties. This shift of seats could substantially benefit the Republican party.

2) Twenty northern counties (Missouri River Basin, including Lewis & Clark County but not the southwestern headwaters): grain and livestock culture and state government (Helena): net gain of only 9,500 population since 1970. The region should retain thirty-three of the thirty-five seats allocated to it in the 1974 districting arrangement, while losing one seat to the Pacific-Slope region and possibly another to the southern counties. Within the region, Helena, the capital, gained almost 10,000 population in the decade, offsetting a net loss in the rest of the region; one seat may shift from Great Falls to the capital, with uncertain impact on the partisan alignment of legislators in the region.

3) Twenty-five southern counties (Missouri River headwaters, Yellowstone and Musselshell River Basins): livestock, coal, oil, and tourism: net gain of almost 43,000 population since 1970, mostly around Billings and Bozeman. The region should retain the thirty-three house seats allocated to it in 1974, possibly gaining one from the northern counties. Within the region, Yellowstone (Billings) and Rosebud Counties may gain two or three seats between them at the expense of rural counties in the region, while Bozeman may gain one seat. The partisan impact of

this shift would seem to favor Democrats, because the influx into the region of oilfield and coal workers from central and southern states in recent years has reduced Republican dominance in the lower Yellowstone Valley, while Bozeman, the seat of Montana State University, is now less solidly Republican than it was several decades ago.

It should be pointed out, however, that the continuing shift of population from rural counties to urban centers in Montana may not strengthen Democratic representation in the degree that might be expected. The weakening of the Republicans by oil and coal development (and accompanying unionization) in the southeastern counties has been offset by the decline in Democratic strength in the northern counties since the New Deal period; along the so-called "High Line," grain farming has evolved into large-scale corporate agribusiness, and this development has strengthened the GOP. The decline of population and of traditional Democratic clout in the copper towns of Butte and Anaconda has also been significant. Union-based Democratic strength associated with timber products in the western counties has been offset in some measure by the Republican predilections of senior citizens moving into retirement communities in Ravalli County and the Flathead Lake region.

As has usually been the case in the past, the volatility of Montana's economic circumstances, and the mobility of voters among the sparsely populated subregions of this vast state, may keep the partisan balance in congressional, state, and legislative elelctions closely attuned to national trends, regardless of legislative districting practices.

The task of carving out 100 "compact and contiguous" election districts of about 7,400 population each (plus or minus perhaps 10 percent), by the aggregation of census enumeration districts whose populations frequently range between 2,000 and 4,000 in the major population centers, is made even more difficult by physical

and climatic considerations within the state as well as by the need to pay some attention to conventional political boundaries. The Continental Divide, not far from the Idaho border, imposes real limitations on the structure of legislative districts in the western part of the state. In central Montana there are only two all-weather crossings of the Missouri River along more than 200 miles of its course. In the mountainous terrain of western Montana, a district that might resemble a barbell on the map could make considerable sense for purposes of internal communications. Conversely, a "compact and contiguous" district that joined two physically separated mountain valleys (for example, Ravalli and Granite Counties, which have no direct all-weather road between them) might be the most obvious sort of partisan gerrymander.

This is meant to suggest that the conventional definition of a gerrymander, as an odd-shaped district designed to cluster the strength of one party or to dissipate the strength of another, seems not to have much relevance in Montana. On the other hand, the state has sometimes had serious difficulties with the more sophisticated, structural kinds of gerrymander involved in multiple-member districts and per-unit allocations of legislative representation.

NOTES

1/ Montana, Constitution (1972), sec. 14 (3): "The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its final recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved." Organization and functions of the commission were established by the Montana Codes Annotated 5-1-101-111; 1973 Laws, chap. 21; 1977 Laws, chap. 204.

2/ Bruce Adams, "A Model State Reapportionment Process: The Continuing Quest for 'Fair and Effective Representation'," Harvard Journal on Legislation 14 (1977): 825, 854 n. 109, 869, 896.

3/ The vote was 116,415 for and 113,883 against; voters in twelve counties, mostly urban, favored ratification; in forty-four counties, mostly rural but including Silver Bow (Butte), voters opposed ratification. See Ellis Waldron and Paul B. Wilson, Atlas of Montana Elections, 1889-1976, University of Montana Publications in History (Missoula, 1978), pp. 259-63.

4/ Ellis Waldron, "Montana," in Impact of Reapportionment on the Thirteen Western States, ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), p. 182 n. 1.

5/ Montana, Constitution (1889), art. VI (prior to 1965 amendment).

6/ Montana, Political Codes (1895), secs. 112, 113.

7/ The "Leighton Act," 1911 Montana Laws, chap. 112 (sub S.B. 35).

8/ Ellis Waldron, "How the Montana Legislative Assembly Became Malapportioned," Montana Business Quarterly 3 (Winter 1965): 60-61.

9/ Ellis Waldron, "Montana," in Rocky Mountain Urban Politics, ed. J. A. Emenhiser (Logan: Utah State University, 1971), pp. 76, 97.

10/ Preliminary Order, Herweg v. 39th Legislative Assembly (January 13, 1965); see 1965 House Journal, pp. 48-52, and 1965 Senate Journal, pp. 34-37.

11/ Montana, Constitution (1889), art. VI, secs. 2 and 3, as amended by 1965 Laws, chap. 273, ratified November 8, 1966.

12/ Ellis Waldron, "100 Years of Reapportionment in Montana," Montana Law Review 28 (1966): 12-13; Herweg v. 39th Montana Legislative Assembly, 246 F. Supp. 454 (1965).

13/ 1967 Laws, chap. 194.

14/ Roberts v. Babcock, 246 F. Supp. 396 (1965).

15/ Herweg v. Butte, Civil No. 1232 (D. Mont., Butte Div., 1965), reprinted, Montana Public Affairs Report, No. 10 (Missoula: Bureau of Government Research, University of Montana, March 1972).

16/ Waldron and Wilson, Atlas of Elections, pp. 241, 248

17/ Wold v. Anderson, 327 F. Supp. 1342 (1971).

18/ Wold v. Anderson, 335 F. Supp. 952 (1971), noting "imminence of the elections for the selection of delegates."

19/ Waldron and Wilson, Atlas of Elections, p. 237, display the districts; each district elected twice as many representatives as senators.

20/ Montana Codes Annotated 5-1-109. The districts established in 1974 are displayed in Waldron and Wilson, Atlas of Elections, pp. 272-73.

NEVADA*

Eleanore Bushnell

Nevada, in company with most states in the West,1/ fought against, delayed compliance with, and finally half-heartedly acceded to apportionment standards based on population as set down by the United States Supreme Court. Hostility to the Court's rulings came not just from Nevada's rural residents and from the Republican party, the two groups standing to lose power and influence because of the new requirements, but also from urban residents and from the Democratic party, even though these were the groups destined to gain legislative strength following a population-based apportionment.

Although best known for the glitter of its tourist industry -- twenty-four-hour gambling, entertainment by Hollywood stars, and visits by various foreign and domestic potentates -- Nevada houses a sedate, tradition-centered body of residents. The "typical" Nevadan embraces conservative political, social, and economic policies and wants his state to be run in accordance with these principles.

Before court-ordered reapportionment, legislative authority had long been exercised by a group of veteran legislators who, whatever their party, shared a common outlook. The well-entrenched majority displayed satisfaction with the existing distribution of power -- a rurally-dominated and Republican Senate apportioned on the "little federal" plan (one senator per county), and a Democratic Assembly in which rural counties held seats far out of proportion to their populations. This apportionment pattern assured continuance of fiscally conservative habits.

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* Andrew P. Grose, Research Director, Nevada Legislative Counsel Bureau, and J. Kenneth Creighton, Research Analyst, supplied information for this essay. Their help is gratefully acknowledged. Mr. Grose also read the manuscript in draft form; he is warmly thanked and fully absolved of responsibility for any errors of fact or interpretation.

The confidence of most residents and legislators in conservative-rural values, plus a strong and persisting bias against national interference in a matter perceived as a purely state concern, led Nevada to battle fiercely against court-ordered reapportionment and to employ a myriad of devices to evade the law and stave off the inevitable.

Since 1970, opposition to population-based apportionment has dwindled, in part because the system is now a fait accompli and in part because urban control of the legislature has not resulted in any conspicuous changes in legislative policy-making (thus easing anxiety that an urban-based legislature would engage in reckless social programs and wild spending). Disputes in the impending 1981 redistricting and reapportionment will center on the best way to preserve incumbents' seats and on whether to increase the size of the legislature. The latter question arises from the desire of the rural counties to retain their four senators and eight assemblymen (see maps, page 14), a number that cannot be justified by the 1980 census unless the membership of both houses is increased, and probably not even in that event.

Apportionment before 1960

Nevada's original constitution provided that the federal census "shall serve as the basis of representation in both houses of the legislature."2/ In 1950 an amendment required Assembly redistricting following each census3/ and allotted one senator and at least one assemblyman to each of the seventeen counties. The amendment failed to repeal the clause requiring apportionment of each house according to population. The total incompatibility of these two parts of the constitution did not disturb the executive or legislative leadership and went largely unnoticed by the public.

Probably no uneasiness was generated by the contradictory provisions because from 1917 onward the Senate, in direct contravention of the constitution, had been

composed of one senator from each county. And from the beginning of state government (1864) each county had been allowed at least one assemblyman. The legislature had established this illegal apportionment by ordinary statute and without arousing any protests. Thus, the 1950 amendment embedded in the constitution the pattern followed for so many years.

Other constitutional provisions affecting legislative apportionment stipulate that the aggregate number in both houses may not exceed seventy-five4/ and that the size of the Senate shall not be less than one-third nor more than one-half the size of the Assembly.5/ The present Assembly has forty members, the Senate twenty.

The 1961 Apportionment

The consequence of allowing one senator and at least one assemblyman from each county put Nevada close to the bottom among the fifty states in the representative quality of its legislature. Before the Reynolds decision6/ thrust reapportionment on a reluctant state, eight percent of Nevada voters could, theoretically, elect a majority of the senators, and 29 percent could elect the Assembly majority. Obviously, the small counties held a grossly disproportionate share of legislative power.

Another result of Nevada's severe malapportionment allowed Republicans to maintain control of the Senate from 1937 until 1965 even though registered Democrats outnumbered registered Republicans throughout the period. Democrats exerted their numerical superiority in the Assembly, which they controlled by majorities ranging from 64 to 70 percent in the thirty years before "one man-one vote" became the law.

In addition to Senate apportionment based solely on geography and Assembly apportionment giving unwarranted strength to the "cow counties," malapportionment

in Nevada was also abetted by the state's rapid growth. Nevada for many years has been among the fastest growing states in the Union, with population increases of 78 percent between 1950 and 1960, 71 percent between 1960 and 1970, and 63.3 percent in the past decade. This growth has occurred mainly in the environs of Las Vegas and Reno. In the absence of reallocation of legislative seats, such rapid enlargement of the population, combined with urbanization, magnified the already existing distortion of the representative pattern.

Nevada's last statewide apportionment before Reynolds dismantled the county-based system took place in 1961. For the first time the two big counties, Clark (Las Vegas) and Washoe (Reno), with 75 percent of the population, attained a majority in the lower house; their combined total of 57 percent of the Assembly seats after 1961 represented a distinct improvement over the 40 percent the two large counties had held in the preceding session.

Although the plan adopted in 1961 scarcely approached a representative scheme reflecting population, and left the "little federal" system in the Senate undisturbed, the plan did indicate awareness by the legislature that population-based apportionment was becoming a significant nationwide issue, one that Nevada might have to recognize and make some adjustment to, however modest.

Table 1
The Legislature after the 1961 Apportionment

County	Population (1960 Census)	Percent of State's Population	--Seats-- Senate	Assembly	Percent of Seats in Legislature
Clark (Las Vegas)	127,016	44.6	1	12	24.0
Washoe (Reno)	84,743	29.8	1	9	18.5
Elko	12,011	4.2	1	2	5.5
Remaining 14 counties	61,508	21.4	14	14	51.8
TOTAL	285,278	100.0	17	37	99.8

Source: Compiled by author from data found in U. S. Department of Commerce, Bureau of the Census, Final Report, PC (1)-A-30 (1971), p.7.

Impact of the United States Supreme Court Decisions

Before the newly apportioned legislature met in 1963, the first statement that the national judiciary might intervene in a state's apportionment scheme was delivered. In Baker v. Carr,7/ the U. S. Supreme Court opened a wide crack in the once impregnable wall that had kept state apportionment cases from reaching federal courts. The Court ruled that the equal protection clause of the Fourteenth Amendment afforded grounds for persons to challenge a state's apportionment before the national judiciary. In Nevada, the AFL-CIO, relying on the Baker ruling, brought suit in federal district court to force a change in the state's pattern. This effort, denounced by both Democratic and Republican leaders, was dropped by the AFL-CIO and did not receive a hearing in court.8/ The 1963 legislature adjourned without acting on reapportionment.

The 1965 Redistricting

But if Nevada could overlook Baker, it could not disregard the 1964 decisions, particularly Reynolds v. Sims.9/ Flora Dungan, a Democrat and a two-term member of the Assembly from Clark County,10/ filed suit in 1964 challenging the apportionment formulas of both the Senate and the Assembly. The federal district court announced that it would hear the suit unless the legislature, sitting in its regular session in January 1965, reapportioned itself in conformity with the Reynolds command of "one man-one vote."

