memorandum

League of Women Voters Education Fund

JAN 3 1972

December 29, 1971

State League Presidents
Reapportionment, Representative Government or
Legislative Chairman

Litigation Department

Re: Apportionment Suits in Your State

As an adjunct to the apportionment questionnaire sent to you by the National Office, the Litigation Department requests more specific information relating to local, state, and congressional reapportionment suits. We apologize for the two-pronged format of the apportionment questionnaire, but trust that the additional information can be conveniently returned with the original question form.

We are working with the Lawyer's Committee for Civil Rights Under Law in a joint effort to assess more effectively those disparities which might be susceptible to litigative action. Your assistance in responding to the following two questions would be most appreciated.

(1) Are there, or will there be, any law suits challenging any local, state, or congressional redistricting plans in your state? Who is bringing the suits? What is the complaint? Has there been a court decision?

(2) Please send any available copies of new redistricting plans for any level of government in your state.

1730 M STREET, N.W., WASHINGTON, D.C. 20036 • TEL. (202) 296-1770

memorandum

JAN 3 1972

The League of Women Voters of the United States

December 20, 1971

TO: SELECTED LOCAL LEAGUE PRESIDENTS
FROM: CYNTHIA HANNUM, NATIONAL ACTION CHAIRMAN

The League of Women Voters of the U.S. gave permission to the LWV of the National Capital Area to lobby your Congressman to vote to release the District of Columbia share of the Metro subway funds. The lobbying took place on November 29 and 30 and December 1, 1971, and was done in cooperation with the Council of Governments, the Washington Metropolitan Area Transit Authority, elected officials in the Metropolitan area, and other regional groups. The LWVUS allowed the LWV-NCA to lobby those Congressmen who have their second homes in Maryland and Virginia and who have not supported the release of the D.C. share of the subway funds in the past.

The LWV of the National Capital Area is an inter-League organization composed of eight local Leagues in the Washington area. It has strongly supported a coordinated transportation system which includes rapied rail transit since 1963. The D.C. share of Metro funds has been consistently deleted from the D.C. appropriations bill since the last half of 1970, until the amount of funds due plus 6% interest is now $74,712,000. When the funds were once again deleted by Rep. Natcher's subcommittee this past November, the League and others mounted a vigorous action campaign to restore the funds on the House floor. Great impetus was given to the campaign by the rising indignation of the suburban jurisdictions which have been paying their shares regularly and have exhibited considerable patience over the District's dilemma. There were threats that they would refuse to pay more if D.C.'s share were not released, in spite of the fact that holes have been dug and work is in progress.

Permission to lobby your Congressman was granted for the following reasons:

1. The national air quality position supports measures to reduce vehicular pollution, including development of alternate transportation systems.

2. Regional problems in the National Capital Area cannot be solved without going to Congress, particularly since the District of Columbia is without self-government and has no other way to commit funds except through Congressional appropriations.

3. In view of point 2, it seems particularly incumbent upon Congressmen living in the area affected to play a responsible role toward the jurisdiction of their second home.

This story has a happy ending in spite of all predictions to the contrary. The House restored the Metro funds on December 2 by a vote of 196 to 183.

LETTER TO SELECTED CONGRESSMEN FROM
LEAGUE OF WOMEN VOTERS OF THE
NATIONAL CAPITAL AREA

JAN 3 1972

November 29, 1971

Dear Congressman:

As a resident and commuter in the Washington metropolitan area as well as a member of Congress, you are certainly aware of our persistent transportation crisis. It is also evident that visitors to our nation's capital are confronted with traffic problems that can only increase until a rapid rail transit system is a reality. This should not be the case in metropolitan Washington - ease of travel would heighten appreciation of the nation's capital.

Yet at this point in time when the need for a viable transportation system is urgent, construction of the Metro system is jeopardized by lack of funds. The continuation of subway construction must have top priority and without the District of Columbia share, this is not possible. The cost of construction delays runs to millions of dollars monthly - not a pretty picture of governmental efficiency and a decided disservice to the suburban jurisdictions which have contributed their share of the original assessment in good faith.

The League of Women Voters of the National Capital Area, representing eight local jurisdictions of metropolitan Washington, firmly supports a coordinated transportation system for the area with strong emphasis on public transportation.

The League of Women Voters of the United States, which includes members from your home state, has formulated a position on air quality for the Nation as a whole which supports measures to reduce vehicular pollution, including the development of alternative transportation systems.

We urge you to vote this week to restore the subway funds to the D.C. appropriations bill so the District can meet its share of the cost. If the capital's transportation problems are to be lessened, the Metro must become a reality. Your vote can make a difference!

Sincerely yours,

/s/

Mrs. Donald R. Hill
President

S&W

FEB 7 1972

THE STECK DIVISION
STECK-WARLICK COMPANY

AC 512-454-4761, P. O. Box 968, Austin, Texas 78767

Veta ——

This goes with the National Report re reapportionment — dated Dec. 13 — sent you earlier. I also made copies for Betty Anderson for her file. (Stuff from Texas Legislative Service also went to National.) Chris

LITHOGRAPHING • PRINTING • OFFICE EQUIPMENT

Dec. 9, 1971

Experts Say Court Rulings Won't Solve Redistricting

By GARTH JONES
Associated Press Writer

Anyone who thinks high court decisions, expected shortly will settle Texas' redistricting problems better take another look at the situation.

State government experts are already predicting there will be another big shuffle of legislative and congressional district boundaries after the next nationwide census in 1980.

During the 1960s most redistricting problems came from the tremendous population growth of the state as a whole—a 16.9 per cent gain for Texas compared with the national gain of 14.2 per cent.

In 1981, the first legislature to get a chance to act on the 1980 census figures, the big problem will be our constantly shifting big city populations with their masses of apartment dwellers who move frequently and erratically.

Congressional redistricting more or less sets the pace for legislative redistricting because the larger congressional districts, now totaling 24, provide the first division of the state with boundaries of state senatorial and representative districts coming later.

A recent publication by Wesley Chumlea, associate professor of political science at Stephen F. Austin State University in Nacogdoches, provides an excellent discussion of the history of congressional redistricting and its future prospects.

Chumlea points out that "the silent gerrymander, the simple failure to redistricting following a decennial census" is nothing new. The legislature waited until 1917 to redistrict congressional boundaries following the 1910 census, resulting in two congressmen-at-large elected statewide instead of by assigned districts. The next redistricting did not take place until 1933, based on the 1930 census, and this lasted until 1957, from 1950 to 1957 Texas had another congressman-at-large.

Texas gained a 23rd congressman in 1960 but once again the legislature refused to come to grips with the problem and it was not until 1965 that a redistricting law, based on the 1960 figures, was passed. This redistricting was promptly challenged because it allowed deviation of almost 20 per cent in population between some districts, and the 1967 legislature had to redraw district lines again. It was from these districts that congressmen were elected in 1968 and again in 1970.

Now, the 1971 redistricting bill, based on the 1970 census, remains to be tested. Chumlea said the latest bill may well meet the Supreme Court's guidelines because the districts have a deviation or range in population of only 4.13 per cent between the largest and smallest.

"Whether they (the new districts) meet the test of constitutionality or not is still a question," Chumlea says. "Too many of the districts are anything but compact; some may not be altogether contiguous and one or two are positively grotesque in appearance."

And the 1971 legislators started their redistricting with the rural areas, moving into big city areas to gain the needed population. Courts may decide the division should have started in the big cities.

"Texas may gain another seat in Congress in 1981," said Chumlea, "but this depends entirely on the degree of population growth it experiences during the 1970s, relative to other states."

Although Texas' population shot up 16.9 per cent in the 1960s, there were 16 other states that had higher growth rates. And 98 per cent of Texas population increase in the 1960s took place in the state's metropolitan areas, with 85 per cent of the increase coming from Dallas, Fort Worth, Houston and San Antonio.

"Whether Texas gains an additional House seat in 1981 or not, it will still need to rearrange its congressional districts so they will adequately reflect its mobile, increasingly metropolitan population," Chumlea says.

Nov. 25, 1971

Redistricting Plan Facing Suit in SA

SAN ANTONIO (AP) — Six persons, including County Republican chairman Van Henry Archer Jr., filed a federal court suit Wednesday challenging the constitutionality of the state legislative redistricting plan.

The class-action suit seeks a temporary restraining order barring elections under the present plan, pending a hearing by a three-judge court.

Named as the defendants were Gov. Preston Smith, Secretary of State Bob Bullock and five members of the Texas Legislative Redistricting Board, including Lt. Gov. Ben Barnes and House Speaker Gus Mutscher.

The suit charges that in many instances the redistricting board minimized or cancelled out the "voting strength of racial or political elements" in House districts.

(See SUIT, Page A9)

It also struck at the creation of single-member House districts for some counties such as Harris County (Houston) and multiple-member districts for others.

It charged that in many instances the House districts were created for the benefit of incumbents.

The board was accused of gerrymandering in the arrangement for northeast Bexar County (San Antonio), attaching that area to the district of Sen. Wayne Connally. That district takes in the northeast edge of San Antonio and encircles the city, stretching as far south as Rio Grande City in the Rio Grande Valley, the suit noted.

The suit charges the board "elected to gerrymand the senatorial lines so as to not disturb the incumbent state Sen. Joe Bernal's Dist. 21, or state Sen. Glenn Kothmann's Dist. 19," both in San Antonio.

The board was accused of drawing the lines deliberately to "sever, divide, and in effect destroy the voters of the Republican Party and the Conservative Democrats and other minority groups" who live in north and northeast Bexar County.

The suit said the boundary lines "completely diluted plaintiffs' vote and strength" and insure "one party domination" in the districts involved.

In addition to Archer, the plaintiffs included former Republican State Committeeman M. O. Turner of San Antonio.

Vol. 58 – No. 147 68 Pages Austin, Texas, Thursday, December 23,

1971

UT Professor Named Master in Redistricting Case

By GEORGE KUEMPEL
Capitol Staff

University of Texas law professor George Schatzki, has been named special master to hear challenges of the state's House and Senate reapportionment plans.

Schatzki, a liberal, also is a former law partner of State Sen. Oscar Mauzy of Dallas, a leading spokesman for single member House districts and a plaintiff in one of the four suits challenging the constitutionality of the redistricting plans.

The selection of Schatzki as special master was announced by Federal District Judge William Wayne Justice of Tyler, one of three federal judges who will rule in the suits.

Justice's announcement came during a prehearing "conference" here with more than two dozen attorneys representing the plaintiffs, the state and other defendants in the suit.

Hearings on the case were scheduled to open New Year's Eve because of the "emergency situation" and will resume Jan. 3. A Jan. 6 deadline on the hearings was set by Justice.

Schatzki then will make a report — including his recommendations — to the three-judge panel. The judges will hold hearings on Schatzki's findings Jan. 20 and 21, according to Justice.

"We are confronted with a full-fledged judicial emergency," Justice said in setting the rigid guidelines for the case. "If we are not to disrupt the political processes of this state some decision from the three member court should emanate before Feb. 7."

Feb. 7 is the filing deadline for political candidates.

Schatzki was a partner in Mauzy's Dallas law firm from 1959 until 1962. He was elected last year as a vice president of the Texas Civil Liberties Union, which is aiding plaintiffs in one of the suits.

Both of the contested redistricting plans were drafted by the five member Legislative Redistricting Board, which was made up of Lt. Gov. Ben Barnes, Land Commissioner Bob Armstrong, Atty. Gen. Crawford Martin, Speaker Gus Mutscher and Comptroller Robert S. Calvert.

The constitutionally created board inherited the task of reapportioning the state's 31 Senate seats after the Legislature failed to do so, as is required following the publication of the decennial census.

House reapportionment also fell to the board after Dist. Judge Herman Jones of Austin declared the plan approved by

(See MASTER, Page 8)

MASTER

(From Page One)

the state Legislature unconstitutional. Jones' ruling was later upheld by the State Supreme Court.

The Board's House reapportionment plan provides for a continuation of multi-member districts in all urban areas, except Harris County, which is divided into 24 single-member districts.

The multi-member district concept was isolated by Justice as the primary question in the challenge of the state's reapportionment plan.

"The only thing seems to me is truly an issue is the alleged invidious discrimination by petitioners in multi-member districts," the judge said.

Justice also made it clear Schatzki will be expected to come up with a redistricting plan of his own if he feels that either or both of the existing plans are unconstitutional.

"The master will be instructed in the event he should feel the present distribution is unconstitutional in either the House or Senate or both, he should prepare a plan which would provide constitutional apportionment of the House and Senate," Justice told attorneys.

Justice also assessed the state and plantiff fees of $5,000 each to cover additional costs resulting in the speeding up of the proceedings.

AUSTIN REPORT – December 24, 1971

THE Federal courtroom in Austin resembled the site of a Bar convention with all the lawyers involved in the House redistricting challenges combined for a 3-judge panel review (AR, Dec. 19). Judge Justice Friday said the panel will appoint a special master to hear arguments Dec. 31 and Jan. 3-6. Then, he's to make a report to the panel--or submit a redistricting plan if he determines unconstitutionality, and the judges will call a hearing to take objections. The panel's ruling will be made before the Feb. 7 filing deadline, Justice said, but the deadline may have to be extended if appeals are made. The court assessed the State $5,000 for special master costs, and $5,000 from all other parties, but Asst Atty Gen. Sam McDaniel says the State doesn't have the $5,000 since Gov. Smith vetoed Atty Gen. Martin's court costs money...UT Law Prof. George Schatzki was the one picked as special master.

UT LAW Prof. George Schatski knew the 3-judge Federal panel on House redistricting was going to renege on his appointment as special master to hear the suits (AR, 12-26-71) even before Earl Luna filed the motions for SDEC Chmn Roy Orr to remove him. Schatski was packing to go to a meeting in Chicago, instead of reading decisions, not long after it was announced that American Bar Pres. Leon Jaworski of the Houston law firm of Fulbright, Crooker, Freeman, Bates & Jaworski was going to be the Atty Gen.'s "chief honcho" in the case--fee free, and his first move would be to ask removal of the special master. The judges were to hold a pre-trial hearing Friday, and hear arguments the week of Jan. 3...In the meantime, Dallas City Councilman George Allen, Rep. Zan Holmes and Dallas School Trustee Dr Emmett Conrad intervened in the suit, asking on behalf of all black Dallasites that single-member House districts be drawn in their county. – AUSTIN REPORT – January 2, 1972

, January 23, 1972 25 Cents CENTRAL TEXAS EDITION

Court Throws Out Redistricting Plan

DALLAS (AP) — A three-judge federal panel threw out the Texas Legislature's congressional districting Saturday, ruling it unconstitutional.

At the same time, the jurists accepted a proposed new plan based solely on population and said it will be the law until the next census in 1980 unless the legislature meanwhile comes up with some new plan that the court will accept.

The judges retained jurisdiction for extending the filing deadline for candidates, now set at Feb. 7, "in the event it is made known to this court that a called session of the legislature will include congressional reapportionment."

The plan adopted is one of two submitted by plaintiffs in the suit — 10 Texas voters, headed by Don Weiser, a Dallas mathematician employed in the research department of an oil corporation.

But the judges said their order was "determinative of the rights of all others."

However, they did allow the intervention of Van Henry Archer Jr., chairman of the Bexar County Republican party, although they did not use a plan he submitted.

U.S. Circuit Judge Joe M. Ingraham of Houston presided over the court, sitting with U.S. District Court Judges William M. Taylor Jr. and Robert M. Hill.

Texas Secretary of State Bob Bullock was defendant.

The case was argued before the judges Friday morning, but they reserved their opinion until 11 a.m. Saturday.

Lawrence Fischman, lawyer for the plaintiffs, said members of the legislature made two trips to Washington "at the expense of the people of Texas" to consult Texas congressmen about their redistricting wishes.

He also quoted House Speaker Gus Mutscher Jr. as saying "with a most remarkable piece of political candor" that the approach to redistricting is determined by what can be avoided. Fischman said he took this to mean: "We can make a deal."

A comparison of the maps of districts as created by the legislature and the court show occasional remarkable differences in some areas.

Dist. 13 in the Panhandle and South Plains, for instance, went as far east as Clay County. It now is a compact area in the Panhandle and to the south.

Dist. 17, which under the legislature's districting sprawled from roughly Lubbock to Dallas with all sorts of dips and curves, now is a tightly-knit area.

The new Dist. 24, which once took in Denton County and the population-rich area between Dallas and Fort Worth, now takes in Hill and Ellis Counties and about half of Dallas County. This includes a portion of the Mid-Cities area.

Sam McDaniel for the State of Texas argued that "the people of the state have a better chance of making their wishes known through their elected representatives" than through "self-appointed guardians of their interest" such as the plaintiffs.

The judges apparently did not agree.

In their 700-word opinion and order they said the record shows that enactment of the legislature's order, known as

(See REDISTRICT, Page A6)

S.B.1, did not come "as close to equality as it might have come."

They held that the state failed to justify population variances between the various districts and that S.B.1 was therefore unconstitutional.

"Accordingly," intoned Judge Ingraham, "defendant is enjoined from conducting or permitting any primary or general elections based upon the districts established by S.B.1."

The court noted that the defendant, Bullock, had not submitted any plan for congressional seats as an alternative to S.B.1, whereas the plaintiffs had submitted two, known as Plan B and Plan C.

Plan B, the judges found, was based on S.B.1 but had a "significantly lower" deviation between district populations. Plan C was based solely on population and showed a variance between districts of less than 3-10ths of one per cent .0028.

Under S.B. 1 the population of the largest legislative district established was 19,275 persons greater than that of the smallest, producing a deviation of 4.1 per cent. The plaintiffs' Plan B showed a deviation of 2.5 per cent, and the Bexar County Republican plan about 2 per cent.

The court adopted Plan C, concluding that it "best effectuates the principle of one man, one vote, enunciated by the Supreme Court."

Sunday, Jan. 23, 1972

Smith Blames Barnes For Remapping 'Bust'

By GLEN CASTLEBURY
Capitol Staff

Gov. Preston Smith said Saturday there is little reason to believe the Legislature could accomplish valid congressional redistricting in a special session.

Smith, noting that the Legislature piddled away a full regular session without redistricting, blamed Lt. Gov. Ben Barnes, one of his primary election opponents, blamed Lt. Gov. Ben Barnes, one of his primary election opponents, for shortcomings in the congressional remapping plan knocked down Saturday by a federal court in Dallas.

"The responsibility for this inaction. . .rests squarely on the legislative leadership," Smith said.

An aide to Barnes said Barnes would have no comment.

The 62nd Legislature last year was hammering out final details of congressional remapping when the 140-day session came to its constitutional adjournment. Smith in a night declaration called the lawmakers into special session, and they took four more days to pass the bill killed by the federal court.

Barnes and House Speaker Gus Mutscher personally intervened in the final drafting of the bill.

For the Legislature, the court's ruling Saturday makes it three up and three down on redistricting. State Senate redistricting wasn't accomplished at all (and ended up for the first time in history before the Legislative Redistricting Board), and House redistricting was ruled unconstitutional by state courts.

Smith aid although he hasn't seen the court's decision or reviewed the remapping it ordered, the court "has laid down some extremely difficult standards and guidelines. . .if the Legislature were to draw any changes in the plan for the 1972 elections."

The court in its ruling held open an option to extend the Feb. 7 deadline for filing for the primary election in case the governor summoned a special session to deal with redistricting.

Smith said he is confident the court ruling will be appealed by Atty. Gen. Crawford Martin. There was no word from Martin following the ruling.

The governor's statement said in part:

"There is little reason to believe that the Legislature in special session could draw a new plan acceptable to the court in the short time remaining before the filing deadline and the primary elections. . .

(See SMITH, Page A6)

"I have already called one special session to deal with the problem of congressional redistricting. That session was necessitated by the failure of the Legislature to pass a congressional redistricting bill during the five months of the last regular session.

"The responsibility for this inaction during the regular session and for the Legislature's failure to pass a constitutional congressional redistricting bill during the special session rests squarely on the Legislature leadership.

"For these reasons, it is my present inclination that it would be fruitless to call another special session at this time."

●

Capitol Staff

The Dallas federal court's reshuffling of congressional district lines Saturday scalloped the edges — but left intact the heart — of the 10th District.

Austin still is at the hub of the new 13-county district now represented by U.S. Rep. Jake Pickle.

The reborn district as decreed by the court includes these counties: Bastrop, Travis, Balcno, Hays, Caldwell, Fayette, Washington, Austin, most of Waller, all but the south end of Colorado, about a third of Guadalupe, the northwestern part of Lavaca and all but a small part of Gonzales.

The court took Burleson and Lee counties out of the 10th District as it had been drawn by the Legislature. The court put Lee and Burleson in the 11th District now represented by U.S. Rep. Bob Poage of Waco.

The new counties put in by the court are those of Guadalupe (Seguin) Lavaca (Halletsville and Yoakum), and Gonzales (Gonzales) counties.