Disregarding this straightforward warning, the 1965 session failed to act. Most of the legislators hoped that somehow the Supreme Court decision could be reversed.11/ They adopted a resolution asking Congress to propose a Constitutional amendment allowing apportionment of one house of a state legislature on a basis other than population. The resolution passed the legislature by a large majority: 28-7 in the Assembly and 14-1 in the Senate. All eight "no" votes were cast by Democrats representing either Clark or Washoe County; every Republican and every legislator from a "cow county" recorded on this roll call voted for the resolution.

Only one substantive apportionment bill received serious consideration in the 1965 session. It proposed a seventeen-member Senate composed of seven senators from Clark County, five from Washoe County, and five from the rest of the state. The bill was defeated 18-17 in the Assembly. Of the seventeen favoring the bill, fifteen were Democrats. Five of the eighteen "no" votes came from Republicans representing Washoe County, even though that county would have acquired four additional seats in a Senate apportioned according to population. Residence, then, proved unpersuasive. Party, basic political conservatism, and resentment at outside interference in a matter considered to be the state's private business, all joined to control the decision and, thereby, cost Nevada the chance to determine its own future legislative pattern.

The federal district court, unsurprisingly, did what it said it would do. In Dungan v. Sawyer,12/ having noted the refusal of the legislature to act and the gross population disparities under the existing apportionment system, the court ruled the system illegal. It specifically outlawed as unconstitutional the plan that allowed one senator and at least one assemblyman per county, and it blamed the 1950 amendment for creating the invalid apportionment. The court ordered the governor to convene a special session by October 30, 1965, in which the legislature's sole purpose would be to enact a reapportionment plan. Such plan must be submitted to the court by November 20; should the plan be found invalid, the court would either reapportion the state itself or would call for at-large elections.

Governor Grant Sawyer, a Democrat, summoned the special session; following the custom of most governors, he stayed aloof from the apportionment struggle. Anger, dismay, spite, ill humor, and overt hostility pervaded the special session. After considering more than twenty plans for reapportioning, attacking the Supreme Court, quarreling with one another, proposing to fly the flag at half-staff, advancing a proposition to make federal judges elective, and doing almost everything imaginable to postpone meeting the problem, the legislature finally and grudgingly brought forth a plan based essentially on population.

The new scheme established a twenty-member Senate and forty-member Assembly. Clark County (Las Vegas) remained underrepresented, but far less so than before. The "cow counties" remained overrepresented by about 14 percent in both houses; the tilt in their favor, however, had been greatly reduced. Under the 1965 arrangement, 49.7 percent of the voters could theoretically elect a majority of the Senate, 46.8 percent a majority of the Assembly -- a dramatic improvement over the eight percent and 29 percent prevailing before the court stepped in. Even so, the federal district court, in accepting the new apportionment, recognized that the product of the special session did not represent "the fairest and best plan that the Nevada Legislature could possibly enact."13/

After the Dungan decision, apportionment geared to population became a fact; the pattern is now established, and future challenges to "one man-one vote" seem improbable. Nevada has not adopted an automatic reapportionment arrangement, nor has it created a commission responsible for reapportioning and redistricting every ten years. The task remains with the legislature, and, as will be observed in the discussion of the 1971 reapportionment, the legislature has tended to focus its efforts on preserving incumbents' seats.

Public Involvement in the Mid-1960s

Most newspapers in Nevada opposed reapportionment during the heated mid-1960s. Reno papers expressed fear of legislative control passing to Clark County, and they warned voters in the 1964 election to reject candidates who favored population-based apportionment. Both Las Vegas papers favored Assembly reapportionment, but did not endorse reallocation of Senate seats. In the state capital, Carson City, the city council unanimously passed a resolution asking Congress to alter the new reapportionment requirements and allow states to adopt flexible plans appropriate to their local needs. The Legislative Commission,14/ the State Farm Bureau, and a bipartisan committee appointed by the governor to study Nevada and the Reynolds ruling all showed varying degrees of hostility to forced, population-based reapportionment. No ad hoc citizens' groups either favoring or opposing reapportionment were formed in Nevada. Thus, active opposition to court-ordered reapportionment existed in the legislature, to a lesser extent in most of the newspapers, but hardly at all among the public.

The 1971 Redistricting

Republican Assemblyman Frank Young, beginning his third term in 1971, came to Carson City determined to insure that the impending apportionment would conform more closely to "one man-one vote" than had the 1965 reapportionment, and that

single-member districts for legislators would be part of the revised system. His energy, careful preparation, and parliamentary skill brought success in the Assembly, where he attained his goals of single-member districts and an apportionment nearer to a reflection of population distributions. The Senate, however, chose to retain multi-member districting in 1971, largely because that system protected incumbents who in both Las Vegas and Reno lived in neighborly proximity and exhibited no desire to move. Under the present pattern (1980), seven senators run in one Clark County district, two in another Clark district, and four in one Washoe district. Thus, 65 percent of the twenty senators come from multi-member districts.

Protection of incumbents formed the heart of reapportionment discussions in the halls and committee rooms of the 1971 session. Senate retention of multi-member districting demonstrates the "save our seats" theme characterizing the session. In the Assembly, lines were drawn so that each incumbent would, as nearly as possible, have his own district in the new single-member system; accomplishing this objective resulted in the creation of some odd boundary lines and revealed an incumbents' gerrymander as remarkably tortured and as effective as the more traditional partisan gerrymander.

TABLE 2

Apportionment, 1965 and 1971

County	Senate 1965	Senate 1971	Assembly 1965	Assembly 1971	Total Seats 1971	Percent Pop. 1971	Percent Seats 1971
Clark (Las Vegas) Districts	8	11	16	22	33	56	55
Washoe (Reno) Districts	6	5	12	10	15	25	25
Rest of State	6	4	12	8	12	19	20
TOTAL	20	20	40	40	60	100	100

Source: Compiled by author from U.S Dept. of Commerce, Bureau of the Census, Number of Inhabitants, PC(1)-A-30 (1971), p. 11.

As the above table illustrates, Clark County secured a majority in the legislature in 1971, the first time that any single county had controlled one house, let alone both.

The new pattern, although close to a precise reflection of population, contained certain disparities. For example, one Senate district was underrepresented by nine percent, one overrepresented by 15 percent; one Assembly district was underrepresented by 14 percent, one overrepresented by 17 percent. These defects, together with the retention of multi-member districting in the Senate, led to another suit against Nevada's apportionment in federal district court.

In December 1971, a three-judge panel heard Stewart v. O'Callaghan, Millspaugh v. O'Callaghan.15/ After a long delay, lasting until May 1972, the court announced its decision upholding the Nevada apportionment scheme. Blazing a new constitutional and mathematical trail into the thicket of apportionment, the court determined the average statewide disparity for the Assembly to be approximately four percent, and for the Senate about five percent. It avoided comment on the

maximum deficiencies (noted above) in both houses. The court ordered immediate changes in two Assembly districts and instructed the 1973 legislature to rectify inequalities in five other Assembly, and two Senate, districts. It approved multi-member Senate districts in the absence of a showing that the system diluted any group's voting strength. It did not refer to evidence presented during the trial that the motivation for the existing plan came from the desire to preserve the seats of those Reno and Las Vegas incumbents who dwelt in the same neighborhoods.

The 1973 session made the adjustments ordered by the court. District lines in 1981 stand as displayed on the maps, page 14.

Probabilities in 1981

Reapportionment and redistricting debates in the 1981 legislative session will center on how best to secure incumbents in their posts. It is likely that the only major dispute will develop over proposals to enlarge the legislature. Preliminary census figures, varying heretofore only one percent from the final figures, show Clark County (Las Vegas) with a population increase of 69 percent over 1970, giving it 58 percent of the state's total population and a possible twenty-third Assembly seat in the present forty-member body. Washoe County (Reno) increased in population by 59 percent over 1970, giving it 24 percent of the total population; it will not be entitled to greater representation in the legislature. Douglas County and Carson City, 16/currently combined into one district, grew the most (107 and 183 percent respectively) and clearly deserve additional representation. 17/

Much juggling of district lines will be necessary if the smaller counties are to maintain their existing four Senate and eight Assembly seats -- particularly because the central Senate district (Esmeralda, Lincoln, Mineral, Nye, and White Pine Counties) has lost residents and would need to be attached to an area with a population of about 11,000 to be entitled to a Senate seat. Assembly District 35

(Lincoln and White Pine Counties) would require attachment to an area containing about 8,000 residents in order to retain its one Assembly seat. Any such attachments would obviously diminish adjoining districts and thereby create new difficulties. Therefore, small-county legislators can be expected to work for an increase in the size of the legislature as the only device by which they might be able to maintain their present number, if not their present proportion, in the legislative body.

At this writing (November 1980) the bill being discussed by the small-county legislators proposes enlarging the Assembly by four seats and the Senate by two. In that case the "ideal" Senate district would contain 36,000 residents, clearly entitling Clark County to another senator while not bringing the central Senate district even close to the "ideal" 36,000 residents. The "ideal" Assembly district, if the membership of that house is increased by four, would contain about 18,000 residents, entitling Clark County to two more seats and still leaving Assembly District 35 more than 6,000 short of entitlement to even its current one seat. Merely enlarging the legislature will not assure the small counties their current representation, but it will assure a monumental redistricting job.

Democrats control both houses in the 1981 session, so responsibility for drawing the new districts lies with them. But an alignment, particularly with respect to enlarging the legislature, could occur between Clark County and the small counties, both of which could expect to improve, or at least maintain, their strength in a larger body. If this combination occurs, Washoe County will be the loser - an unusual event in Nevada's political history since ordinarily Washoe and the small counties make common cause.

One other possibility deserves attention, namely that Clark County legislators will exercise their dominance of both houses to retain the present size of the legislature and will insist upon a reapportionment granting them one more Assembly

seat and possibly an additional Senate seat; both would be at the expense of the small counties. Whatever the final result, it is entirely safe to prophesy that much time will be spent in the 1981 session on drawing district lines and manipulating population figures, and much effort will be devoted to protecting incumbents from whatever part of the state.

One other apportionment matter deserves mention. Presently entitled to one representative in Congress, Nevada may gain a second congressman. Preliminary census figures (November 1980) show the state reaching a population of 798,899, well above the Bureau of the Census estimate of 702,000. Thus, the chance for a second representative, given the equal proportions formula for congressional redistricting, appears possible. Internal districting in such an event would probably give Clark County (after carving away 60,000 residents) one congressman and the remainder of the state the other.

Conclusion

Nevada's treatment of the problems of reapportionment and redistricting reveals widespread antipathy to population-based apportionment, antagonism to national intrusion in a presumed state affair, half-hearted compliance with court orders when compliance became unavoidable, and a determined effort to preserve incumbents in their offices. The fundamental struggle occurred between Las Vegas and Reno, with the latter as exemplar of conservative values and so joining with the rural areas to preserve those values against the supposed threat of high-spending, welfare-oriented liberals from Las Vegas. The supposed threat proved unreal, as is demonstrated by the output of the legislative sessions in which Clark County has had a majority in both houses of the legislature. The Nevada legislature has yet to deal fully with problems such as transportation, pollution, welfare, or housing that arise from urbanization. Population-based apportionment did not bring forth solutions to

those problems, least of all radical solutions. The tyrannical urban majority, bent on achieving revenge for the long years it was deprived of its proper voice in the political process, never developed. In fact, reapportionment, for all the turmoil and fear it created, wrought no significant changes in the activities or the direction of the legislature.

NOTES

1/ For a review of the antagonism with which most western states looked upon population-based apportionment, see Impact of Reapportionment on the Thirteen Western States, ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970).

2/ Art. XV, sec. 13.

3/ Art. IV, sec. 5. In 1970 another amendment included redistricting the Senate as well.

4/ Art. XV, sec. 6.

5/ Art. IV, sec. 5.

6/ Reynolds v. Sims, 377 U.S. 533 (1964). Five companion apportionment cases, decided at the same time, contributed to the "reapportionment revolution," but Reynolds had the widest effect on Nevada's system.

7/ 369 U.S 186 (1962).

8/ Labor is not a strong force in Nevada, one of twenty right-to-work states, and its influence on redistricting or any other major issue has been negligible.

9/ 377 U.S. 533 (1964).

10/ Ms. Dungan, an atypical Nevada legislator, was a political activist interested in welfare, prison reform, and other liberal causes. Her efforts to secure a population-based apportionment were opposed even in Clark County, which would have gained the most from such an apportionment.

11/ They were encouraged in this belief by Lieutenant Governor, now Senator, Paul Laxalt, a Republican; his involvement is the only example of a member of the Nevada executive branch entering the apportionment fray.

12/ 250 F. Supp. 480 (1965).

13/ Dungan v. Sawyer 253 F. Supp. 352 (1966), at 358.

14/ The Legislative Commission is a twelve-member body composed of six senators (three Democrats and three Republicans) and six assemblymen (three Democrats and three Republicans). It appoints the heads of the Legislative Counsel Bureau and exercises a supervisory control over the activities of the Bureau.

15/ 343 F. Supp. 1080 (1972). The two cases, one initiated in Reno, one in Las Vegas, raised the same issues and were combined.