Pickle has represented most of those counties under one redistricting bill or another during his years in Congress.

For the 10th District, the court's version of redistricting is hardly more jarring than the plan which passed the Legislature and was stricken down by the court.

It was the Legislature's redistricting bill which stripped Williamson County (Georgetown) away from its historical ties to the 10th District, which was once represented in Congress by Lyndon B. Johnson.

The Austin American

Read by the Decision-Makers of Texas

Vol. 58 – No. 169 Austin, Texas, Monday, January 24, 1972 10 Cents

New Redistricting Plan Gives

DALLAS, Tex. (AP) — Reaction was mixed when the Texas Legislature's reapportionment of the state's 24 congressional districts was thrown out by a federal court and replaced by the "one-man, one-vote" alignment.

The court's order, all agreed, would not afford the protection for incumbents seeking reelection that the legislature's plan provided, but only a few voiced displeasure.

The new plan, which apparently will remain in effect until 1980, will cause six incumbents to run against each other in three of the new formed districts—if all six seek reelection.

Gov. Preston Smith said Saturday soon after the plan was made public that he had no intention of calling a special session of the legislature.

The congressman who must run against another incumbent include Graham Purcell of Wichita Falls, who will run against Omar Burleson of Anson; Jim Wright of Fort Worth against Ray Roberts of McKinney, and Clark Fisher of San Angelo who must face Abraham Kazen of Laredo. All are Democrats and three will lost their seats in the U.S. House.

The sweeping denunciation of the 62nd Legislature's more political oriented reapportionment bill, which was ruled unconstitutional,

Incumbents Less Protection

was the second major setback delivered in three days to Texas' state legislators.

Another federal court threesome ruled Thursday that the state's new party primary filing fees were too exorbitant to permit candidates of moderate means to run in some elections.

A third 3-judge panel, sitting in Austin, is expected to rule next week, possibly Monday, whether the State Legislature's redistricting bills for the State Senate and House were unconstitutional.

The federal jurists Saturday left the door open for the Texas Legislature to meet in a special session before the party primary filing deadline Feb. 7 and adopt a "constitutionally permissable plan of congressional redistricting" as a substitute to the plan the court approved. However, Governor Smith appeared balking at calling such a session.

The judges put state legislators on notice that they will examine any new plan for its constitutionality before it can be applied to a congressional primary or general election.

The federal judges also retained jurisdiction to extend the filing deadline for candidates in congressional districts if a special session of the Legislature is called and includes congressional reapportionment.

James Quick, assistant state

(See COURT, Page 6)

attorney general, said he was certain the decision will be appealed directly to the U.S. Supreme Court, which could rule before Feb. 7.

The federal court adopted a plan that essentially equalized the number of people living in each of the 24 congressional districts allotted Texas for 1972 elections.

The plan, drawn by a research mathematician for an oil company, is "based solely on population and is significantly more compact and contiguous" than the State Senate's plan adopted by the Legislature, the three federal judges said.

Districts in the new plan don't deviate more than .3 of 1 per cent from the ideally equalized district of 466,530 people. The Legislature's plan, approved last June, deviated 4.1 per cent. The population of the largest district—the 13th with 477,856 people in the Texas Panhandle—was 19,275 persons greater than the smallest district—the 15th with 458,581 people in the Lower Rio Grande Valley.

The almost total black district in the heart of Houston in the Legislature's bill is not noticeably changed under the new plan.

The judges' opinion stated that the Legislature's bill for reapportionment failed to come "as close to equality as it might have come."

The jurists noted that in 1969 the U.S. Supreme Court held that in congressional redistricting a state must "make a good faith effort to achieve precise mathematical equality."

The court ordered that no delay in effectuating the new plan will be granted while the decision is being appealed to the Supreme Court.

January 24, 1972

Solons Call On Smith For Help

WASHINGTON (AP) — Three Texas Democratic congressmen pitted against other incumbents in an unexpected court - approved redistricting plan appealed Sunday to Gov. Preston Smith to call a special session of the legislature to deal with the problem.

The redistricting plan was approved Saturday in Dallas by a three-judge federal panel and came after most of the state's congressmen had already filed for re-election in districts which are now altered, in some cases drastically.

"The sensible thing to do would be for the governor to fulfill his responsibility and call a special session and straighten the whole thing out—and I believe he will," said Rep. Graham Purcell of Wichita Falls.

Rep. Abraham Kazen of Laredo said the judges had overreacted to a complaint concerning only two districts and in the process diluted the vote of South Texas by stretching his district more than 500 miles and 38 counties up into the Panhandle.

He said Smith should call a special session immediately.

Rep. Jim Wright of Fort

(See SOLONS, Page 6)

SOLONS

(From Page One)

Worth also said he favored a special session.

But Wright's possible opponent, Rep. Ray Roberts of McKinney, also a Democrat, said he hoped the state attorney general would seek a 60-day delay while the case is appealed to the Supreme Court.

The congressmen were interviewed at a reception given in their honor by the Texas State Society.

The redistricting plan put forth by Dallas mathematician Don Weiser and accepted by the judges puts Purcell against Democrat Omar Burleson of Anson and Kazen against Democrat O. C. Fisher of San Angelo.

Burleson and Fisher missed Sunday's reception. But Wright and Roberts faced each other bravely as potential competitors.

"I'll play by the rules, whatever they may be, but I'd like to know what they are," Wright told Roberts.

Roberts told Wright good-naturedly, "I'm not going to run against you, Jim," but when he saw a reporter taking down the conversation he said: "Now don't print that because I might end up running against him."

Wright said the judges might have been correct in assuming that the legislature passed a bill which guaranteed survival of most incumbent congressmen.

Redistricting At-A-Glance

DALLAS, Tex. (AP) — The Federal Court's decision on Texas congressional reapportionment included these provisions:

—Declared the plan drawn up last year by the Texas Legislature unconstitutional.

—Adopted a new plan which takes effect immediately.

—Pitted six incumbent Democrats in the U.S. House against each other in the primaries, meaning three will lose their seats.

—Allows for population deviation between largest and smallest districts of less than .3 per cent, whereas the voided plan allowed deviations of 4.1 per cent.

—Adopts districts from the population centers outward, rather than "fleshing out" rural districts with big city populations.

—Allows the legislature to draw a new constitutional plan in special session, in which case the Feb. 7 filing deadline would be extended.

—Gov. Preston Smith says he will not call a special session and that such a session would be waste of taxpayers' money.

—Retains jurisdiction of the matter in the court with the authority to accept or reject any plan drawn by the legislature through 1980.

Pickle Hits Districting Confusion

By NAT HENDERSON
Staff Writer

The new congressional redistricting plan approved Saturday by a federal tribunal in Dallas has thrown the Texas delegation as well as voters into great confusion, U.S. Rep. Jake Pickle said Monday in Austin.

"Some counties have had four or five congressmen in the last four or five terms, and some people no longer know who their congressman is," Rep. Pickle said.

"I have a sense of frustration not knowing where my district is," Pickle added. "I hope the court and the Legislature will finally reach some accord."

A three-judge court sitting in Dallas on Saturday ruled the new congressional redistricting plan enacted at the last session of the Texas Legislature is unconsitutional. The plan often is called the Mutscher Plan,

(See PICKLE, Page 6)

NO SPECIAL SESSION
Gov. Preston Smith at news meeting

Smith Blasts Barnes' Role Vows No Special Session

By GLEN CASTLEBURY
Capital Staff

Gov. Preston Smith in no uncertain terms Monday said he will not call the Legislature into special session to correct redistricting problems he said are the fault of Lt. Gov. Ben Barnes.

The governor summoned a Capitol press conference to unleash his most stinging attack to date on Barnes over the congressional redistricting bill ruled unconstitutional Saturday by a federal court.

Smith also announced that Atty. Gen. Crawford Martin has asked the U.S. Supreme Court to stop the Dallas federal court from putting into effect its own redistricting plan which would throw six veteran incumbent Texas congressmen into districts with each other.

Martin's plea to the Supreme Court raised questions about the political leanings of the three-judge federal court which knocked down the Legislature's redistricting bill, saying "it is inconceivable that so much havoc could result except by some design."

The governor, in his second

(See SMITH, Page 6)

January 25, 1972 – Austin-American

SMITH SAYS NO

(From Page One)

press conference of the day, also expressed confidence that an Austin federal court panel later this week will rule that the Legislature's House redistricting bill is unconstitutional—and he promised he won't call a special session to correct that either.

"In other words, I will not call a special session at any time to deal with any redistricting matter," he said.

"What can one expect of those who, like the lieutenant governor, have claimed credit for the passage of an unconstitutional ethics bill, an unconstitutional filing fee bill and unconstitutional redistricting bills?" Smith asked.

"I want to make it perfectly clear that the Legislature and the state of Texas have been fooling around with redistricting for more than a year. I, for one, am not going to allow any more of it.

Smith said that when the Legislature and its leadership "consistently fail in discharging responsibility, as we saw it do in the 62nd Legislature, I have no choice but to accept the courts' decision."

He pointed out that the Legislature had five months of a regular session and took four more days in a special session to work on congressional redistricting. He poked at Barnes for being on the Legislative Redistricting board which ultimately had to redistrict the House and Senate in the plans now under fire in the Austin court.

He noted that Barnes has said he ultimately had to draft both the Legislature's bills and the board's bill. Smith said Barnes must now take the responsibility for what has happened to the bills.

JAN. 25, 1972

Barnes' office had no comment of the Smith statements.

The federal court, in knocking down the congressional plan passed by the Legislature, said it was obvious the lines were drawn with political orientation to protect incumbents. The court chose instead an alternate plan, based solely on population figures, submitted by a mathemetician in behalf of the 10 Dallas plaintiffs who brought the suit challenging the bill.

"They were drawn in just a matter of days without personal political considerations and without making deals," Smith said of the plan adopted by the court.

Smith said he had talked with two congressmen and U.S. Sen. Lloyd Bentsen about the problem. He said the congressmen and wanted him to call a special session.

"This is my answer," he said.

Smith said it "is easy to understand" that in redistricting legislators involve their personal interests, make good on various personal political promises and make trade-outs.

"The call it compromise, I believe," Smith said. In the plea for a stay filed by Martin with the Supreme Court, the attorney general said that "a very strong case can be argued that (the plan adopted) was not pure in political motive."

Martin's informal plea noted that the court consisted of "two Republican judges and a liberal Democrat." The judges are Circuit Judge John Ingraham and District Judge William M. Taylor, Republicans, and District Judge Robert M. Hill, a Democrat.