16/ Carson is the only city-county in the state. It is presently combined with Douglas County as one Senate district.

17/ The 1981 apportionment will require that an "ideal" Senate seat, given the present twenty-member body, represent about 39,800 residents and an Assembly seat, given the present forty-member body, something over 19,900. Under the 1971 apportionment, an "ideal" Senate seat represented 24,400 residents, and an Assembly seat 12,200.

NEW MEXICO

Fernando V. Padilla

New Mexico formally entered the Union in 1912 as the forty-seventh state. The statehood constitutional convention created a 24-member Senate and a 49-member House of Representatives. The state constitution permitted, but did not require, reapportionment after each decennial federal census. 1/ Since 1911, the state Senate has undergone five major reapportionments (1911, 1949, 1965, 1966, and 1972), while the House of Representatives has been reapportioned six times (1911, 1949, 1955, 1963, 1965, and 1972). 2/

The 1911 apportionment remained in place for nearly forty years. 3/ The state constitution incorporated a gerrymander which favored the Republican, Hispano counties of the Rio Grande River Basin. 4/ Of twenty-four state Senate districts, sixteen were dominated by nine primarily Republican Hispano counties: Bernalillo, Colfax, Dona Ana, Rio Arriba, San Miguel, Santa Fe, Socorro, Taos, and Valencia. Republican dominance was enhanced by "shoestring" districts. 5/ For example, San Miguel County (pop. 23,000) elected one state senator by itself, elected another senator with Mora County (pop. 13,000) with a limitation that the senator had to be a resident of Mora County, and elected a third senator with Guadalupe County (pop. 11,000) with a limitation that the senator had to be a resident of Guadalupe County. Thus, Republican San Miguel County dominated the election of senators from Mora and Guadalupe Counties as well as electing its own senator. The same type of multi-county, one-member "shoestring" districts gave Republicans a bonus of four seats in the House of Representatives, where eleven predominantly Republican

counties controlled twenty-six of the forty-nine seats. So successful was the Republican gerrymander that in the first ten elections after statehood, Republicans lost control of the House only twice and never lost control of the state Senate. 6/

The basic historical theme of New Mexico redistricting has been conflict between the state's Hispano population and the Anglos of "Little Texas." 7/ Hispanos were the dominant population and voting bloc when New Mexico became a state. They constituted the core of Republican strength (Hispanos did not turn to the Democratic party until the 1930s) and opposed the "federal" plan for apportioning state legislative seats. By contrast, rural, conservative, Southern-style Anglo Democrats from "Little Texas" have favored the "federal" plan in reapportionments. The political difference between the two populations and regions is perhaps best illustrated by the results of the 1972 Democratic presidential primary election. "Little Texas" supported George Wallace, while the Hispano counties supported George McGovern.

In 1941, the state legislature proposed a constitutional amendment that would have reapportioned the legislature. Each county would have been awarded one senator regardless of its population, and each county would have been entitled to one representative for each 11,000 inhabitants, with a limit of five representatives per county but with each county, regardless of population, being entitled to at least one representative. The proposed constitutional amendment was soundly defeated at the 1942 general election. 8/

Reapportionment finally came to New Mexico in 1949. There was a consensus that Senate reapportionment should allot one senator per county except for sparsely populated Los Alamos County, which had just been created. Both population equality standards and "shoestring" districts were abolished in the Senate. 9/ The reapportionment of the House proved to be a much more difficult task. Seven major bills and two compromises were extensively debated. The House finally approved a

reapportionment plan which increased its membership to fifty-five, created both multi-county and single-county districts, and allowed one-county districts to elect up to six representatives. Following legislative enactment, the electorate adopted the new apportionment scheme as a constitutional amendment in 1949. 10/

The fight for reapportionment in 1949 was led by Democrats from "Little Texas." "Little Texas" Democratic county chairmen pressured both governor and legislators for action. The "eastsiders" cast bloc votes for almost any type of reapportionment plan. 11/ Legislators from "Little Texas" eventually allied themselves with lawmakers from non-Hispano Bernalillo County and several southern border counties to win passage of the reapportionment plan. Bernalillo County (the Albuquerque area) gained three House seats but lost a "shoestring" district, while two "Little Texas" counties gained three seats between them: Curry County gained one House seat and Lea County two. 12/ Although the 1949 debate over House reapportionment was often acrimonious, "Little Texas" actually made its biggest gains, in comparison to the 1911 reapportionment, in the redistricting of the Senate.

The 1949 "federal" plan for Senate apportionment obviously decreased Hispano influence in that body, especially with the elimination of "shoestring" districts; nevertheless, each Hispano county still elected its own senator. In the House, where Hispano opposition to reapportionment was most determined, Hispanos could still elect at least one representative in each county they dominated, and no Hispano county lost any seats awarded in the 1911 apportionment. Thus, Hispano legislators for the most part succeeded in retaining their political base in the wake of the 1949 reapportionment. 13/

In 1955, the legislature was again reapportioned, this time at the urging of Democratic Governor John F. Simms, Jr., who had been House speaker in 1949. The 1955 reapportionment sought to address the inequities of the 1949 plan. Senate membership increased by one with the addition of a senator for Los Alamos County.

The House eliminated multi-county and shoestring districts altogether, and increased its membership to sixty-six with each county entitled to at least one House seat. The size of the Bernalillo County delegation was increased to nine, while no other county had more than three representatives. 14/ Voters approved the necessary constitutional changes in September 1955. 15/

The House of Representatives and state Senate were both originally apportioned on something close to a population basis. However, the 1949 and 1955 reapportionments, based on the "federal" analogy, resulted in a grossly mal-apportioned legislature, which was the case in New Mexico by the time Baker v. Carr 16/ was decided in 1962 (see Table 1). Persons living in districts containing just 14 percent of the total state population could elect a majority of the state Senate, and districts containing just 27 percent of the population could elect a House majority. 17/

TABLE 1

Largest (L) and Smallest (S) Legislative District Populations as Percentages of Average District Populations, 1912-1960

Year	L	S
1912	100%	100%
1930	108%	62%
1950	151%	40%
1960	237%	40%

Source: Gordon E. Baker, The Reapportionment Revolution (New York: Random House, 1967), p. 35.

Initially, New Mexicans reacted slowly to Baker v. Carr. Nearly seven months after the landmark Tennessee decision, state Representative David Cargo, a Bernalillo County Republican, filed suit against the governor and other state officials in Santa Fe County district court. 18/ Cargo's suit sought to have the House reapportioned under the same basic plan used in 1955, except that the 1960 census results would serve to determine population. In such a reapportionment, Bernalillo County would have gained seven House seats, while Chaves and Dona Ana Counties would have picked up one seat each. Conversely, Rio Arriba County would have lost two representatives, while Colfax, Grant, McKinley, Quay, Roosevelt, San Miguel, and Taos Counties would have lost one representative each. Interestingly, in seeking to redress underrepresentation of large counties, David Cargo did not challenge the system of apportioning at least one representative to each county regardless of population. 19/

Cargo v. Campbell was assigned to District Judge Caswell S. Neal, 20/ who suspended judicial action due to the proximity of the 1962 general election and his desire to give the legislature an opportunity to reapportion itself.

When the New Mexico legislature convened in January of 1963, Senator Ed Mead of Bernalillo County introduced a joint resolution to create a 75-member House, with each county entitled to at least one representative and with the other forty-three members apportioned among counties by the method of equal proportions. 21/ The bill also would have made reapportionment mandatory after each federal census, would have required subdistricting of Bernalillo County (to discourage bloc voting by the Bernalillo delegation), and would have prohibited subdistricting in all other counties. 22/ Senator Mead's resolution died in committee.

Attempts at reapportioning the House of Representatives also came to nothing. Democratic Representative Willis A. Smith and Republican Cargo

introduced identical bills to create a 66-member House, increase the size of the Bernalillo County Delegation to sixteen, make minor increases or decreases in the House delegations of a few counties, and assure each county of at least one representative. Both bills died in committee. 23/

Cargo v. Campbell came to trial on August 26, 1963. The following day, Judge Neal issued a memorandum holding the 1955 House apportionment unconstitutional. 24/ Judge Neal invalidated the state constitutional provision allotting one representative to each county regardless of population, and he also voided provisions prohibiting multi-county districts, "shoestring" districts, and subdistricting within multi-member, single-county districts. 25/ The judge's order set a deadline of November 1, 1963, for enactment of a new districting plan, but this deadline was later extended to December 1, 1963.

Governor Jack Campbell convened the legislature on November 4, 1963, for a special session on reapportionment of the House of Representatives. Speaker Bruce King appointed a fifteen-member, bipartisan "Special Reapportionment Committee" to hear and recommend all reapportionment proposals. 26/ The speaker himself introduced two bills which embodied the major approaches under consideration. The so-called "modified Vinton" approach called for the creation of a 72-member House. Under this plan, the twelve smallest counties were combined into five multi-county, single-member districts. Another thirteen counties became multi-member districts, while seven seats were allotted to single-member counties. Bernalillo County, a single-county district, was apportioned twenty seats. The modified Vinton plan came closer than any other plan under consideration to satisfying the emerging "one man-one vote" standard. The ratio between the least populous district and the most populous under this plan was 1:1.71. A near majority, or 48.34 percent of the population, would have elected 51 percent of the House of Representatives. 27/

Speaker King's second reapportionment bill embodied the equal-proportions approach, which also envisioned a 72-member House of Representatives, but continued to guarantee at least one seat for each county. The remaining forty seats were apportioned among counties on a population basis. Under this plan, Bernalillo County would have been awarded seventeen seats. There were no multi-county districts. The ratio between the smallest and the largest districts was 1:9.97. Counties containing just 41.58 percent of the state's population would have elected 51.00 percent of the total House membership. 28/

The House of Representatives deadlocked on the two proposals. Although most legislators felt certain that Judge Neal would void any plan based on the equal-proportions method, only the Bernalillo County delegation favored the modified Vinton proposal. As a possible compromise, legislative leaders proposed a redistricting plan using a fractional voting system. 29/ The Legislative Council Service drafted a bill creating a 75-member House with fractional votes for the twelve smallest counties and eighteen full votes for Bernalillo County. The seventy-five members were apportioned by the equal-proportions method rather than by the modified Vinton approach. Two additional seats, one each for Curry and Grant Counties, were eventually added to the total at the request of the majority floor leader, in order to get the bill out of committee. 30/

After considering a series of alternatives, the House took up the leadership-sponsored compromise plan and attached to it critical amendments which

> struck fractional voting provisions for the smaller counties and substituted weighted voting for all counties. Membership remained the same and weighting was achieved by multiplying the fractional votes of the smaller counties by 10 and by giving all other counties 10 votes for every member to which they were entitled. A total of 700 votes were possible under the bill, with Albuquerque's 18 members casting a total of 180 votes. Harding county's (sic) one representative cast one vote. 31/

The House adopted the final compromise bill by a narrow 35-to-31 vote, after

rejecting by 21 to 45 a final effort to pass the modified Vinton proposal. The final version, as described above, discarded the fractional voting system for some legislators and instead included a weighted voting system for all. 32/

The advantages of the weighted voting system were that it came close to achieving a sort of population equality and that each county retained its own representation. Each weighted vote represented approximately 1,359 persons. The ratio between the most underrepresented and the most overrepresented counties, based on each county's weighted vote, was 1:2.00. Furthermore, districts containing 46.79 percent of the state's total population could elect 51.00 percent of the total House membership. 33/

The second task of the special session was to geographically subdistrict fourteen counties after an apportionment bill was passed. 34/ County districting plans were primarily prepared by the Legislative Council Service, although some were prepared by county delegations to the House and by individual representatives. Only the Chaves and Bernalillo County delegations had major partisan fights on subdistricting. With amazingly little squabbling, the House and Senate passed, for the first time in New Mexico history, a subdistricting bill on November 13, 1964. 35/

On January 8, 1964, Judge Neal held the 1963 weighted vote apportionment statute in violation of the state, but not the federal, constitution. 36/ Instead of voiding the entire statute, however, Judge Neal merely detached the weighted voting provisions from the rest of the law and allowed most of the rest of the statute to continue in force until after the 1964 elections. Judge Neal's order in effect created a 77-member House of Representatives. The ratio between the populations of the smallest and the largest districts was 1:8.64. Half of the House seats deviated in the population they represented by more than 20 percent above or below an ideal population of 12,350 persons. Lastly, 43.34 percent of the state's inhabitants lived in districts that could elect 51.94 percent of all House members. 37/

In June of 1964, the United States Supreme Court held in Maryland Committee v. Tawes 38/ that an apportionment system based on the method of equal proportions was unconstitutional. The Maryland decision meant that the New Mexico House apportionment was now in violation of federal and well as state constitutional standards. Even more significant, however, was United States Supreme Court decision in Reynolds v. Sims, 39/ which held that both houses of a state legislature must be apportioned on a population basis. With this 1964 decision, it became apparent that the 1955 apportionment of the New Mexico Senate, based on the federal analogy, was also unconstitutional.