Martin's plea said also that the ruling disrupts the election process, ignores the system of checks and balances in government, overlooks population growth trends, and that the court properly should have given the Legislature a chance to do the job again instead of adopting a plan submitted by a plaintiff.

The state refused to submit alternate plans to the court.

The Supreme Court Monday also apparently received an affidavit from John T. Potter of Austin, assistant director of the legislative council who helped prepare the Legislature's bills, saying that the court's plan has errors which left the city of Seguin and a census tract in Dallas completely out of any congressional districts.

At least one state election official, though, minimied the possible effect of such error, if true, noting that the court can correct its mistakes simply by amending its order.

PICKLE

(From Page One)

named after House Speaker Gus Mutscher.

The tribunal adopted one of two reapportionment plans submitted by plaintiffs who filed the suit contesting the Mutscher Plan. The new court plan, based solely on population, apparently will remain in effect until the 1980 census unless the Legislature comes up with a plan acceptable to the federal courts.

"None of us (the Texas congressional delegation) anticipated this ruling, and it has thrown great confusion among all the delegation."

Pickle, who has announced for re-election in the 10th Congressional District, noted that the new court plan makes a total of four times his district has been reapportioned since 1956.

He cited Austin County as an example of a locale which has been switched back and forth from one district to another in recent years.

Austin County, with Bellville as the county seat, was in former Rep. Clark Thompson's district until 1964, when it was moved into Rep. Olin Teague's district from 1964-66. Then in 1966, it was put into Pickle's 10th District only to be taken out again in 1968 and placed back into Teague's district.

The Mutscher Plan put Austin County back in the 20th District. The new court plan leaves it in the 10th as in the Mutscher Plan.

Pickle said he is "extremely sorry to lose Burleson and Lee counties under the court plan. They've been in the 10th District over 50 years — I suppose forever."

Lee and Burleson Counties, which were left in the 10th under the Mutscher Plan, go into the 11th Congressional District under the court plan. The 11th District is represented by W. R. "Bob" Poage of Waco.

Pickle lost Williamson County to Poage under the Mutscher Plan. Pickle still loses Williamson to the 11th District under the new court plan.

The present 10th District composed of 12 counties was due to be changed in 1972 under the Mutscher Plan. The court plan makes further alterations.

The present 10th District encompasses the counties of Travis, Blanco, Hays, Caldwell, Bastrop, Williamson, Lee, Burleson, Fayette, Colorado, Wharton and Jackson.

The Mutscher Plan left the 10th District with 12 full counties, but three of them were different. Williamson, Wharton and Jackson were dropped from the 10th in the Mutscher Plan. The counties of Washington, Austin and Waller were added in their place.

The new court plan puts all or part of 13 counties into the 10th District.

Eight counties will be in the district in their entirety under the court plan. They are Travis, Blanco, Hays, Caldwell, Bastrop, Fayette, Washington and Austin.

All of Waller County except the Brookshire and Katy vicinity will be in the 10th District under the court plan. The entire county was in the district from 1966-68. Brookshire and Katy go into the 22nd District.

Labor, GOP Laud Decision

1-25-72

Capitol Staff

Two groups as unlikely as the AFL-CIO and the Republicans have gotten together about the federal court ruling knocking down the Legislature's congressional redistricting bill.

"Substitution by the court of a constitutional one-man, one-vote alignment of voting districts marks a great turning point toward political reform which is the prime objective of the Texas GOP," Republican State Chairman George Willeford of Austin said in a statement about the court's action.

AFL-CIO President Roy Evans in a separate statement noted that "We hear some elected officials complaining about the recent court action and saying the governor should call the Legislature back.

"The fact of the matter is that the House members and the Senators did not draw the lines in the first place. They were drawn by one man — Lt. Gov. Ben Barnes and his office staff," Evans said.

"The House members and the state Senators had very little, if anything, to say about how the lines were drawn."

Gov. Preston Smith also blamed Barnes for the redistricting problems.

Evans said that the situation should emphasize "the tremendous power given the lieutenant governor and the Speaker by the present system of redistricting and the fact that this power has been used to keep our government from being responsible to the needs of its citizens."

Governor Eyes Session For Primaries, Finances

Capitol Staff

The possibility of a special session of the Legislature any time soon — for something other than redistricting — remained up in the air Monday.

Gov. Preston Smith said it "is entirely possible" that a special session might have to be called this spring because federal courts have ruled that the state's system of paying for primary elections is unconstitutional.

Smith said that if he must call a sesson for that he "would hope" to take up other problems — namely the 1973 budget and tax bill.

But redistricting of any kind is out, and Smith left no doubt about that.

"I will not call a special session at any time to deal with any redistricting matter," he told a press conference.

He said he is still studying the confusion caused by a court order barring the levying of filing fees on candidates as a means of paying for primary election costs.

One of two filing fee cases is still pending before the Supreme Court.

Smith aid he believes that if a special session is needed on filing fees it could be called as late as 30 days before the May 6 primary.

He said his decision on a special for filing fees rests on his study of alternatives and on possible action by the court.

He said his decision on a special for the budget rests on what State Comptroller Robert S. Calvert tells him about the best time for estimating incoming future revenues.

Smith noted that revenue estimates last year — when the Legislature passed a $600 million tax bill — were increased $100 million as the five month-long session progressed.

A special session for budget matters was necessitated by Smith's veto of the 1973 half of the biennial appropriations bill.

The budget for 1973 must be adopted before the start of the fiscal year Sept. 1, 1972.

Congressional Redistricting

State Republicans Submit Briefs

By JONTHAN LEVINE
American-Statesman Service

WASHINGTON — Texas Republicans Wednesday went on the offensive against leading Texas Democrats in the U.S. Supreme Court battle over new state congressional districts.

New briefs filed at the court Wednesday by the Republicans put Anne Armstrong, South Texas millionare and co-chairman of the Republican National Committee, Republican National Committeeman Peter O'Donnell Jr. of Dallas and State Republican Chairman Dr. George H. Willeford of Austin in direct opposition to the state and Sen. Lloyd Bentsen, who is representing unhappy Democratic congressmen.

The Republicans asked the high court for permission to intervene in the case. They want the Dallas court plan.

In a related development, the 10 Texas citizens who brought the suit which led to the drastic changes, filed two motions.

In one motion, they opposed the State of Texas' request to postpone the new redistricting order. To grant a postponing order, they contended, would in effect cancel the whole plan because there would not be time for hearings before the election.

The court is in recess until Feb. 22.

In a second motion, they opposed Bentsen's intervention in the case, claiming Bentsen is not directly involved.

"(Bentsen) may not assert the rights of some other person" before the court," they said.

The Republicans asked permission to argue before the court that "the state has failed to show that irreparable harm will occur if the court's order becomes effective."

Bentsen, in additional comments also filed with court Wednesday, side-stepped the question of "irreparable harm," saying he would not argue the merits of the particular Dallas court order.

Rather, he said, he would question whether the Dallas court has the constitutional power to draw up a redistricting scheme at all.

U.S. House Remap For Texas Delayed

WASHINGTON (AP) — The Supreme Court ordered a delay Friday in carrying out a three-judge panel's redistricting of Texas' U.S. House seats. Political leaders immediately interpreted this as meaning that the original legislative-designed districts will be used for the 1972 election.

However, the Supreme Court did not specify how long its stay of the three-panel ruling will remain in effect.

The three members of the panel ruled last Saturday in Dallas that the legislative redistricting to conform to 1970 census figures was unconstitutional.

The panel ordered into effect a plan submitted by 10 voters which the court said came closer to the one man-one vote rulings by the Supreme Court than did the legislative districting.

Gov. Preston Smith on a speaking tour in West Texas stuck by his previous statements that he would not call a special session of the legislature to redraw the U.S. House district boundaries.

The panel gave the legislature the power to draw still another plan —but the three judges retained the right to reject it.

The governor told Democrats at Monahans that the lack of appropriations after September will force a special session, and that redistricting and the issue of election filing fees might be submitted at the same time.

The governor's office said Smith did not say when such a special session will be held or specifically promise that filing fees and redistricting will be included in the session's calls.

The filing fee problem arose when a three-judge federal court held unconstitutional the Texas system of requiring fees of candidates for office.

Gov. Smith said at Monahans that he still lacked information on the filing fee issue—including how much money the state has available for elections and how much [illegible]

The governor said he was pleased "that we can conduct elections under the old system" after the Supreme Court's stay.

Smith said he had discussed the court's decision by telephone to Washington with Loyd Hacker, administrative assistant to Sen. Lloyd Bentsen, D-Tex.

After talking with Hacker, Smith said he interpreted the decision to mean that there would be no further ruling by the U.S. Supreme Court on the district boundary lines until after Texas holds it elections this year.

The Supreme Court order, granting the requested stay, was issued without any comment on the dispute.

Texas officials are expected to follow up with an appeal seeking to wipe out the plan of the three-judge panel.

In asking for a stay, the Texas officials told Justice Lewis Powell Jr. Monday there was doubt whether elections could be held under the plan.

e Decision-Makers of Texas
exas, Saturday, January 29, 1972

Delay of Single Member Districts To Be Asked

By GEORGE KUEMPEL
Capitol Staff

The state will ask the U.S. Supreme Court to stay implementation of single member legislative district plans ordered for Dallas and Bexar Counties by a three member federal court, Atty. Gen. Crawford Martin said Friday.

The federal panel ordered the counties divided into single member districts for the coming elections in a ruling in which it struck down as unconstitutional the state's entire House reapportionment plan.

The court agreed, however, to allow the remaining districts to stand through the November elections and gave the Legislature until July 1, 1973, to develop a plan that meets court guidelines.

Unless the Legislature acts within the allotted time, the

Counties' new designs, Page 2

court said it will feel discriminated against Negroes in Dallas and Mexican-Americans in San Antonio by use of "compelled" to redistrict the state itself.

The state's plan failed to meet the one man, one vote requirements and multi-member House districts, the court said.

Harris County — the state's most populus — was divided into single member districts in the state's plan, while representatives in all other urban areas would continue to run countywide.

Gov. Preston Smith, meanwhile, turned his guns on Lt. Gov. Ben Barnes again and said there had been "little doubt" in his mind that the plan would be struck down.

Barnes played the lead role in the drafting of the Senate and House reapportionment plans, both of which came under fire in Federal Court here. The Senate plan, however, was upheld by the Federal panel Friday.

"The legislative leadership — particularly that in the

(See DELAY, Page 6)

(over)

Judge Irked By Plan

Capitol Staff

If Federal Judge William Wayne Justice had had his way Friday, the three-judge federal court here would have thrown out the Texas Senate redistricting plan along with the House plan.