On August 27, 1964, suit was filed in United States district court by Mrs. Imogene Lindsay and Mrs. Mary E. Beauchamp (both Democratic candidates for seats in the lower house of the legislature in 1964), challenging the apportionment of the state Senate. 40/ The three-judge federal district court deferred action on the suit, however, in order to give the 1965 legislative session an opportunity to reapportion. 41/

When the Twenty-Seventh Legislature convened in January 1965, Governor Campbell urged the legislators to reapportion. 42/ In the House, the speaker and the majority leader introduced two reapportionment bills which were referred to the House Privileges and Elections Committee. The committee recommended a substitute bill which provided for reducing the size of the House to seventy members by combining the twelve smallest counties into five multi-county districts. The apportionment among the other counties remained the same, as did the districting within multi-seat counties. The committee substitute passed the House by a vote of 51 to 23, and the Senate by a vote of 22 to 1. 43/

The 1965 House apportionment plan was certainly an improvement over the 1963 plan in terms of population distribution. The population ratio between the least and the most populous districts was reduced from 1:8.64 to 1:2.20. In addition,

the percentage of the population residing in districts which could elect a majority of the House was increased from 43.34 percent to 46.3 percent. Finally, only eight districts, instead of half of them, deviated by more than 20 percent from the ideal district population of 13,586. 44/

Reapportionment of the Senate proceeded even more rapidly than House reapportionment, although a total of thirteen reapportionment bills were introduced in the upper chamber. Among the wide variety of reapportionment bills considered, one proposed a unicameral legislature, another would have created a twenty-member Senate elected at large from multi- and single-county districts, still another would have created a forty-member Senate elected at large from twelve single-county districts and eight multi-county districts (with apportionment based on the modified Vinton formula), and yet another would have added five members to the Senate from Bernalillo County and weighted the votes of all senators. In addition, there was discussion in the Senate of another plan, not submitted as a bill, which would have created a 38-member Senate with eleven multi-county districts and four single-county districts. 45/ After five days of debate in March of 1965, the Senate passed, as a proposed constitutional amendment and over the opposition of the Senate leadership, the bill calling for weighted voting in the upper chamber. 46/ However, on September 28, 1965, the voters rejected the proposed constitutional amendment. 47/ A few days later, on October 11, 1965, the federal district court declared the Senate apportionment unconstitutional and gave the state until March 1, 1966, to reapportion. 48/

The 1966 session was different from the other three sessions which had passed reapportionment bills since 1963. First, the small counties realized they would lose their individual senators. Second, with most senators favoring a smaller body, the future size of the Senate was a major concern. Third, there was serious debate over whether it was preferable have subdistricting of multi-member county delegations

or at-large elections (Republican, racial and ethnic minorities, and sectional groups opposed at-large elections.) Fourth, both chambers were actively involved in the decision-making for the Senate, because a number of House members aspired to win Senate seats. And finally, minority groups received more attention in the reapportionment process than ever before. 49/

Senator R. C. Morgan and thirteen others sponsored Senate Bill No. 2, which would have created a 54-member Senate elected from four multi-county and five single-county districts, with all multi-member counties subdistricted. Other proposed Senate plans called for a 24-member Senate, a 35-member Senate, and a 36-member Senate. The Senate Committee of the Whole, which heard all re-apportionment bills and proposals, eliminated from consideration all plans which called for an upper chamber of fewer than thirty-five members, or for at-large Senate elections. After a week of debate, the Senate approved by a 17-to-15 vote an amended Morgan plan, creating a 53-member Senate. After several attempts to kill the Senate-passed plan in the House, however, the Senate recalled its bill. At the request of a few Senate leaders, the Legislative Council Service drafted, just three days before the session was due to end, a new Senate plan calling for the creation of a 42-member upper house. The Senate passed this "compromise" measure by a vote of 32 to 0, and the House followed suit on a 71-to-5 vote. 50/

The new Senate apportionment plan created forty-two single-member districts, and included six multi-county districts and one district combining pieces of two counties. While Bernalillo County was apportioned ten senators, no other county was given more than two seats. There remained, however, sizeable population deviations in the Senate plan, which included eighteen districts that deviated by more than 20 percent from the population ideal. The population ratio between the smallest and the largest districts was 1:2.27, and 42.22 percent of the people resided in districts that could elect, collectively, a majority of the Senate membership. 51/

On March 17, 1966, the federal district court held, in a 2-to-1 decision, the legislature's plan unconstitutional because some population variations among districts were too great. The court left untouched twenty-five districts in nine counties, but it reapportioned the remaining seats so that the districts would come closer to meeting population-equality standards. At first, the court created thirty-nine single-member districts, plus at-large districts for Chaves, Curry-Roosevelt, and Dona Ana Counties. On March 31, 1966, however, the court modified its ruling by creating separate districts for the at-large seats in the multi-county districts for Sandoval-Rio Arriba Counties, Roosevelt-Curry Counties, and Otero-Lincoln Counties. Under the plan of the federal district court, 45.7 percent of the people resided in districts electing a majority of the Senate. No Senate district deviated by more than 29.13 percent from the ideal population, and the population ratio between the most overrepresented and the most underrepresented districts were 1:1.78. 52/

A revolution had occurred in Senate apportionment. When the reapportionment began, less than 14 percent of the state's total population resided in districts that could elect a majority of the members of the upper house. Less than fifteen months later, it took districts containing over 45 percent of the people to elect a Senate majority. The big losers in the Senate reapportionment were the twelve smallest counties and their incumbent senators. The big winners were the state's nine most populous counties, which now elected a total of twenty-eight senators. In terms of sectional interest, the eight counties of the northwestern part of the state were now represented by twenty-one senators; the eight southwestern counties were represented by six senators; the seven "Little Texas" counties of the southeast were represented by eleven senators; and the nine northeastern counties had four Senators. Thus, as far as sectional representation was concerned, Senate reapportionment had a major negative impact only on the small northeastern counties.

Nor did the expected conflict between Hispanos and "Little Texas" materialize. Added seats for the populous "Little Texas" counties more than made up for losses among small counties, and Hispanos traded control over rural seats for control over urban seats to achieve a net gain of five Hispano Senate districts in the state. 53/ On some issues of reapportionment, Hispano and "Little Texas" interests converged, but for very different reasons. For example, "Little Texas" opposed at-large elections for Bernalillo County in hopes of lessening the probability of bloc voting by the Bernalillo County Senate delegation. Hispanos, for their part, opposed at-large elections for Bernalillo County because this type of election had left the county's large Hispano population without any representative of its own in the House after the 1949 and 1955 reapportionments. Jack Holmes points out that under at-large provisions, the entire nine-member House delegation from Bernalillo County was made up of Anglos, but as soon as subdistricting was introduced in 1963, six Hispanos were elected to the new eighteen-member Bernalillo County House delegation. 54/

It was time to reapportion again in 1971, and it was clear that judical standards for meeting the one man-one vote rule would be much stricter in 1971 than they had been during the 1960s. During 1971, the New Mexico legislature reapportioned both houses. The legislature created a 45-member Senate and apportioned thirteen of the seats to Bernalillo County. The Los Alamos-Santa Fe district continued as the only district not made up of whole counties. Since all the other Senate districts were based on units of whole counties, some districts deviated from the population ideal by as much as 22 percent. 55/

The 1971 House plan created a 71-member House of Representatives with twenty-two seats allotted to Bernalillo County. The 1971 plan, for the first time, created seven House districts made up of pieces of counties. 56/ Despite the breakup of counties, however, some House districts deviated by as much as 18 percent from the population ideal. 57/

On November 23, 1971, the Santa Fe County district court, in Cargo v. King, 58/ held apportionment of both houses unconstitutional, on the grounds that population variances were too great. The court ordered the New Mexico legislature to reapportion itself in time for the June 1972 primary election. 59/

During the second session of the Thirtieth Legislature, two apportionment plans were approved for both houses. The first was a provisional plan, effective only for the 1972 election, which based districts on estimated precinct populations. The second plan, based on census enumeration districts, was to be in effect for all elections held after 1972; county governments were ordered to remap and realign precincts to follow census enumeration districts by 1974 for the House and by 1976 for the Senate. 60/

The 1972 Senate bipartisan reapportionment plan created forty-two single-member districts, including thirteen districts in Bernalillo County. Because it was no longer possible to adhere to the integrity of county lines and still meet the population-equality standards of the courts, the plan included twelve districts that breached county boundaries. By contrast, there were only two single-member, multi-county districts. The remaining twenty-eight districts were created from parts of single counties. No district deviated from the population norm by more than five percent, and 50.8 percent of the population lived in districts that could elect, collectively, a majority of the senators. The population ratio between the smallest and the largest districts was 1:1.09. Finally the Senate plan terminated the terms of all senators, so that all forty-two seats would be open for election in 1972. 61/

The House of Representatives passed a reapportionment bill which maintained House membership at seventy. The House plan contained only one single-member, single-county district, but it included nineteen districts that crossed county lines.

Forty-nine other districts were created within single counties, and there was one floterial district designed to prevent the city of Lovington from being divided in half, with one of the halves joined to a community ninety miles away. No district deviated by more that five percent from the ideal population of 14,514 inhabitants. The population ratio between the smallest and the largest districts was 1:1.1, and 51.1 percent of the population lived in districts that could elect, collectively, a majority of the House. 62/

On March 10, 1972, the Santa Fe County district court amended its order of November 23, 1971, and held the 1972 apportionments of House and Senate constitutional. 63/ The state district court did hold unconstitutional the one floterial district in the House plan, but accepted the legislature's alternative districting plan for the three counties involved. 64/ In 1973, the legislature abolished the alternate House and Senate redistricting plans based on census enumeration districts, 65/ and made permanent the 1972 "provisional" plan. The Santa Fe County district court agreed with these actions and terminated its jurisdiction of the case. 66/

In 1976, a final chapter was added to the 1970s reapportionment story in New Mexico. The state legislature passed, and the voters approved, a constitutional amendment which set the size of the House at seventy and the size of the Senate at forty-two. 67/

Hispano interests were well protected during the 1971 and 1972 reapportionments, especially in the House of Representatives. Legislators were aware of court decisions striking down racial and ethnic gerrymandering, and they were also aware of the state's long history of recognizing and accommodating the political interests of racial and ethnic groups. Also, within the legislature an Hispanic-led coalition, known as the "Mama Lucy" faction, held a tenuous control within the majority

Democratic Caucus. The 1972 House and Senate reapportionments continued the trend for the state's Hispanos of trading off rural seats for urban seats. 68/

The representation of sectional interests, including those of "Little Texas," did not change much in the legislature as a result of the 1972 reapportionments. Bernalillo County gained three seats in the Senate and nearly four seats in the House, mainly at the expense of rural areas. "Little Texas," however, appears to have neither lost nor gained representation in either chamber.

What are the likely issues in the next New Mexico reapportionment? According to Robert Anderson, director of the Division of Government Research at the University of New Mexico, rural areas of the state--especially the "Little Texas" counties--will lose more seats due to shifts in the population. 69/ In the Senate, the Democrats are likely to retain control, but fifteen to twenty seats may change hands due to retirements and election losses. Senate President I.M. Smalley has said that there may be no need to reapportion the upper house if population changes are minor. 70/ Senator Smalley believes reapportionment will most likely be done during the 1982 regular session, but he does not rule out the possibility of a 1981 special session.

House Speaker C. Gene Samberson acknowledges there may be some losses of rural seats in the House. 71/ Speaker Samberson has asked the Legislative Council Service to research options such as at-large elections. The primary concern of the speaker is that the reapportionment issue not end up in court.

Richard H. Folmar, assistant director of the Legislative Council Service, believes the critical issues are whether the state can continue basing reapportionment on estimated populations of precincts, and whether the Senate can resolve the problem arising from the fact that eight districts face elections in 1982, while thirty-four districts held elections in 1980. 72/

Important but less pressing questions concern the population deviations that the courts will allow, and whether they will allow at-large elections in multi-member districts. According to Richard Folmar, the courts may give the legislature more latitude in population deviation than in 1972, but the question of at-large elections remains very much up in the air. As is always the case in reapportionment, how the New Mexico legislature is reapportioned will affect careers, political influence, and the power structure in the state during the next decade.

NOTES

1/ Richard Folmar Legislative Reapportionment in New Mexico, 1844-1966 (Santa Fe, N.M.; Legislative Council Service, 1966), p. 17.

2/ Ibid., p. 145; Jack E. Holmes, Politics in New Mexico (Albuquerque: University of New Mexico Press, 1967), p. 234; F. Chris Garcia and Paul L. Hain, eds., New Mexico Government (Albuquerque: University of New Mexico Press, 1976), p. 32.

3/ Folmar, Legislative Reapportionment, p. 23; Holmes, Politics in New Mexico, p. 233.

4/ For an opposite point of view, that no Republican gerrymander occurred, see Inez Gill, "Legislative Apportionment and Congressional Districting in New Mexico," Bulletin No. 39 (Albuquerque: University of New Mexico, Dept. of Government, Division of Research, 1953), cited in Folmar, Legislative Reapportionment, p. 18.

5/ Holmes, Politics in New Mexico, pp. 182-83. A "shoestring" district combines some of the characteristics of a multi-county, multi-member, at-large district with some of the characteristics of a floterial district. While the largest county dominates the district, residence requirements assure some direct representation for the smaller counties.

6/ Holmes, Politics in New Mexico, pp. 227-29, 235-36.