Justice, agreeing with his colleagues in ruling the House plan unconstitutional, wrote a separate opinion — 10 pages long — attacking Lt. Gov. Ben Barnes and Houston gas lobbyist Searcy Bracewell for drawing a Senate plan designed to fragment black voters of Houston among four Harris County Senate districts.

Justice is a liberal from Tyler appointed to the federal bench by President Johnson.

Both the House and Senate plans were written by the Legislative Redistricting Board, of which Barnes is a member, after the legislature failed completely to remap the Senate and the Legislature's House plan which was ruled unconstitutional by state courts.

"Mr. Bracewell's views clearly have carried the day," Justice wrote of the Senate plan for Harris County.

He cited depositions given the court during hearings earlier this month that Barnes and his executive assistant Robert Spellings "had effective" control of the redistricting process" when it reached the five-member board and that Bracewell had consulted frequently with Barnes and Spellings about redrawing the Senate lines in Houston.

Justice said Bracewell "on one of these occasions" delivered a "colored map whose origin is obscure but which came to be called the Houston Chamber of Commerce map."

It was established during the hearings that the Bracewell-Chamber of Commerce map was almost identical to a suggested map brought to Barnes during the board's work by Everett Collier.

(See JUDGE, Page 6)

JAN. 29, 1972

DELAY IS ASKED OF COURT

(From Page One)

Texas Senate — has demonstrated its inability to provide the people of Texas with constitutional and equitable redistricting plans as required by the Texas Constitution," Smith said.

". . .The immature action and lack of leadership on the part of the Lieutenant Governor has compelled us to endure a raft of court tests and unconstitutional bills and possible loss of vitally needed funds."

Barnes said that he is "pleased that Texas scored as well as it did" in the redistricting bouts with the courts and called the Legislature's work a "success."

"The Senate reapportionment plan as upheld in its entirety; the House plan was upheld in 252 of 254 counties in Texas for the 1972 elections," the Lieutenant Governor responded.

The state's Congressional reapportionment plan as declared unconstituional by a federal court last Saturday, but a stay has been granted through the present elections.

In addition to seeking a stay in the present case, the state also will ask the Supreme Court to review the lower court decision "so that the law respecting legislative reapportionment in Texas can be clearly and finally determined," Martin said.

The state Republican party, meanwhile, urged Smith to call and immediate special session of the Legislature for legislative and congressional redistricting to change the primary election and filing deadline dates "so that the new redistricting applies to the 1972 elections as intended by the constitution."

Smith said Monday that he would not call a special session for redistricting.

The federal court, in setting guidelines for further House redistricting, strongly suggests that it expects single member districts for all urban counties, a source close to the court said.

"While multi-member districts are not per se unconstitutional neither are they consititutionally unassailable," the court said.

The House reapportionment plan, put together by the five member legislative redistricting board after the Legislature's plan was declared unconstitutional, divided Harris County into 23 single-member districts, a move the court said the state failed to justify in its arguments in light of multi-member districts for other counties.

"The most important inconsistency to be found in the Texas House plan is the different treatment given to the heavily populated counties," the court said.

"Texas has failed . . . to provide rational justification for the haphazard combination of single- and multi-member districts in this case. This irrationality, without reasoned justification, may be a separate and distinct ground for declaring the plan unconstitutional" the court said.

The state had argued that Dallas County did not get single-member districts because of opposition to them from the community itself, an agrument which was repudiated by testimony.

The court also said that multi-member districts in Dallas have deprived negroes of a voice in the legislative process and have been a breeding ground for racism.

"In essence, we find that the plaintiffs have shown that negroes in Dallas County are permitted to enter the political process in any meaningful manner only through the benevolence of the dominant white majority," the court said. "If participation is to be labled 'effective' then it certainly must be a matter of right and not a function of chance."

This lack of representation is evidenced in the voting record of the Dallas County legislative delegation, the court said.

"As long as the organization that dominates the county-wide Democratic primary in Dallas County relies upon such racial appeal to defeat black favored candidates, we think it highly unlikely that candidates elected on such a platform could seriously represent in the Texas Legislature the best interests of Dallas' black community."

Only two negroes have been elected to the Legislature in Dallas since reconstruction — and both were included in the DCRG "slate," the court pointed out.

The court also refused to go along with the state's arguments that the reason there have been so few Mexican-Americans in the Legislature from San Antonio is because they don't vote in large numbers.

As a result, the state said, they should not be granted relief by the court.

The court traced this "lack of interest" to a history of discrimination and anglo laws aimed at keeping the Mexican-American out of the election process.

"Because they were denied access to the political processes through years of discrimination, the Mexican-Americans do not now register and vote in overwhelming numbers," the court said.

"No political, racial or other interest group has any constitutional right to be successful in its political activities. However, a state may not design a system that deprives such groups of a reasonable chance to be successful."

JUDGE

(From Page One)

editor of the Houston Chronicle and a close friend of Barnes.

"The evidence more than amply supports a conclusion that the Senate districts in Harris County designedly operate to dilute, minimize and cancel out the voting strength of blacks," Justice wrote, although he said that because of established law and case law "I am not to be taken to mean that I believe blacks are necessarily entitled to proportional representation."

"The law appears to be to the contrary . . . I approach the problem from a pragmatic standpoint, trying at the same time to stay out of the political thicket, " Justice wrote.

Justice said Houston voting patterns are establshed along Economic lines and that Bracewell as a lobbyist opposed major measures — such as corporate income tax — favored by liberal senators from Houston.

"Mr. Bracewell, therefore, possessed a legitimate interest in electing state senators of a conservative philosophy from Harris County, " he said.

Justice said the redistricting board's plan makes the black voting population in four of the five senatorial districts to be 19, 35, 23 and 18 per cent.

Bracewell was a House member from Houston from 1948 to 1950 and a member of the Senate from 1950 to 1959.

1-30-72

Legislature Earns Worst Marks Yet

By ROBERT REARD
Associated Press Writer

Federal courts have given the Texas Legislature three straight F's on major pieces of legislation.

Atty. Gen. Crawford Martin has added a fourth, making it one of the worst report cards Texas lawmakers ever had to take home to voters.

The court rulings were predictable. If legislators had paid attention to what the courts said previously, they would not be in a position of bemoaning what some call judical dictatorship.

The Supreme Court said in 1969 that states must "make a good-faith effort to achieve precise mathematical equality" in redistricting laws.

Still, there was an attitude among some legislators last year that they might be able to get away with a deviation from mathematical equality greater than that which had already been struck down in other states.

It is possible they may be right in the long run. Federal judges appointed by Presidents Kennedy and Johnson sat on courts that knocked down the Texas laws, and those cases are all on appeal to a U.S. Supreme Court that differs by four Nixon appointees from the one that wrote the one-man, one-vote decision.

On redistricting, the legislature carved up the state into new districts for congressional seats and into new districts for seats in the Texas House of Representatives based on the 1970 census. It failed to draw up a new map for Texas Senate districts.

A state district court threw out the map for the Texas lower house, so a special five-man redistricting board set up by the state constitution had to draw new districts for both chambers of the legislature instead of just the senate.

The House plan overturned by the state court had a population deviation of 9 per cent between the largest and smallest districts. The plan devised by the redistricting board deviated from mathematical equality by 9.9 per cent.

That is the plan that a three-judge federal court in Austin ruled unconstitutional Friday. But it gave the legislature until July 1, 1973, to come up with a new one, except in the case of Dallas and Bexar (San Antonio) counties.

In those counties the court gave approval at once to plans calling for single-member districts for Dallas' 18 representatives and for Bexar's 11. Representatives have had to run countywide in those counties.

Candidates in those counties may run in any district they want to, regardless of where in the county they live, for this year's elections only.

The court let stand the redistricting board's new map for the Texas Senate, but Judge William Wayne Justice of Tyler filed a blistering dissent to that portion of the decision.

Earlier, separate three-judge federal courts in Dallas voided the congressional redistricting plan, which has a population deviation of 4.1 per cent, and the state's filing fee law.

The U.S. Supreme Court granted a stay in the congressional suit decision Friday, meaning that six Texas congressmen paired under a plan approved by the lower court probably will not have to face each other this year.

The old filing fee law was declared unconstitutional in 1970. The legislature tried to replace it with a law calling for a fee of 4 per cent of a year's salary for the position sought, or a petition signed by 10 per cent of the number of voters that voted in the previous general election for governor.

The second filing fee law also died in court. Both cases are on appeal.

Please return. JAN 13 1972 S.C. copy

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 520 • 733 FIFTEENTH STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 628-6700

January 10, 1972

The Honorable Irving Goldberg
United States Circuit Judge
United States Courthouse
1100 Commerce Street
Dallas, Texas 75202

The Honorable William Wayne Justice
United States District Judge
P. O. Box 330
Tyler, Texas 75701

The Honorable John H. Wood, Jr.
United States District Judge
Federal Building
P. O. Box 1040
San Antonio, Texas

Your Honors:

Re: *Regester* v. *Bullock*, No. A-71-CA-143
Marriott v. *Smith*, No. A-71-CA-144
Archer v. *Smith*, No. A-71-CA-145

Enclosed to each of you is a copy of the Memorandum of the amici curiae Lawyers' Committee for Civil Rights Under Law, the League of Women Voters of the United States, and the League of Women Voters of Texas. One copy, signed, has been filed with the Clerk in Austin, and one copy has been served upon lead counsel of record for each party, including intervenors, in each of these cases (and including the parties in *Graves* v. *Barnes*, No. A-71-CA-142).

Appendix A of each copy, including the service copies, is a six-page summary of the record in *Whitcomb* v. *Chavis*. In addition, the copy of the Memorandum sent to each of you is accompanied by the Appendix and Briefs filed in the Supreme Court in *Whitcomb* v. *Chavis*.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Unfortunately, we have been unable to supply these materials with each service copy, but we have filed a set of the *Whitcomb* materials with the Clerk's copy of the Memorandum, so that any party who wishes to examine the *Whitcomb* papers may do so in Austin.

Very truly yours,

Armand Derfner

Armand Derfner

mfd
Enclosures

Via Airmail
Special Delivery

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Austin Division

DIANA REGESTER, et al.	:	
-vs-	:	No. A-71-CA-143
BOB BULLOCK, et al.	:	
JOHNNY MARRIOTT, et al.	:	
-vs-	:	No. A-71-CA-144
PRESTON SMITH, et al.	:	
VAN HENRY ARCHER, JR.	:	
-vs-	:	No. A-71-CA-145
PRESTON SMITH, et al.	:	

MEMORANDUM OF THE AMICI CURIAE

Pursuant to leave of this Court granted at the Pre-Trial Conference on December 30, 1971, amici curiae file this memorandum directed to two issues raised in the cases involving the reapportionment of the Texas House of Representatives: the requirement that a reapportionment plan be rational; and the prohibition against the use of multi-member districts which discriminate against members of minority groups. A description of the amici and their interest in this case follows:

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law is a nonprofit corporation which was organized at the request of President Kennedy to involve private lawyers throughout the nation in the struggle to assure equal civil

rights for all Americans. The Committee's membership includes two former Attorneys General, twelve past Presidents of the American Bar Association, and a number of law school deans, as well as many of the nation's leading attorneys. Through its national office and its offices in Jackson, Mississippi, and twelve other cities, the Lawyers' Committee has actively engaged the services of over a thousand members of the private bar in addressing legal problems in such areas as voting, education, employment, housing, and the administration of justice.

League of Women Voters of the United States
League of Women Voters of Texas

The League of Women Voters is a nonpartisan voluntary association whose purpose is to encourage the informed and active participation of all citizens in government and politics. It is open to all women citizens 18 years or older, and has a membership of 157,000 in more than 1,275 Leagues in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. The Texas League is an affiliate of the United States League, with approximately 4,300 members in 41 local chapters. From its inception in 1920, the United States League and its affiliates have worked at national, state and local levels on various governmental issues selected by the members for study, decision and action. Its longterm interest has been equality of representation and the eradication of discrimination in voting.

Each of the amici has long been specially concerned with reapportionment because it believes that fair apportionment is an absolute prerequisite to the achievement of a just society, while unfair apportionment corrupts the political system and destroys (rightly so) any confidence in it.

This memorandum is an attempt to provide guidance to the Court in assessing the requirement of rationality and the prohibition against discriminatory multi-member districts, and to indicate briefly why the amici believe the apportionment of the Texas House of Representatives is unconstitutional in both respects.

I. *THE PROHIBITION AGAINST DISCRIMINATORY MULTI-MEMBER DISTRICTS*

A. *The Law.* A multi-member district system is void if it operates, designedly or otherwise, to minimize or cancel out the voting strength of racial or political minorities. *Burns* v. *Richardson*, 384 U.S. 73 (1966). In applying this rule, the Supreme Court has held that it is not enough to show that a particular interest group suffers political defeat at the polls; there must be evidence that members of the particular group have "less opportunity than others to participate in the political process and to elect legislators of their choice." *Whitcomb* v. *Chavis*, 403 U.S. 124, 149 (1971). For the reasons stated below, amici believe this showing is made out, in the case of a racial minority, whenever there is evidence that the minority is isolated or that race plays any part in the minority's defeats.[1/]

The Supreme Court's unwillingness to find multi-member districts inherently discriminatory is based upon its knowledge that some minorities exercise considerable influence. Voters tend to form politically oriented interest blocs (such as liberals, conservatives, pro-union voters, or businessmen). Because of voters' varying and multiple interests, these blocs tend to shift, fragment, coalesce and overlap, and voters in a minority on one issue may combine with others to form a majority on other issues or at other times. To the extent that these groups engage in free competition and interaction, the Supreme Court holds that they are engaged in normal and permissible political activity.

The Supreme Court draws the line, however, when a particular segment of the population is "denied access to the political system." *Whitcomb* v. *Chavis*, 403 U.S. at 155, *i.e.*, when a minority is isolated, finds it difficult to form coalitions, or is burdened with disadvantages that do not relate to political issues. This view has special application in the case of racial minorities because, in relation to the right to vote, race is an irrelevant and impermissible

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1/ The term "race" is used to refer to both blacks and Mexican Americans, since the rights involved (and therefore the analysis) apply to both groups.

factor. *See Gordon* v. *Lance*, 403 U.S. 1, 5 (1971).

In cases involving racial minorities, proof of isolation may include the following types of evidence: a pattern of racial divisiveness in the electorate; a fairly recent history of racial discrimination, public or private; instances of racial appeals by candidates; a showing that minority votes have little effect on election results; a relative paucity of minority candidates; or a showing that in elections involving clear racial choices (*e.g.*, involving black or Mexican-American candidates) the wishes of minority voters are generally opposed and overborne by the wishes of the overall (white) electorate. It is unnecessary to prove total exclusion or to prove, for example, that minority candidates are always rejected by the majority. The Supreme Court requires only a showing that members of this minority have "less opportunity" for success than other voters.[1/] In short, the isolation of a racial minority is shown whenever there is some evidence that racial issues have been influential to any significant degree, in determining the lines of political division or in diverting the attention of the electorate from nonracial issues.

In such cases, the State is obliged to eradicate the isolation. If the isolation is the result of private behavior rather than the election system structure, the State nevertheless has the obligation to modify its structure to minimize the isolation. This obligation is made clear by *Anderson* v. *Martin*, 375 U.S. 399 (1964), where Louisiana was barred from designating the race of candidates on the ballots. The Supreme Court held that, "in light of 'private attitudes and pressures towards negroes,'" racial identification placed the power of the State behind a "racial classification that induces racial prejudice at the polls." 375 U.S. at 402-03.

Where the racial divisions in a society are clear-cut, a challenger's burden of proving the discriminatory effect of a multi-member district is greatly

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1/ Any stricter requirement would be inconsistent with the Supreme Court's position that any degree of discrimination built into an apportionment system voids that system. Hadley v. Junior College District, 397 U.S. 50, 57 (1970); Wells v. Rockefeller, 394 U.S. 542 (1969).

diminished or indeed may be entirely supplied by judicial notice. For example, in the case of Mississippi the Supreme Court upheld an order requiring single-member districts even though the record was totally devoid of evidence of any discriminatory effect. *Connor* v. *Johnson*, 402 U.S. 690 (1971). In the case of Alabama, the showing of discriminatory effect was supplied by the court's judicial knowledge of Alabama's history of discrimination. *Sims* v. *Amos*, C.A. No. 1744-N (M.D. Ala. Jan. 3, 1972). *Compare Smith* v. *Paris*, 257 F. Supp. 901 (M.D. Ala. 1966), *aff'd*, 386 F.2d 979 (5th Cir. 1967); *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969); *Perkins* v. *Matthews*, 400 U.S. 379, 388-89 (1971). Thus a history of discrimination will supply the requirement of showing a discriminatory effect (even where conditions may have improved), because past discrimination will inevitably have shaped the voting patterns and attitudes of the present electorate. *Gaston County* v. *United States*, 395 U.S. 285 (1969). *See Rogers* v. *EEOC*, No. 30,651 (5th Cir. Dec. 21, 1971); *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

B. *The Indiana Case*. The views set forth above are confirmed by the recent decision in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), in which the Supreme Court restated the rule that discriminatory multi-member districts are void, found proof of discrimination lacking, and discussed its reasons for finding the record defective.

The *Whitcomb* case involved a fourteenth amendment challenge to multi-member state legislative districts in Marion County, Indiana (Indianapolis). The plaintiffs' case consisted primarily of proof that blacks in Indianapolis are concentrated in a ghetto area, that they have special interests in certain issues, that a disproportionately low percentage of legislators in the past ten years has come from the ghetto, and that there is a high degree of political party control over the nomination of candidates and the voting patterns of the legislative delegation.

Based on this record, the Supreme Court's conclusion was that "we are unprepared to hold that district-based elections decided by plurality vote

are unconstitutional in either single- or multi-member districts simply because the supporters of losing candidates have no legislative seats assigned them." 403 U.S. at 160. Again, "the voting power of ghetto residents may have been 'cancelled out' as the District Court held, but this seems a mere euphemism for political defeat at the polls." 403 U.S. at 153. Finally, "the mere fact that one interest group or another concerned with the outcome of Marion County elections has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system." 403 U.S. at 154-55.

The Supreme Court saw nothing in the *Whitcomb* record to distinguish between Marion County blacks and other, politically oriented interest groups such as liberals, conservatives, pro-union voters or businessmen. This was the fatal defect of the *Whitcomb* record.

Indeed, for all the record showed in *Whitcomb*, Indiana is the millenial society where race pays no part in politics. The *Whitcomb* record showed the following:[1/] There were incidents of public and private discrimination in Indianapolis in the late 19th and early 20th centuries, but the record shows none after 1926. Indiana has had a civil rights law since 1885, and enacted a new civil rights law in 1969. Appendix 188-89. The election results show a strong two-party system, with votes cast along political party lines rather than racial lines, both in the ghetto area and elsewhere. Party nominations are made at primary elections, where those who have been "slated" by the party organization were invariably successful. The slating (at least for Democrats) is done at a convention of precinct chairmen, both black and white. The success of party nominees almost invariably depends upon the success of the ticket. Blacks typically vote Democratic, and form a substantial part of the Democratic Party's strength. The predominance of party discipline over race is shown by the 1968 general elections in which three blacks were elected on the Republican ticket

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1/ The record is summarized in Appendix A, *infra*.

countywide but finished well *behind* white Democratic opponents in the ghetto.

In sum, it was easy for the Supreme Court to conclude that Marion County blacks were able to form coalitions and participate freely in the political process, that "Center Township ghetto voted heavily Democratic and that ghetto votes were critical to Democratic Party success," that "it seems unlikely that the Democratic Party could afford to overlook the ghetto in slating its candidates," that "had the Democrats won all of the elections or even most of them, the ghetto would have had no justifiable complaints about representation," that even the Republicans slated black candidates (though these candidates were not the ghetto choices), and, overall, that ghetto votes in Marion County were significant. 403 U.S. at 150-52. Against this background, there was every basis for the Supreme Court to assume that blacks in Marion County were not isolated, but influential.

C. Measured by the above tests, the multi-member districts in Texas appear to be unconstitutional. There is ample proof of discrimination against, and racial isolation of, both the black and the Mexican-American minorities. That fact is probably sufficient, but it is buttressed by proof of their lack of success, both in terms of the actual number of minority representatives elected in multi-member districts and in terms of specific recent election results in Dallas and Bexar Counties.[1/] Although amici have seen only portions of the record, those portions show instances in which the minority voters' interests have been outweighed by votes apparently cast along racial rather than political lines. There is also evidence of campaign literature urging that votes be cast against minority candidates on the basis of their race. Finally, there is evidence that minority victories result not from forming coalitions freely, but simply take place at the suffrance of the majority. Nor can the lack of success be attributed to the Indiana pattern of backing the losing party, because the Texas minorities

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1/ Amici do not suggest that minorities have a constitutional right to elect candidates of their own race, but elections in which minority candidates have run often provide the best evidence to determine whether votes are cast on racial lines.

are frozen out despite the fact they typically back the winning ticket.