7/ Ibid., p. 183. Hispanos comprise a majority of the population in the counties of Dona Ana, Guadalupe, Mora, Rio Arriba, Sandoval, San Miguel, Santa Fe, Socorro, Taos, and Valencia. The six counties of "Little Texas" are Chaves, Curry, DeBaca, Lea, Eddy, and Roosevelt. Ibid., pp. 12, 292n.

8/ Folmar, Legislative Reapportionment, pp. 22-23; Garcia and Hain, New Mexico Government, p. 29.

9/ Ibid., p. 34.

10/ The reapportionment measure appeared on the ballot as Constitutional Amend ment No. 10. Folmar, Legislative Reapportionment, pp. 23-36, especially p. 33.

11/ Ibid., pp. 28n, 29. An "eastsider" is someone from "Little Texas."

12/ Ibid., p. 34.

13/ Ibid., p. 30.

14/ Ibid., pp. 36-39.

15/ Ibid., p. 40.

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

17/ Gordon E. Baker, The Reapportionment Revolution (New York: Random House, 1967), p. 39.

18/ Folmer, Legislative Reapportionment, p. 41.

19/ Ibid., pp. 41-42.

20/ Ibid.

21/ Ibid., p. 44. The method of equal proportions is the one used in apportioning U.S. House seats. Each geographic unit (a state for the federal system and a county in a state system) is allotted one representative without regard to population. The remaining seats are apportioned on the basis of population in whole numbers, using a rather simple mathematical formula. Apportionments under this system require almost no political decision-making. See ibid., pp. 59-60.

22/ Ibid., p. 44-45.

23/ Ibid., pp. 45-46.

24/ Cargo v. Campbell, 6 National Municipal League, Court Decisions on Legislative Apportionment 79 (Santa Fe County district court, September 1963).

25/ Folmar, Legislative Reapportionment, pp. 51-52.

26/ Ibid., pp. 65-66

27/ Ibid., p. 67.

28/ Ibid., pp. 67-68.

29/ Ibid., pp. 68-70. Judge Neal later remarked that if the legislature had passed a bill based on the equal-proportions method, he would have done the redistricting himself. Albuquerque Journal, November 26, 1963, cited ibid., p. 83.

30/ Ibid., pp. 68-71.

31/ Ibid., pp. 73-76.

32/ Ibid., p. 74.

33/ Ibid., p. 79.

34/ Ibid., p. 78.

35/ Ibid., pp. 76-77.

36/ Cargo v. Campbell, 10 National Municipal League, Court Decisions on Legislative Apportionment 179 (Santa Fe County district court, 1963).

37/ Folmar, Legislative Reapportionment, pp. 87-90.

38/ 377 U.S. 656 (1964).

39/ 377 U.S. 533 (1964).

40/ Beauchamp v. Campbell and Lindsay v. Campbell, Civil Docket No. 5778 (D. N.M. 1964), unreported.

41/ Folmar, Legislative Reapportionment, p. 98; Robert C. Dixon, Jr., Democratic Representation (New York: Oxford University Press, 1968), p. 615.

42/ Folmar, Legislative Reapportionment, pp. 98-100.

43/ Ibid., pp. 102-6.

44/ Ibid., p. 103.

45/ Ibid., pp. 100-1, 107-8.

46/ Ibid., p. 111.

47/ Ibid., pp. 112-16.

48/ Ibid., p. 116.

49/ Ibid., pp. 119-23.

50/ Ibid., pp. 124-32.

51/ Beauchamp v. Campbell, 23 National Municipal League, Court Decisions on Legislative Apportionment 90 (D. N.M. 1966).

53/ Folmar, Legislative Reapportionment, p. 138.

54/ Holmes, Politics in New Mexico, p. 236.

55/ Garcia and Hain, New Mexico Government, p. 32.

56/ See House Bill 339, approved April 1, 1971.

57/ Garcia and Hain, New Mexico Government, p. 32.

58/ Civil Docket No. 43123, unreported order.

59/ Apportionment of the New Mexico Legislature: A Citizen's Introduction to Legislative Apportionment (Santa Fe: New Mexico Legislative Council Service, 1976), p. 17 (hereafter cited as Citizen's Introduction).

60/ Ibid., pp. 18-21; Garcia and Hain, New Mexico Government, p. 32.

61/ Citizen's Introduction, pp. 18-19. See also Senate Bill 106, approved February 19, 1972.

62/ House Bill 149, approved February 28, 1972.

63/ Cargo v. King, Civil Docket No. 43123 (Santa Fe County district court, 1972), unreported amended order.

64/ Ibid.

65/ Senate Bill 73, approved March 30, 1973.

66/ Cargo v. King, Civil Docket No. 43123 (Santa Fe County district court, 1973), unreported supplemental order.

67/ Garcia and Hain, New Mexico Government, p. 33.

68/ Telephone interview with Robert Anderson, Director, Division of Government Research, University of New Mexico, September 11, 1980.

69/ Ibid.

70/ Telephone interview with Sen. Smalley, September 11, 1980.

71/ Telephone interview with Rep. Samberson, September 11, 1980.

72/ Telephone interview with Folmar, September 11, 1980.

OREGON

Donald G. Balmer*

History of Redistricting in the State

The original Oregon constitution, adopted in 1857, provided for a Legislative Assembly of sixteen senators and thirty-four representatives, with the numbers to increase, as the population grew, to an absolute ceiling of thirty senators and sixty representatives. Article IV, section 6 required that the Assembly reapportion itself "at the session next following an enumeration of the inhabitants by the United States, or this State"; this same provision of the constitution required that population be the basis of apportionment for both houses. Counties were to be used in establishing election districts, and adjacent counties could be joined for "Senatorial and Representative purposes." However, as established in section 7, no county could be divided to create a senatorial district.

Contrary to the mandate of the 1857 constitution, the Assembly did not reapportion itself after each census, the basic pattern of noncompliance having been fairly well established by 1907. There were periodic shifts in election districts for both houses when the ceiling of thirty senators and sixty representatives was reached; however, these were slight adjustments and no effort was made to follow the requirement that population be the basic determinant of apportionment. The result was that urban areas were badly underrepresented. Multnomah County, containing most of the Portland metropolitan population, had about one-third of the

*Allan Green, Director, Legislative Research, Oregon State Legislature, contributed substantially to early versions of this article.

state's population as early as 1910 but was represented by less than one-fourth of the members of the Assembly, with no change after the 1910, 1920, 1930, 1940, or 1950 censuses. By 1950 two counties adjacent to Multnomah, Washington and Clackamas, also had large portions of the Portland metropolitan population and, along with Lane County (Eugene), were greatly underrepresented.

Eastern Oregon, with two-thirds of the state's area, did not increase in population at a rate proportionate to the growth of western Oregon. The eighteen eastern counties elected almost 27 percent of each house of the Assembly in 1950 although they contained only 16 percent of the state's population. With only about half the population of Multnomah County, the eastern region had more representation from 1910-1954.

The 1949 legislative session, coming after a decade of rapid population increase due to wartime industrial growth, featured a bitter controversy over reapportionment. Richard L. Neuberger, a state senator from Multnomah County, introduced a bill to force periodic reapportionment on a population basis by requiring the secretary of state to present a plan to the first session of the Assembly convening after the results of each federal census were known. If the Assembly failed to enact this or a similar plan, the secretary of state's plan would become law upon adjournment. Senator Neuberger's bill, and his nationally published articles on apportionment in the New York Times, Survey, the New Republic, and Harper's, brought into the open the conflicts in values and interests that underlay the reapportionment issue. In the end, however, the status quo prevailed and the Assembly did not pass the Neuberger bill.

In 1950 an urban-based, labor-supported movement of Young Democrats and some individual Young Republicans drafted an initiative petition to retain the population basis for districting, but to transfer reapportionment responsibilities from the Assembly to a reapportionment commission composed of the governor, the

secretary of state, and the state treasurer, all of whom were electd on the statewide ballot. In a move to offset rural fear of Multnomah County dominance, the initiative provided that no one county could ever have more than one-third of the membership of either house. The Young Republicans as an organization did not support this initiative and the proponents were unable to gather sufficient signatures to place it on the ballot. Sufficient signatures were gained, however, for a new plan of the Young Republicans, the Farm Bureau, and the Wheat Growers Association. This "balanced plan" guaranteed at least one representative from each county and, with thirty-six counties in Oregon and a ceiling of sixty representatives mandated by the constitution, could have caused an imbalance between tiny Sherman County and more urbanized counties of about twenty to one. The Senate would have been increased in size to thirty-six from thirty members, but still the population imbalance in the Senate would have been even greater than the imbalance in the House. The initiative, one of eighteen on the 1950 ballot, was defeated by a vote of 190,992 to 215,302, with the more populous counties' votes insuring defeat of the proposal.

The 1950 census made evident that population disparities in the existing legislative districts were as high as ten to one. Early in 1952, the Young Republicans, the Young Democrats, and the League of Women Voters formed a committee to devise a reapportionment initiative to make some temporary apportionment adjustments in legislative districts and to require that the Assembly reapportion itself by July 1 of the year following each federal census. This initiative, aimed at amending the state constitution, provided that if the Assembly failed to reapportion, the secretary of state would assume the task. To prevent only superficial reapportionment, the initiative gave the state Supreme Court original jurisdiction, on petition of any qualified voter. With the support of major newspapers, labor, and the state Grange, the plan was adopted by a vote of 357,550 to 194,292.

The new constitutional provision was soon attacked in the state courts on the ground that it would adversely affect a legislator's right to expand his district to include an additional county, and on the ground that the new provision violated the separation of powers doctrine by giving the legislative function of reapportionment to the executive branch (secretary of state) and the judiciary (Supreme Court review). The state Supreme Court rejected these contentions.

In the following session the Assembly did not adopt an apportionment plan, but it did refer to the voters a constitutional amendment permitting subdistricting within large counties if the districts were contiguous and substantially equal in population. This amendment was adopted by the voters, and the 1955 Republican-controlled Assembly divided Multnomah County into five subdistricts for the House rather than having all candidates run county-wide. This subdistricting of Multnomah County was probably the closest thing to a gerrymander that Oregon had seen outside the half-century failure to reapportion. Previously, with all senators and representatives elected at large in the county, the majority Democrats had virtually swept the field at each election. By subdistricting Democratic Multnomah County but not Republican Lane County, the Republican legislature decreased the Democratic delegation in the House and increased the Republican delegation. Other partisan advantages also lurked in the movement to single-member districts. Such contests raised campaign costs, which Republican candidates traditionally could afford, and also forced elections on individual personalities, which, again, aided the Republicans, whose candidates were usually better known in their communities than the Democrats, who often relied on the party label for voter identification.

Rural interests continued to oppose the new constitutional provisions regarding reapportionment; bills were introduced in 1955 and 1957 to give each county at least one senator, but they did not pass.

The 1961 Assembly was faced with the first reapportionment under the 1952 constitutional amendment. The secretary of state supplied legislators with a "do-it-yourself" reapportionment kit prior to the session. The "kit" included maps of the state identifying county boundaries, present House and Senate districts, the old and new population figures, blank maps, and the constitutional requirements for redistricting. An unofficial House committee from the Republican minority presented a plan strongly favoring rural areas. In spite of the attorney general's opinion that the Republican plan was unconstitutional, the House adopted it by a wide margin. The Senate amended the bill to further reduce Multnomah County representation, and the revised plan was then adopted by both houses.

Under the constitutional provisions for citizen appeal, a Multnomah County senator filed a legal action with the state Supreme Court in behalf of three electors. The petition claimed that urban counties were deprived of fair representation under the Assembly's plan. A Eugene representative intervened in the case, contending that the Assembly plan was a violation of the will of the people and would have been rejected if there had been a willingness in the Assembly to abide by the intent of the constitution. The court unanimously agreed with the plaintiffs. The secretary of state, following the court's instructions, submitted a plan to the state Supreme Court which featured greater representation for urban counties. The state Supreme Court accepted the plan.

Opponents of the court's ruling obtained the necessary signatures for a ballot initiative to amend the constitution again. The new amendment would have expanded the Senate but kept its districts essentially on a population basis, while the House would have been enlarged and the basis for its districting shifted to a blend of population and area. After a vigorous campaign, the proposal was defeated by a vote of 197,322 to 325,182.

Redistricting in the 1970s

The next requirement to reapportion in accordance with the 1952 constitutional amendment faced the 1971 Assembly. Contrary to the events of 1961 when both houses were controlled by the same party and a plan was adopted, a divided Assembly could agree on no plan in 1971. The House, controlled 36-26 by the Republicans, passed a plan on a vote that closely followed party lines. The Senate, with a 16-to-14 Democratic majority, adopted its own plan, and the two bodies were unable to agree. The House Republicans were promoting a single-member district plan while the Senate Democrats insisted on electing senators at large in Multnomah County. The Senate view, while promoted by Democrats, protected some conservative Democratic senators in Multnomah County who would have lost to liberals in single-member district primaries. The different reapportionment plans remained in conference committee upon adjournment.

With the inability of the two houses to agree on a plan, the Assembly adjourned and the responsibility for redistricting became that of the secretary of state.

The plan devised by the secretary of state followed political boundaries with adjustments for population purposes. According to the secretary of state, the district lines were drawn after consultations with legislators, representatives of the media, and others interested in the subject of redistricting. The final determination of district boundaries, of course, remained with the secretary. Population disparities were very small in the secretary's plan, with deviations of only about two percent between the largest and smallest districts in both houses.