All these factors confirm the fact that race is still an important issue in Texas, and that because of it, blacks and Mexican-Americans are frozen into permanent minorities destined for constant defeat at the hands of relatively monolithic majorities. Because that minority status is aggravated, and sometimes created, by the multi-member district system, Texas is not at liberty to use that system.

D. *The Election Structure.* The Texas system isolates minorities in another significant way that was not present in Indiana: the majority requirement (and runoff) and numbered place system of conducting primary elections. These mechanisms encourage the isolation of any minority (not just racial minorities) by insuring that, even if the majority is initially split, it can still regroup to face the minority candidate.

No majority requirement was involved in the *Whitcomb* case, as the Supreme Court recognized, 403 U.S. at 160. Indeed, majority requirements are almost unknown outside the South.[1/] The discriminatory potential of majority requirements is well known. *See Evers* v. *State Board of Election Commissioners*, 327 F. Supp. 640 (S.D. Miss. 1971); *Boineau* v. *Thornton*, 235 F. Supp. 175 (D.S.C. 1964). Such requirements have also been held objectionable under section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *See* Appendix B, *infra*.

The majority requirement and numbered place system pose serious constitutional questions by themselves. When they are superimposed on another system of discriminatory potential, the inference of unconstitutionality cannot be avoided. *See Jenness* v. *Fortson*, 403 U.S. 431, 437-39 (1971). Because the multi-member districts aggravate the discriminatory potential of the majority requirement and numbered place systems, Texas may not use such districts.

1/ The majority requirement is or has been used in every Southern State except Virginia and Tennessee. Outside the South, it has been used, and abandoned, in Kentucky, Oklahoma, and Utah. To the best of amici's knowledge, the only present non-Southern use of the majority requirement is for special elections to fill Congressional vacancies in California.

II. IRRATIONALITY OF THE TEXAS PLAN

A. *The Law.* A reapportionment plan is void if it is internally inconsistent and contradictory, and hence irrational.

The fourteenth amendment forbids a plan that reflects "no policy, but simply arbitrary and capricious action," *Baker* v. *Carr*, 369 U.S. 186, 226 (1962); *Reynolds* v. *Sims*, 377 U.S. 533, 557 (1964), and which is not "free from any taint of arbitrariness or discrimination." *Roman* v. *Sincock*, 377 U.S. 705 (1964). "To the extent that a state's legislative apportionment plan is conclusively shown to have no rational basis, such a plan violates the equal protection clause." *Davis* v. *Mann*, 377 U.S. 687, 694 (1964)(concurring opinion). Even where there are theoretically valid rationalia for deviating from exact population equality, those rationalia must themselves be applied "systematically" throughout the state, not in an "ad hoc" manner in certain places and not at all in others. *Kirkpatrick* v. *Preisler*, 394 U.S. 528, 534-35 (1969).

These principles have been applied by several courts in striking down plans containing unexplained mixtures of single- and multi-member districts.

In *Kruidenier* v. *McCulloch*, 142 N.W.2d 355 (1966), the Iowa Supreme Court declared unconstitutional a reapportionment plan making one county a multi-member district while dividing the other counties into single-member districts. The court held that the scheme would not be sustained without reasoned justification. Since the state failed to show this, the court declared the plan invalid.

A federal district court in Pennsylvania invalidated a reapportionment plan which, like the Texas scheme, contained a "curious pattern of representative districts in the larger counties."[1/] *Drew* v. *Scranton*, 229 F. Supp. 310 (N.D. Penn. 1964), *vacated and remanded*, 379 U.S. 40 (1964). The district court particularly condemned the inconsistent and irrational method used in

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1/ The Pennsylvania plan provided that in all cities except the largest, single-member districts were uniformly the rule.

distributing single- and multi-member districts. The court described a situation closely analogous to the one in this case:

> "Defendants have offered no explanation for thus dividing 14 of the larger counties entirely into single member districts while at the same time, dividing the 15 other larger counties, many of them adjoining the single-member district counties, into a crazy quilt of 1, 2, 3 & 4 member districts . . . . In the absence of any legislative history or other explanation justifying it and we have found none, we can only conclude that this districting is either the result of gerrymandering for partisan advantage . . . or that it is wholly arbitrary and capricious. The plaintiffs' contention is that thus providing a haphazard arrangement of 2, 3, & 4 member districts alongside of single member districts violates the basic principle of one man, one vote, which is, as we have seen, implicit in the constitutional sense of equal protection of laws in this field. We are constrained to agree with this contention." 229 F. Supp. at 236. 1/

In *Butcher* v. *Bloom*, 415 Pa. 438, 203 A.2d 556 (1964), the Supreme Court of Pennsylvania, discussing the same plan involved in *Drew*, noted that

> "[a] legislative scheme which creates single member districts and multi-member districts in an arbitrary manner would be objectionable. We would agree with the district court . . . that in the absence of any reasonable justification (historical or otherwise), such districting might be the result of gerrymandering for partisan advantage, and in that event, would be arbitrary and capricious. In light of the constitutional pitfalls inherent in such a districting scheme, it would be more prudent to approach the matter by setting up single member districts unless valid and compelling reasons exist which require the creation of some multi-member districts." 203 A.2d at 572-73.

The requirement of a rational and consistent pattern of districting is accentuated when it is a Board, not a legislature, that produced the plan. Boards or courts that draw reapportionment plans may experiment within only the narrowest of bounds, and their plans are subject to the most careful scrutiny. *See Connor* v. *Johnson*, 402 U.S. 690, 692 (1971)("when district courts are forced to fashion apportionment plans, single member districts are preferable to large multi-member districts as a general matter"). The precise question of the role of a redistricting board has been discussed by the Supreme Court of California, which stated that such a board's mandate must be narrowly construed:

1/ Nothing in the Supreme Court's per curiam opinion vacating the judgment touched the district court's finding of irrationality.

> "We do not believe that [the people] would have delegated such broad legislative power to the commission as is now appropriate for the legislature to exercise, had they known the standards set forth in section 6 [*e.g.*, that no county shall have more than one sectional district or be included in a district with more than 2 cities] could not be followed consistently with the United States Constitution." *Silver* v. *Brown*, 46 Cal. Reptr. 308, 316, 405 P.2d 132, 140 (1965)

B. *The Record In This Case.* The Texas plan fails to measure up to these standards or to withstand the required scrutiny. It is internally inconsistent and contradictory, and irrational on its face.

The most important inconsistency is the different treatment given to the heavily populated counties. Harris County, the largest, is split into 23 single-member districts; all the other populous counties are put in multi-member districts of varying numbers of members, ranging up to 18 for Dallas County. Three of the 11 multi-member districts comprise entire counties; in the other eight multi-member districts, the district lines cut county boundaries without rhyme or reason.[1/] No justification appears in the record for the hodge-podge of county splitting and the mix of multi- and single-member districts. The use of multi-member districts in a Southern state is especially subject to close judicial scrutiny for a rational basis.[2/]

The record clearly indicates that the Board never formed any systematic policy for the use of single- and multi-member districts.[3/] The plan cannot

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1/ The bulk of Jefferson County is made into a three-member district, but the remainder is split in two parts, *each* of which is combined with other counties to form single-member districts. Bexar County could have been maintained as a unit, with a deviation no larger than that tolerated in Dallas. Instead, a portion of Bexar County was split off and attached to adjoining District 45; the result was to lower the deviation in Bexar County by a minimal amount, while raising the deviation in district 45 from 0.4% to 4.8%.

2/ *See* Part I.A, *supra.*

3/ Amici have read the depositions of three of the Redistricting Board members and the two chief staff members. Those depositions show the following: The Board never formally chose between single- and multi-member districts. Martin 46,120-21; Mutscher 28; Barnes 92, 100, 135. Majority approval did not come until the day of signing. Martin 45-46, 86, 120. Except for an unexplained instruction to use single-member districts in Harris County only (Spellings 10-11),

[Footnote Continued]

be justified on the ground that it reduced deviations in population.[1] Nor can the State justify the present plan on the basis of past State policy of either preserving county lines[2] or limiting the size of districts.[3] The claim that Dallas was kept at-large to conform to popular sentiment[4] is simply contradicted by the record;[5] moreover, even if the Board based its unique treatment of Dallas on grassroots sentiment, it could not constitutionally apply this standard in selected areas only. *Kirkpatrick* v. *Preisler*, 390 U.S. at 534-35.

The plan's peculiar kind of multi-member districting is not supported

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[Footnote Continued]

the Board gave no specific instructions to the staff, who proceeded to draw the plan according to their own design. Martin 30-43, 89, 124; Johnson 9, 17-18; 28; Spellings 10, 34-36, 49-50, 56, 62. The Board members did not communicate much even among themselves, Martin 86-87, 105, and had almost no time to examine the final plan. Barnes 50; Martin 87-88, 137.

Although there were *claims* that various criteria were considered, the depositions show that these criteria were applied haphazardly, if in fact they were applied at all. Martin 51-52, 56, 62, 69-73, 81-85; Spellings 12, 38-50, 59-60, 164-67; Johnson 15, 28, 32, 49. In any event, the drafters frequently lacked information that was necessary for them to follow the alleged guidelines. Spellings 13-14; Johnson 29-39.

Finally, there was no rational justification for failing to subdivide the 11 multi-member districts, Barnes 97-103; Martin 30, 35-36, 43, 48, 63, except for a claim that the people of Dallas County wanted their county kept at-large, a claim which is disputed in the record. *See* n.5, below.

1/ The total deviation is 9.9%, which is unacceptably large. Kirkpatrick v. Preisler, *supra*, Abate v. Mundt, 403 U.S. 182 (1971). *See* Sims v. Amos, C. A. No. 1744-N (M.D. Ala. Jan. 3, 1972).

2/ As the splitting of Harris County shows, there is nothing in Smith v. Craddick, No. B-2932 (Tex. Sept. 16, 1971), or any other source, which requires multi-member districting or forbids subdividing counties.

3/ The size of Dallas County -- 1.3 million people electing 18 Representatives at-large -- belies any alleged attempt by the Board to conform to the 15-member, 1 million population, limitation given to the courts as an excuse for multi-member districting in Kilgarlin v. Martin, 252 F. Supp. 404, 444 (S.D. Tex. 1966).

4/ Martin Deposition 37-39.