The secretary's plan was controversial for a number of reasons. First, it created all single-member districts, whereas previous apportionments had included multi-member subdistricts in Multnomah and Lane Counties. Second, counties were split to attain population balance. And third, the black population of Portland was

divided among several districts in both houses. The plan was challenged primarily on the ground that splitting counties was contrary to the Oregon constitution. The Supreme Court responded that single-member districts were quite acceptable and that, when state and federal requirements conflicted, federal requirements took precedence in apportionment. Although the court returned the plan to the secretary for technical changes, it upheld the substance of his districting scheme.

The final districts were drawn by a Republican secretary of state, who incidentally was the leading Young Republican behind the 1952 reapportionment initiative. In the election that followed, Democrats gained control of the House, with a 33-27 majority, and increased their margin in the Senate to 18-12. In the 1974 election the Democrats made even greater gains, winning six more Senate seats and five additional seats in the House. The Democrats maintained control of both houses throughout the 1970s.

Redistricting in the 1980s

Almost thirty years after adoption of the constitutional amendment which prescribes the responsibility and procedure for reapportionment in Oregon, the issue remains unsettled. During the 1979 legislative session, the House passed a propsal to amend the constitution to provide for a reapportionment commission. The commission would have been comprised of four members appointed by the presiding officers and minority leaders of each house, and a fifth member selected by the appointees. It would have been required to complete a reapportionment plan by August 1 in the year following the census. The House proposal was not adopted by the Senate, however. Instead, the two houses of the Assembly passed legislation establishing criteria to be used during the 1981 reapportionment. Under the 1979 law, legislative districts, whenever practicable, must be contiguous, must be of equal population, must use existing geographical or political boundaries, must not

divide "communities of interest," and must have their geographical components connected by transportation links. In addition, the law forbids the drawing of district lines to favor political parties or incumbent legislators, or to dilute the voting strength of language or ethnic minority groups.

Among the major issues to be confronted during the 1981 redistricting are population deviations among districts, the compactness of districts, and the racial or ethnic composition of district populations. There will almost certainly be strong sentiment to relax requirements for strict population equality among districts, in order to draw district lines that coincide with county boundaries and in order to preserve communities of interest. It is interesting that compactness was not included in the redistricting criteria adopted by the 1979 Assembly; some social and economic interests, particularly those located along the coast, contend that their community of interest is more important than the compactness of districts in that part of the state. There are also certain racial and ethnic groups who contend that they were unnecessarily divided by the 1971 apportionment, and who will use the Williamsburgh case and the mandated legislative criterion regarding minorities to insist that their members be concentrated in legislative districts.

Multnomah County, and Portland in particular, will lose a number of seats in 1981 because of shifts in population to suburban counties and other areas of the state.

Reapportionment plans will be prepared in 1981 by the Legislative Reserch Office, a non-partisan permanent research staff. Both houses of the Assembly will likely contain Democratic majorities in 1981, but the presence of a Republican governor will assure that any plan must obtain bipartisan support if it is to avoid a veto. The pressure on the Democratic majority to approve a plan that is acceptable to the Republicans will be even greater if the Republican secretary of state is reelected. The creation of a fifth Oregon seat in the United States House of Representatives will add additional spice to the 1981 redistricting.

UTAH

Lauren H. Holland*

Robert C. Benedict

From 1896 until the United States Supreme Court entered the reapportionment arena in 1962 with Baker v. Carr,1/ the constitution of the state of Utah was the basis upon which redistricting was conducted. Article IX, section 2 provided that the legislature adjust legislative boundaries every five years, relying upon the federal census and a state decennial census to be conducted at staggered ten-year intervals.2/ However, specific requirements of the Utah constitution severely limited the nature of any revisions resulting from a reapportionment plan. Article IX, section 3, for example, limited the size of the membership of both houses of the legislature.3/ Section 4 required that the county be preserved as the basic unit for drawing district lines (all districts are single-member).4/ More specifically, the constitution guaranteed each county "at least one (House) representative" and prohibited the consolidation of parts of different counties for purposes of forming senatorial districts. The constitution also established a contiguity standard when whole counties were combined to form one senatorial district.5/

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These provisions favored the thinly populated rural counties over the faster growing urban areas, leading to an urban-rural rivalry. The provisions also created a situation conducive to malapportionment, if not gerrymandering. Thus, when reapportionment of the state legislature took place in 1921, 1931, and 1955, the rural counties were advantaged.

The urban-rural rivalry was then, and still is, evident in the conflicts between the five urban counties (Cache, Weber, Davis, Salt Lake, and Utah) and the remaining twenty-four counties. Salt Lake has by far the greatest population, and together with Weber, Davis, and Utah Counties it forms the urban area known as the "Wasatch Front."

In the reapportionments of 1921 and 1931, the House was apportioned by population and by governmental unit (i.e., counties), while the Senate was divided according to population only. In each case, the legislature was totally responsible for redistricting. In their redistricting attempts, legislators had to consider demographic changes. Such changes included (and continue to include) both a substantial increase in the state's population and an ongoing concentration of the state's population in the urbanized areas along the Wasatch Front.6/ Even if the legislature had been inclined to recognize these population changes, malapportionment was virtually assured due to constitutional requirements. For example, small rural counties which lost population relative to urban areas were still entitled to at least one House representative. Similarly, small counties, unless they had contiguous boundaries, could not be combined to form larger Senate districts. Enlarging the size the of legislature beyond the number constitutionally mandated, to facilitate the equalization of representation, was also prohibited.

In 1920 a constitutional amendment to allow one senator per county (furthering rural advantage) was defeated in the legislature. This idea was resurrected again in 1953. A joint resolution passed by the House and Senate called for a

sixty-member lower chamber and a Senate of twenty-nine members, one for each county. The state's five urban counties (with 65 percent of the state's population) would have been accorded 17 percent of the Senate seats under this plan. In this instance the measure was referred to the voters at the 1954 general election.

To the battle over the referendum was added a debate over the influence of the Mormon Church. The subject of the degree of Church-state interaction in Utah is often hotly debated, and the issue was raised again prior to the 1954 election. Several of the Church's top leaders publicly supported the reapportionment measure, as did the Church-owned Deseret News in its editorials.7/ Thus it appeared that the Church, and the Farm Bureau Federation and other rural interests, would be aligned against a "Citizens Committee" composed of prominent Republican and Democratic political leaders, Jews, Catholics, Protestants, labor union officials, bankers, and teachers who had organized to fight the referendum. Shortly before the election, however, a letter was released from the Office of the First Presidency of the Church, declining a position on the referendum.8/ Sixty-two percent of the voters cast negative ballots, with the results reflecting an urban-rural split. The 1955 redistricting bill then enacted into law allocated the five urban counties 60 percent of the House seats and 48 percent of the Senate seats.

In all the reapportionment struggles prior to the 1960s, the state's congressional districts were largely ignored. The federal census of 1920 gave Utah two representatives, and the district boundaries were drawn in 1921. The 1st Congressional District contained twenty-five counties, while the 2nd District was composed of the four populous counties of Davis, Tooele, Salt Lake, and Utah. No redistricting at the congressional level was completed during the next forty years. By the early 1960s the population deviation between the two districts was striking: the population of the 2nd District was over a quarter of a million more than that of the 1st District.

As Utah entered the 1960s, the arena for the redistricting battle shifted from the state legislature to the federal court system.9/ Federal judicial decisions effectively rendered obsolete the Utah constitutional provisions on reapportionment. Subsequently, a federal district court found sections 3 and 4 of Article IX to be unconstitutional, in Petuskey v. Clyde.10/ Since then, the legislature has been guided by federal standards established by the courts, rather than by the state's constitution, not yet amended in line with Petuskey.

The situation which occasioned the Petuskey challenge was the reapportionment plan of 1963, the first reapportionment effort following the U. S. Supreme Court decision in the Baker case. An attempt to comply with both the Utah constitution and the implications of Baker, the 1963 plan resulted in severe malapportionment. Most noticeable was the relative underrepresentation in both houses of the urban counties along the Wasatch Front, and the relative representational advantage of several rural counties. In absolute numbers, senatorial districts under the plan ranged in population from 55,372 to 10,195, and House districts from 21,135 to 1,164, creating a total disparity of 153.4 percent for the House districts and 136.9 percent for the Senate districts.

Focusing on the state constitution, rather than on the plan itself, the federal district court concluded that:

> The restrictive provisions of the Utah constitution are in irreconcilable conflict with the Constitution of the United States and, being so, are themselves federally unconstitutional and must be considered as totally void in application under the Supremacy Clause of the Constitution of the United States. And we so hold.11/

In response, the state legislature submitted a new reapportionment plan in 1965. The federal district court, sitting in continual review, found the second plan to be an improvement, evidencing the legislature's "good faith." Expressing "confidence" that the legislature in the future would "give its consideration to the

commands of the United States" and act more in accordance "with the constitutional requirements," the court upheld the 1965 plan.12/

Obviously, the court still had serious reservations, as well it should have had. Under the "greatly improved" plan, severe malapportionment continued, with some Senate districts having 75 percent more people than others, and certain House districts 50 percent more.

Although federal standards dominated the redistricting efforts of the 1960s, state political trends also had a strong impact on the process. Most importantly, the state underwent a partial change in political philosophy, in which Utah embraced to a substantial degree the expanded role of the federal and state governments. This change gave the Democratic party the legitimacy it needed to elect a Democratic governor and to gain comfortable majorities in both houses of the legislature in the election of 1964. Thus, when the reapportionment plan of 1963 failed on constitutional grounds, Republicans were faced with a Democratic legislature for the next redistricting battle. In this partisan battle, major conflicts revolved around the 2nd Congressional District, where the Democrats eventually succeeded in defeating a Republican challenge and retaining a "safe" Democratic district. Some legislators were also concerned that the 1st District was too large geographically for effective campaigning and contact with constituents. The congressional plan finally accepted in 1965 tended to divide the state into an eastern and a western district.13/

The 1960s, then, served as a transitional period both in Utah politics and in judicial concern with equitable apportionment of legislative seats. Under judicial challenge, accordingly, the Utah legislature abandoned the apportionment guidelines of the state constitution and adopted the standards established by the federal courts. By the time the legislature submitted its next reapportionment plan, in 1971, the federal guidelines had become fairly clear through judicial interpretation of the equal protection clause. In Kirkpatrick v. Preisler14/ and Wells v.

Rockefeller,15/ the federal courts reaffirmed their commitment to mathematical equality in the population of legislative districts, without, however, establishing a strict de minimis standard. Population equality became the courts' "overriding consideration."16/ Additionally, the courts indicated a reluctance to establish either contiguity or compactness as mandatory federal constitutional requirements,17/ although the courts retained them as permissible considerations. It should be noted, however, that these criteria may be invoked in congressional redistricting, thus establishing a more stringent standard for congressional than for legislative districting.

The plan which emerged from a special session of the Utah state legislature in August of 1971 came under immediate judicial attack. In Florence v. Rampton,18/ the district court found the plan to be unconstitutional due to wide disparities in district populations. In fact, the largest district in the House had a population that was 37.3 percent larger than the population of the smallest district, while Senate district variations reached 40.2 percent. Even without an absolute de minimis requirement, the plan was obviously inequitable. The current Utah apportionment plan, submitted in February of 1972 to relace the 1971 plan, substantially reduced the disparity ratio in both houses, to 12.2 percent for the House and 8.5 percent for the Senate.

Not suprisingly, the current plan contradicts the Utah state constitution. For one thing, it joins counties into single House districts. Secondly, in at least one House district, two counties (Carbon and Grand) are joined even though they touch at only one point, in the middle of a river. Finally, the current plan fails to maintain the geographic integrity of counties. Because of these disparities between constitutional provisions and the actual districting plan, two attempts were made to amend the state constitution, in 1975 and 1979; both attempts failed. 19/

Preliminary work for reapportionment in the 1980s has charted the demo graphic and political changes that have occurred in the 1970s. On the demographic side of the redistricting equation, the figures point to a continuation of previous trends. During the past decade, for example, the average annual increase in Utah's population was 2.4 percent, compared with the nation's average annual rate of 0.9 percent.20/ The projected population for 1980 of slightly more than 1.4 million brings Utah close to the level needed for a third congressional seat. If that seat is awarded, the districts would be five percent short of the projected national average for the population of a congressional district. If a third seat is denied, however, the two existing districts will be severely malapportioned (by as much as 40 percent) relative to the average projected size of congressional districts in the United States.21/

The Wasatch Front has received the bulk of the population increment since 1970, with some suburban areas, especially southwest Salt Lake County, undergoing spectacular growth. The Wasatch Front now accounts for 80 percent of Utah's population, and Salt Lake County alone contains a mammoth 43 percent of the state's population.22/

The Utah political landscape also underwent some rearrangement in the past decade, although the changes in this area were not as dramatic as the population changes. Since the 1920s Utah has been a swing state, alternating between Democratic and Republican control. However, the Republicans have made solid gains in the state since the mid-1970s, in both national politics and state politics. Although the swing toward the Republican party was somewhat delayed in the state legislature, Republican control was thorough when it finally arrived in 1978. Republicans now have substantial majorities in both houses of the legislature. If they can pick up one additional Senate seat in 1980, and maintain their present strength in the House, they will have a two-thirds margin and a "veto-proof legislature" for the next redistricting. The Republicans seem determined to

capitalize on that prospect if it should occur. Speaking before the Salt Lake County GOP convention, Congressman Dan Marriott remarked: "Do I believe in gerrymandering? You bet I believe in gerrymandering. I think it's time we took advantage of our opportunities."23/ Republican legislative victories in November would also lessen a key threat to the party's redistricting plans--the presence of a Democratic governor who is the substantial favorite in 1980.

In anticipation of redistricting in the 1980s, the Senate has formed a committee of three Republicans and two Democrats, and the House has formed a committee of five Republicans and three Democrats. For purposes of the 1981 redistricting, these committees will include the leadership of both parties, with the additional members chosen on the basis of geographic considerations. In the past, the committees have worked closely with the Office of Legislative Research, the legislature's non-partisan research group. The Office will be asked to develop a number of plans within specified guidelines. The committees then will analyze whether the plans meet the requirements of the federal court decisions. Recommendations then will be given to the legislature, where bargaining will begin in earnest when the legislature convenes in January of 1981.

For congressional redistricting, the major problem will be the application of the standards of compactness and contiguity if Utah receives a third congressional seat. Judging from past federal court decisions, special justification would be required if a district should vary from the average district size by five percent. Experts looking at the population figures must first take into account the Wasatch Front counties. The compactness and contiguity standards seem to indicate that the counties outside Salt Lake would have to be divided into districts running either north/south, east/west, or diagonally through the Wasatch Front. Yet another factor to be considered in congressional redistricting is that Salt Lake County can no longer remain intact. Current projections suggest that the county will have to be

divided between two and perhaps among three federal districts. A further complication is that in July of 1980 several of the areas south and west of Salt Lake City voted to incorporate as West Valley City. A current rough estimate gives this city a population of 66,000, making it the second largest city in the state.24/ Essentially, Salt Lake County now contains two large cities, and federal court rulings have placed emphasis on maintaining the geographical integrity of cities; this leaves less leeway in boundary drawing.

The possibility of a third congressional seat has, in the words of one Republican, created a "whole new ball game," and the party eagerly awaits the opportunity to draw the new lines. Dave Pruden, executive director of the Utah GOP, has noted that while not much gerrymandering is expected in state legislative redistricting, there exists "a more cold-blooded feeling regarding national offices."25/ The Republicans will take into account the fact that Salt Lake County has basically been a swing county in congressional elections, while Weber and Utah Counties have usually favored the Democrats.

Given all the various stipulations, what might the new congressional districts look like? Figure 1 shows the current boundaries, as well as examples of an east/west and north/south split. In both instances, the southern part of Salt Lake County (which contains West Valley City) is separated from the rest of the county. However, Salt Lake County may have to be divided into three parts: north of Salt Lake City, the city itself, and south of the city.

In regard to the state legislative districts, Salt Lake County is again the focus of interest. Democrats have their greatest strength in the western parts of the county, while Republican strongholds have been on the eastern side. Some Democrats fear the Republicans might divide the county into narrow east/west districts, with a majority in each district being in the eastern areas where the GOP predominates.

Although Democratic paranoia has risen, the most vigorous battle in 1981 is likely not to be the partisan battle, but the familiar battle between urban and rural areas. The rural counties, which will lose seats, are afraid that their interests (in particular their agricultural interests) will not receive adequate representation in the legislature. Therefore, the rural counties are likely to push at least for enlargement of the House, so that they may maintain their current number of representatives.

In summary, Utah reapportionment in the 1980s will be guided by federal, and not state, constitutional standards. Gerrymandering by the Republicans for partisan advantage is likely, particularly at the national level; most interesting will be the result of a possible division of Salt Lake County for purposes of creating a third congressional district. Finally, the urban-rural battle is expected to continue.

NOTES

1/ 369 U.S. 186.

2/ Utah, Constitution, art. IX, sec. 2. No state census has ever been conducted.

3/ Ibid., sec. 3, states that the number of senators is not to exceed thirty nor be decreased to less than eighteen; nor shall the number of House representatives exceed ninety nor be less than forty-five "or less than twice the number of Senators." Presently, there are thirty senators and sixty House members. See Utah, Code, Annotated (1953), sec. 36-1-4.

4/ Utah, Constitution, art. IX, sec. 4.

5/ Ibid.

6/ Wasatch Front Regional Council, Economic Development: Resource Problems, Issues & Opportunities, Technical Report No. 7 (Salt Lake City: Wasatch Front Regional Council, 1977).

7/ Kenneth Mitchell, "The Struggle for Reapportionment in Utah" (M.A. thesis, University of Utah, 1960), pp. 98-103.

8/ Ibid., p. 164.

9/ Baker v. Carr 369 U.S. 186 (1962); Wesberry v. Sanders 376 U.S. 1 (1963); Reynolds v. Sims 377 U.S. 533 (1964).

10/ 234 F. Supp. 960, 964 (1964).

11/ Id., at 963-64.

12/ Petuskey v. Rampton, 234 F. Supp. 365 (1965).

13/ Congressional Quarterly Weekly Reports 23 (1965): 784-85.

14/ 394 U.S. 526, 89 S. Ct. 1225 (1969).

15/ 394 U.S. 542, 89 S. Ct. 1234 (1969).

16/ Ferrell v. Oklahoma, ex rel. Hall, 399 F. Supp. 73, 82 (W. D. Oklahoma), aff'd, 406 U.S. 939, 92 S. Ct. 2045 (1972).

17/ Gaffney v. Cummings, 412 U.S 735, 92 S. Ct. 2321 (1973).

18/ C 196-71 (D. Utah 1971).

19/ Utah, Office of Legislative Research, Report of the Constitutional Revision Commissions (Salt Lake City: Office of Legislative Research, 1979).

20/ Utah Foundation Research Brief No. 77-5, Sant Lake City, March 21, 1977. See also the Salt Lake Tribune, July 3, 1980, sec. B, p. 3.

21/ Projections are based on figures provided by the Utah Bureau of Business and Economic Research, Salt Lake City.

22/ As to the demographic figures for ethnic minorities, their population is less than nine percent of the state's total. Thus, minorities are not a significant factor in reapportionment decisions.

23/ LaVarr Webb, "Gerrymander? Here? In Utah?" Deseret News (Salt Lake City), July 12, 1979, sec. C, p. 3.

24/ Ibid.

25/ Ibid.

WASHINGTON

Hugh Bone

Richard Morrill

Washington State reapportionment and redistricting problems have constituted an exciting area of legislative and electoral politics. As in many states the record has often been a sordid one. It has been characterized by legislative inaction resulting in extensive public and court involvement.1/

1930 - 1960

After the legislature reapportioned in 1901, it refused to do so after the censuses of 1910 and 1920. Interested citizens therefore placed a reapportionment initiative on the ballot in 1930, increasing the size of the legislature to forty-nine senators and ninety-nine House members. The initiative was adopted by the voters but was not to the legislature's liking. The legislature therefore enacted its own plan in 1931. The governor vetoed the bill on the grounds that initiated statutes were immune from repeal or modification for two years.

In the first election after the new apportionment (1932), the legislature swung sharply from Republican to Democratic control. This could not be traced directly to the new districts, as the Democratic tide also swept into office the Democratic candidates for governor, U.S. senator, and all but one of Washington's congressional seats, while giving Roosevelt 57 percent of the popular vote.

Again the legislature took no action after the 1940 census. Meanwhile, the population increased by about 40 percent between 1930 and 1950. By 1950 the malapportionment was receiving much attention in the press and by civic groups.

The legislature came under mounting criticism when it failed to reapportion in 1951. The Legislative Council proposed new apportionment plans in 1953 and 1955, but the legislature refused to act.

Meanwhile, the League of Woman Voters and its allies started an apportionment initiative but failed to obtain the requisite signatures to get it the ballot in 1954. Undaunted, supporters got a measure on the ballot in 1956, and it was adopted by the voters. But in the end the legislature outwitted the initiative supporters. Aware of the initiative efforts, legislators proposed an innocent-looking constitutional amendment in the same 1956 election, permitting the legislature to "amend" an initiative by a two-thirds vote. The apportionment initiative carried by 42,000 votes, the legislature's amendment by 62,000 votes. Few people foresaw that in supporting both propositions, the voters of Washington had opened the way for the legislature to emasculate the apportionment initiative. The legislature did so almost immediately, with amendments that were almost tantamount to repeal. The legislature restored a number of former districts, its action surviving a state Supreme Court test in a much-criticized 5-4 decision. While the new apportionment was some improvement over the old, twenty-four of the forty-nine senatorial districts deviated by 25 percent or more from the average population, and districts varied in population from 20,454 to 145,180. Perhaps the major impact of the 1957 reapportionment law was to lock in the Democratic majorities in both houses.

The Sixties

When the legislature again failed to act in 1961, the League of Women Voters, using data from the 1960 census, readied a carefully drawn initiative for the 1962 election. However, the initiative failed to pass. Low voter turnout and the determined opposition mounted by farm groups and rural interests contributed to the defeat. Some supporters also felt that even if the initiative were adopted, the legislature would only emasculate it as it had the 1956 measure.

Even before the 1962 election, an important new force entered the reapportionment picture -- the courts. In light of Baker v. Carr, a suit was filed in June 1962 challenging the state legislative and congressional district patterns. After defeat of the 1962 initiative, proponents of a new law rallied around court intervention.2/ In a historic decision, the federal district court dismissed the complaint against the congressional districts but found "invidious discrimination" in the legislative districts and ruled them unconstitutional. But the court avoided immediate direct intervention by giving the legislature, scheduled to convene in January 1963, a chance "to discharge its constitutional mandate."3/

The Democrats had a large margin in the Senate and a 51-to-48 majority in the House. But seven Democrats in the House joined with the Republicans to resist the reapportionment plan supported by the Democratic majority. The House coalition managed to pass its own bill, affording much protection both to Republican incumbents and to the seven defecting Democrats. But the House and Senate then could not agree on a compromise. The court's patience and prodding were obviously not enough to force legislative action. In effect, the ball was now in the court's lap and it had to decide what to do with it.

The balance of 1963 and 1964 was replete with political thrusts and counter-thrusts and appeals involving the courts, the legislative leaders, and the attorney general.4/

In May 1963 the district court responded to the legislature's inaction with a decision expressing disappointment and declaring all 1957 redistricting laws null and void; it said it would not undertake the reapportionment itself, however.

In July 1964 the district court said some judicial action had now become necessary, and it noted such alternatives as court redistricting, at-large elections, and weighted voting in the 1965 legislature. In October, during the election

campaign, the court dropped all these options and ruled that redistricting must be made the first order of business at the 1965 session, and that legislators elected in 1964 could serve only one year. The court later removed the one-year restriction but said the legislature could take no final action on any bills in 1965 until it had acted on reapportionment.

The 1964 election resulted in large Democratic majorities in both houses, the demise of the House GOP - Democratic coalition, and the placing in office of Republican Governor Daniel J. Evans. In contrast to Governor Rosellini, his predecessor, Evans heavily involved himself in reapportionment matters and judiciously used both the veto and threat of the veto to force the Democratic majorities into compromise affording protection to the Republican interests. By this time, also, the legislature was convinced that the district court would do the redistricting if the legislature failed to do so.

After forty-seven days of hectic bargaining among the governor, Senate and House Democrats, and a generally united Republican party, a redistricting bill was passed. The Senate vote was largely along party lines. But it took a coalition of thirty-nine Republicans and seventeen Democrats to get acceptance of the bill in the House. The governor quickly signed the bill, to the cries of many House Democrats that they had been "sold down the river." The court accepted the measure but noted that it was short of "mathematical perfection"; the court called for a better law after the 1970 census.5/ Although the court had retreated over the months, it had kept pressure on the legislators to redistrict. Without court intervention, most legislators later admitted, redistricting would not have been accomplished.

The 1965 law extensively reshuffled seats, only four of the forty-nine Senate districts remaining the same.6/ Five of the forty-nine Senate and fifteen of the ninety-nine House seats were moved from one part of the state to another. All but two of the new districts were within a population deviation of 15 percent.

One of the most significant aspects of the 1965 law was its attempt to protect both incumbents and current party voting strength. The fact that the big gainers were the suburbs and the metropolitan areas, however, did provide an edge for Republicans. They increased their strength from thirty-nine to fifty-five House members -- a majority -- in the first election following the redistricting, in 1966. With only half of the Senate up for re-election, the Democrats lost three seats in 1966 and retained control by a margin of twenty-nine to twenty. They have kept their Senate majorities up to the present. Republicans retained their control of the House until the 1970 elections, when they lost badly and elected only forty-one members.

Political scientists have long disputed the impact of legislative reapportionment in 1965. James J. Best made a thorough analysis of the results of the 1965 law.7/ He concluded that the extensive turnover brought in a number of people with a new view of the job of legislator. Lobbyists had to establish new contacts, and new coalitions were formed which resulted in an acceleration of spending for all state services, especially spending that benefited urban and suburban voters. The changes were not dramatic but were nonetheless important.8/

The Seventies

The 1970 census reported substantial population shifts in Washington, and therefore indicated a need for fairly drastic changes in legislative districts. The largest cities had suffered population losses relative to the rest of the state, with Seattle having to lose two districts, and Spokane one. Eastern Washington had to lose two seats, while suburban Seattle-Tacoma (King, Snohomish, and Pierce Counties) stood to gain three. The shift of population to the suburbs appeared to favor Republicans, given the Democratic character of the large cities. The 1970 census revealed discrepancies in population in the existing districts ranging from +97 percent (134,000) to -45 percent (44,000).

The 1970 election resulted in a Republican House and a Democratic Senate. In 1971, the respective caucuses developed their own highly partisan plans, the Democrats led by state Senator Robert Greive, the Republicans by Attorney General Slade Gorton. Each plan was openly and cleverly designed to maximize party strength. The Democratic plan was an especially classic form of gerrymander. A compromise was not reached in 1971, and a special session of the legislature was required in 1972. At this time, a Seattle attorney, Mr. George Prince, sued in Washington district court (Prince v. Kramer), asking the court to impose its own plan if the legislature failed to act by February 25, 1972.

A compromise was not quite reached in the special legislative session, evidently because of incompatible arrangements by the two parties in Seattle and Spokane. The court then took jurisdiction. The court accepted fairly stringent nonpartisan and anti-gerrymandering guidelines suggested by Mr. Prince (a maximum deviation in population of one percent; compactness; integrity of cities and counties; consideration of racial minorities and such natural geographic boundaries as the Cascades and Puget Sound). The court appointed a University of Washington geography professor, Richard Morrill, as special master, and also allowed interested parties to submit plans: the State Labor Council did so for the Democrats, and the attorney general for the Republicans, while the secretary of state submitted the existing 1965 plan. Only a month was available for the redistricting task, but despite constant inputs of new data, the job was completed in time for filing. It had been hoped to experiment with computer redistricting, but time constrictions made this impossible.9/

Once the new plan was submitted, the Democrats attacked it as biased in favor of the Republicans. They appealed the issue to the U. S. Supreme Court. However, the plan was eventually accepted as drawn, requiring a frantic adjustment of precincts and election rolls in the short time before the 1972 primary election.

The 1972 elections resulted in a "surprise" Democratic victory. Democrats held both houses of the legislature until 1978, when the House became tied, 49-49.10/

It should be noted that party loyalty is very weak in Washington, and personality looms large. It is not uncommon for a senatorial district to elect one Republican and one Democratic representative, both by wide margins. Hence it is difficult to predict elections. This volatility also suggests that it may be a little silly for the parties to invest so much effort in redistricting on the basis of previsous election results!

In the 1979 legislature, Common Cause and the League of Women Voters, with Professor Morrill's help, supported legislation to create a Redistricting Commission. This passed the House readily with strong bipartisan support, but the Senate "old guard" declined even to hold hearings on the proposal. Thus the stage is set in 1981 for another attempt by the legislature to redistrict itself, despite its dismal record.

The Eighties

Preliminary census results suggest a continued population loss for the city of Seattle and its traditionally Democratic districts, but very few major population changes in most other parts of the state. Thus, apart from the shift of districts from the city to the suburbs around Seattle and Tacoma, no drastic revisions will be required this time around. However, Washington is expected to gain an eighth congressional district, which will probably be located in the suburbs around southern Puget Sound (stretching from Olympia to Seattle).

A scandal affecting the Democratic leadership in both the House and Senate is expected to bring about Republican victories in 1980, perhaps giving the GOP control of the governorship and the Senate as well as the House. Ironically, it is too late for the Senate Democrats to change their minds and seek a nonpartisan or bipartisan Redistricting Commission.

NOTES

1/ The apportionment story is very lengthy and complicated. Space allows only highlights here. Fortunately, there are extensive accounts of reapportionment in the period prior to 1970. Gordon E. Baker has presented a full account up to 1960 in The Politics of Reapportionment in Washington State (New York: Holt Rinehart and Winston, 1960). Co-author Hugh Bone has recorded aspects of the turbulent period of the sixties in the section on "Washington," in Impact of Reapportionment in the Thirteen Western States ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), pp. 285-306.

2/ For a comprehensive account of the judicial battles during the first half of the sixties, see the unpublished Ph.D. dissertation by William B. McDermott III, "The Impact of Baker v. Carr in the State of Washington: The Relationship of Constituency to Compliance" (University of Washington, 1965).

3/ Thigpin v. Meyers, 211 F. Supp. 832 (W.D. Wash. 1962).

4/ Only a brief summary can be provided here. For a fuller account see Bone, "Washington," pp. 288-92.

5/ Court's Oral Opinion to Defense Motion to Dismiss, March 9, 1965, 5597 Federal File.

6/ For details see Bone, "Washington," pp. 294-96.

7/ "The Impact of Reapportionment on the Washington House of Representatives," in State Legislative Innovation, ed. James A. Robinson (New York: Praeger Publishers, 1973), pp. 136-82.

8/ Ibid., p. 180.

9/ On the 1972 redistricting, see Richard Morrill, "On Criteria for Redistricting," Washington Law Review 48 (1973): 847-56, and "Ideal and Reality in Reapportionment," Annals of the Association of American Geographers 63 (December 1973): 463-77.

10/ Prior to the 1972 redistricting there had been ninety-nine representatives--one Senate district containing three House districts--but the court had disallowed this.

WYOMING

Oliver Walter

Largely because of increased demands for its energy resources, Wyoming is one of the fastest growing states in the Union. During the past ten years, Wyoming has increased in population by approximately 35 percent.1/ Not unexpectedly, the most rapid growth has taken place in the energy-rich counties of Campbell, Carbon, Converse, Sheridan, and Sweetwater. These counties have, on the average, doubled in population since 1970, and at least four of them should increase their representation in the legislature. However, because all counties except one have grown by at least 20 percent, a significant redistribution of legislative representation will not take place.

History of Redistricting

Wyoming constitutional provisions concerning redistricting were the result of a compromise between the smaller and larger Wyoming counties.2/ Although the compromise did not legally create a system of representation identical to that of the U. S. Congress, the result was quite similar. Counties were designated as the basic legislative districts (creating multi-member districts) and were guaranteed at least one representative and one senator. Further violating the one man-one vote principle was the provision that the House could not be more than three times the size of the Senate. Within these restrictions, representation was to be based on population. The constitution specified that the legislature should be reapportioned after each national and state census. Between 1890 (the year Wyoming became a state) and 1933 the legislature complied with the constitution on six separate occasions. But, as the differences in population between the large and small

counties grew, legislators from the small counties began to lose interest in reapportionment. The legislature ignored the constitution after the 1940 census and again after the 1950 census. Thus, by the time the major judicial reapportionment decisions were rendered in the early 1960s, the Wyoming legislature had ignored population growth for thirty years. More extreme examples of malapportionment can be found in other states, but Wyoming did develop its own sorry instances of malapportionment. In the House there was one representative for every 2,930 persons in Campbell County, while the figure for Laramie County was one for every 10,024 persons. Malapportionment in the Senate was even worse. A senator from Teton County represented around 3,000 persons, while one from Laramie County represented over 30,000 persons. The average deviation from the equal-population ideal for House districts was 2,212, and for the Senate it was 8,216.

Responding to Supreme Court decisions, the legislature was reapportioned in 1963. Considering the state constitutional provision that all counties should have at least one representative and one senator, the one man-one vote principle was quite closely adhered to in the House, but largely ignored in the Senate. The two largest counties gained eight House seats, while eight smaller counties lost one representative each. Four other counties gained either one or two seats in the House. This was accomplsihed by adding five members to the House. Only minor changes were made in the Senate. The only concession to one man-one vote was the removal of one Senate seat each from two counties that had grown little in the previous thirty years. The number of Senate seats was not increased for the two largest counties. In all, the average population deviation was lowered from 2,212 to 463 in the House and from 8,216 to 7,531 in the Senate.

Legislators from the more rural areas favored the 1963 legislation, while those from the relatively more populated counties opposed the plan largely because of malapportionment in the Senate. Minority Democrats also opposed the plan, not so

much because it discriminated against them but because the plan had been favored by the Republicans.

Almost immediately, the Senate reapportionment was challenged in the courts. However, despite efforts by the governor, who called a special session in the summer of 1964, the legislature failed to amend the standing legislation.

For one of the few times in Wyoming history, the Democrats gained control of the House in the 1964 elections. This still left the Republicans with a majority in the Senate, however. Basically because of this split, efforts to reallocate Senate seats failed in the 1965 legislative session. During the debate, the Republican governor proposed that single-member districts be drawn. The governor's plan, which would have made reapportionment somewhat easier and would have rendered voting in the larger counties somewhat less burdensome, was strongly opposed by the Democrats, who feared a Republican gerrymander.

Following the failure of the legislature to reapportion itself, the federal district court assumed this legislative responsibility. The constitutional stipulation guaranteeing a senator for each county was declared invalid. The number of Senate districts was reduced from twenty-three to seventeen, while the membership of the Senate was increased from twenty-five to thirty. The seven largest counties increased their representation from nine to twenty senators.

Judicial reapportionment was a cathartic experience for the state. The previously inviolate rule of county representation was broken, thus making it much easier to manipulate district lines in the future. As in the rest of the nation, arguments against one man-one vote are seldom heard now in Wyoming political debates.

Despite the highly controversial nature of the judicial reapportionment, the consequences of the changes are difficult to detect. After their 1964 surge, the Democrats fared badly in the 1966 and 1968 elections and resumed their customary

role as the minority party. The number of farmers and ranchers in the legislature declined markedly, but those lawmakers who replaced them did not demonstrate markedly different political philosophies.

Wyoming is a rural and a homogeneous state. On some issues, legislators from Casper and Cheyenne are united against those from Ten Sleep or Chugwater, but such issues are rare. Moreover, partisan divisions do not necessarily parallel rural-urban divisions. Thus, despite the symbolic importance of reapportionment, reapportionment was of little substantive importance.

Following the 1970 census, the legislature was again reapportioned. This time, however, the issue did not generate much political heat. A feeble attempt was made by legislators from the small counties to reinstitute county representation, but in the end, the pattern set forth by the federal court was adhered to with only slight modifications.

If reapportionment has created a problem, it is the size of the multi-member districts in Laramie and Natrona Counties. Voters in Laramie County elect either twelve or thirteen legislators, while those in Natrona County elect twelve. During the 1970 session, the governor called for subdistricting in the larger counties, and such a proposal was introduced by a Laramie County Republican. The proposal got nowhere, for two reasons. As in the 1960s, the Democrats feared a Republican gerrymander. Secondly, a number of legislators from both Casper and Cheyenne lived within a few blocks of one another, and almost any subdistricting plan would have forced them out of the legislature. Although the Republican party platform has consistently favored subdistricting while the Democrats have opposed it, the question of whether or not the larger counties should be subdivided has been a matter of almost no public concern during the 1970s.

The energy boom of the 1970s did not result in above-average growth for the state's two largest counties, and they will either maintain their present legislative

allocations or else lose one seat in both the Senate and the House. The five energy counties will likely gain five seats in the House and two in the Senate. What will be the consequences of these gains? First, the Republican party will benefit somewhat. Three of the energy counties are strongly Republican, while two tend to be Democratic. It should be pointed out that two other counties in which Democrats often win, Albany and Laramie, may lose a legislative seat or two. Potentially, these changes could have some impact upon the outcome of the debate over whether or not to increase the state's mineral severance tax. Democratic Governor Ed Herschler won re-election in 1978 largely through his efforts in behalf of a severance tax increase. The Republican-dominated legislature, however, has refused to increase the tax on the mineral industry. After the next reapportionment, it may be more difficult for the Democrats to push this piece of legislation.

A second consequence of the 1980s reapportionment, of course, is that the mineral-rich counties will increase their influence in the legislature. But it is very difficult to find issues on which these counties have interests different from the remainder of the state. As with reapportionment in the 1960s, though, the courts have stepped in and declared present school funding methods unconstitutional. The legislature is now attempting to come up with an allocation method which would fund state schools more equitably. Another issue that might set energy counties against the remainder of the state is aid to counties and cities seriously affected by the growth of the energy industry. Wyoming received seventy million dollars in 1979 from federal mineral royalties. Under the 1976 act which increased the state's share of the royalties from 37 percent to 50 percent, state subdivisions seriously affected by mineral development were to be given priority in the use of the funds. The Wyoming legislature, however, while not ignoring affected communities, made it possible for almost every political subdivision to receive some benefits from the federal funds. Thus far the energy counties have not vigorously protested, largely

because they have received ample funds. But even if the energy counties were to mount a major protest in the future, their increased strength in the legislature would not be great enough to change present allocation formulas.

The 1981 reapportionment has stirred little debate so far. Every county will likely maintain at least one seat in the House, even if the size of the House has to be increased. Present Senate districts will probably remain intact, also. There may be some debate about subdistricting, but there does not seem to be much support building for such a radical change. Thus, as in 1971, reapportionment will be carried out with only the normal partisan debate, and the political consequences will be hard to detect.

NOTES

1/ At this point, final 1980 census figures are not available. Apparently, some counties have greatly over-estimated their growth rates, and thus statements concerning reallocations of legislative representation are tentative.

2/ For an in-depth discussion of Wyoming reapportionment through 1966, see John B. Richard, "Wyoming," in Impact of Reapportionment on the Thirteen Western States, ed. Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), pages 309-328.