5/ The record contains opposing claims about the sentiment in Dallas on the question of single- versus multi-member districts. *See*, *e.g.*, Hearings Before the Legislative Redistricting Board, Vol. 1, pp. 47-48, 72-73, 79-80; Vol. II, pp. 4-6, 72.

by any political theory. None of the authorities cited by Justice White in footnotes 33 and 38 of the opinion in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), supports either large multi-member districts or multi-member districts which do not serve to preserve county lines. 1/ The Texas plan conforms to neither criterion.

In summary, then, Texas has quite simply failed to provide any rational justification for the haphazard combination of single- and multi-member districts at issue in this case. 2/ This irrationality, without reasoned justification, is a separate and distinct ground for declaring the plan unconstitutional.

1/ None of the sources cited in Justice White's opinion provides support for multi-member districts in general. Three discuss justifications for multi-member districts which enable retention of county lines. *Collins, Dauer, David, Lacy & Mauer, Evolving Issues and Patterns of State Legislative Redistricting in Large Metropolitan Areas* 105-110; *David & Eisenberg, State Legislative Redistricting: Major Issues in the Wake of Judicial Decision* 19-22 (1962); Klain, *A New Look at the Constituencies: The Need for a Recount and Reappraisal*, 49 *Am. Pol. Sci. Rev.* 1105, 111 (1955). These three sources and *Dixon, Democratic Representation* 503-07 (1968)(which summarizes modern analysis) also limit their discussion of justifications to small districts of no more than two to four members, and Collins, *et al.*, refer to an 18-member at-large delegation from Cuyahoga County, Ohio (Cleveland), as "a scandalous situation." *Id.* at 112. To the same effect, *see* David & Eisenberg, *supra*, at 19-21.

Finally, Dixon, *supra*, summarizes the views of modern studies and concludes both that multi-member districting generally does not produce its supposed benefits, but also that it usually leads to undue repression of weaker parties and minorities, with the degree of repression increasing with the number of members in the district. His findings are generally confirmed by three other sources: Silva, *Compared Values of the Single- and the Multi-Member District* 17 *W. Pol. Q.* 504 (1964); Silva, *Relation of Representation and the Party System to the Number of Seats Apportioned to a Legislative District*, 17 *W. Pol. Q.* 742 (1964); Hamilton, *Legislative Constituencies: Single-Member Districts, Multi-member Districts, and Floterial Districts*, 20 *W. Pol. Q.* 321 (1967).

The "general preference" for single-member districts, noted by Justice White in footnote 38, can be found in the sources summarized in *Hofrichter, Fact Patterns Documenting the Relationships Between At-Large Nonpartisan Electoral Systems and the Representation and Electoral Effectiveness of Minority Groups* (Bureau of Social Science Research, Inc., Washington, D.C., 1970).

2/ It may well be that the inconsistent treatment given Dallas County as opposed to Harris -- indeed, the results of the entire plan, itself -- were due to lack of time. Deposition of Barnes, 57-58, 100-101; Deposition of Spellings 20, 47, 52, 53 (a single-member district plan would have been practically impossible within the time allotted). But this does not justify an unconstitutionally irrational result.

III. CONCLUSION

Amici believe the standards set forth above are the proper ones for assessing the questions of rationality and discrimination. Amici further believe that, under either of those standards, the apportionment of the Texas House of Representatives must be held unconstitutional.

Respectfully submitted,

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APPENDIX A

Summary of Record in Whitcomb *v.* Chavis, *403 U.S. 124 (1971)*

I. REQUESTS FOR ADMISSION

The plaintiffs requested the following 118 admissions of the State. These requests are listed in the Appendix at pp. 92-115, and are summarized below: */

Request	Summary
1	statutory material
2-27, 29-40	population and demographic material showing that blacks are a cognizable minority, concentrated in a ghetto area, having special interests on certain issues
28	importance of the Legislature
41, 55-56, 116-117	blacks in Marion County and Lake County would control some legislators under a single-member system
42-43	percentages of blacks and whites residing in multi-member districts
44	quotation from the Kerner Commission Report
45-46	increase in housing segregation between 1920 and 1932
47-54	references to discrimination between 1873 and 1926
57-65, 83	comparison of ghetto and non-ghetto election turnout and returns for Presidential candidates in the 1968 primary and general elections
66-70	in 1968, three black Republicans in Marion County were elected to the State House of Representatives although in the ghetto area they finished far behind every white Democratic opponent
71	election returns comparing the votes received by black and white candidates for Representative in the 1968 Republican primary
72	newspaper article referring to a conservative legal view held by one of the three black Republican Representatives
73-82, 84	population, demographic and election statistics relating to the "white suburban belt"
85	comparison of Democratic and Republican votes, by ward, in Marion County, in the 1968 general election for State House of Representatives
86-92	comparison of Marion County with an equally populous 36-county area in the southern part of the State

Request	Summary
93-97	historical infrequency of election of Marion County residents as statewide officers
98-109	history and statistics tracing Marion County's influence in the State Legislature
110-11	there are currently four black Representatives and no black Senators
112, 115	the political party that wins a given legislative election invariably sweeps all seats
113	Marion County has many independent voters
114	it is impossible for Marion County voters to know very much about the vast number of legislative candidates
118	mathematical analysis of Banzhaf "weighted vote" theory

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*/ It is not clear how many of the requests were admitted by the State. *Compare* App. pp. 257-58 *with* Reply Brief of Appellant, pp. 1-5.

II. TRANSCRIPT OF TESTIMONY

Plaintiffs' Witnesses

Appendix Page	Witness	Summary
139-55	John Banzhaf	Testified about mathematical theory concerning impact of multi-member districts
156-65	William Schreiber	Identified exhibits, including (1) various maps showing census tracts, voting precincts, legislative district lines, and the residence of legislators elected from 1960-1968; (2) charts showing the population by race for each census tract; (3) charts listing the name, race, party and previous experience of each legislator elected from 1960-1968; and (4) charts showing the party and total vote for each legislative candidate from 1920-1968
166-69	Bernadette Lehman	Identified a booklet of demographic statistics concerning blacks
169-73	Lynda Leary	Testified that in 1968 a questionnaire was sent asking each candidate his view on certain issues, and that the members of successful delegation answered as a bloc
173-76	Samuel Lesh	Produced and identified certain legislative bills subpoenaed by the plaintiffs
176-205	Patrick Chavis	Black lawyer living outside the ghetto (but with his office in the ghetto), party leader and former Senator, testified that ghetto residents share particular interests on certain issues, although they also share some interests in common with people outside the ghetto; that some of the laws passed by the Legislature were discriminatory; that when he was elected to the Senate, he first got clearance to run from about 30 different prominent Democrats; that he won the primary as a slated candidate, and that all those slated with him had also won in the primary; that he followed party discipline in his legislative votes, and had to in order to be renominated; and that he nonetheless did what he could for the black community but would have been much more tough and effective in their behalf if he had been representing a single-member district
206-15	Judson Haggerty	Former party chairman and Representative, testified that party precinct officials vote at a convention for those candidates who will be "slated" in the party primary,

Appendix Page	Witness	Summary
206-15 [Cont'd]	Judson Haggerty [Cont'd]	where nominations are invariably won by the slated candidates; that party leaders have influence in the slating convention and great influence over the votes of elected legislators; and that single-member districts would give a greater voice to parts of the community, including ghetto dwellers
215-17	George Morris	Identified records of Marion County election returns by ward and precinct in the 1968 primary and general elections
217-26	Clifford Dewitt	Former Representative, described procedure of a slating convention, indicated that precinct officials vote on whom to slate, though party leaders make suggestions; he also testified that party control in the Legislature was tight, and thought party allegiance would be less in smaller districts
226-28	Andrew Ramsey	Black, former candidate, testified that he had gotten many more votes in the primary when he was slated than when he was not
229-31	Mason Bryant	Black former candidate, testified he was asked to run by the party organization and was subsequently slated at the slating convention
231-34	Marilyn Hotz	White Republican residing in the suburbs, testified she is interested in Marion County's problems, and that she votes the slate her committeeman gives her in the primary and general elections
234-45	Nola Allen	A Republican committeewoman, testified that the Marion County delegation to the State House of Representatives often splits on controversial issues, and (unlike the Lake County delegation) rarely expresses unanimity, regardless of which party is in control; she also testified about the manner in which the Republican ticket is chosen, indicating that a selection committee slates preferred candidates in the primary; that in 1968 all the slated candidates won in the primary, but that in 1966 an insurgent group (the Republican Action Committee) had won every primary race against the regular organization's candidates; that the Republican Action Committee had attempted to put together a ticket that would be broadly representative and would appeal to various interest groups; and that the inner-city vote was quite important in the Republican Action Group's victory

Appendix Page	Witness	Summary
245-59	Rowland Allen	An independent voter, testified the large number of candidates is bewildering
249-58	William Schreiber (recalled)	Testified that exhibits showed the ghetto turnout in the 1968 primary was higher compared to the general election turnout than was the case in the rest of the County; that the ghetto vote was especially high for Robert Kennedy; that virtually every election since 1920 has been a clean sweep for one of the political parties; that he has prepared single-member plans for redistricting Marion County, and that the black community would have three Representatives and one Senator
258-61	William Walker	A black voter from Lake County (Gary), testified that his county elects eleven Representatives and five Senators; that in 1969 none of the Lake County delegation was black

Defendants' Witnesses

Appendix Page	Witness	Summary
262-70	Edward Bayloff	An employee of the Marion County planning department, identified maps and documents showing demographic statistics, population and growth figures, and planning projections
270-72	J. Frank Hanley	Identified summaries of returns from the 1968 general elections
272-75	Robert Calhoun	State Director of Public Health Statistics, identified 1967 population estimates, showing substantial change from 1960 census figures
279-313	Charles Whistler	Chairman of the Metropolitan Plan Commission, testified that residential integration has been increasing recently; that residents of Marion County have many problems that are countywide and many that vary in individual areas; that single-member districting would be preferable at the local (or county) government level, where the chief tasks are the allocation of resources within the area; but that multi-member districting would be better for Marion County in the State Legislature, since the task there is to persuade other legislators to take actions which will benefit the County, and a unified delegation would be more influential in this task; and that representatives elected

Appendix Page	Witness	Summary
274-313 [Cont'd]	Charles Whistler [Cont'd]	Countywide would have to appeal to their entire constituency, whereas under single-member districting ghetto representatives might be better spokesmen for their local constituency but they would have little influence in the legislative process because they would not enjoy the support of representatives elected from other parts of the County
313-21	George Comfort	A political scientist, testified that Marion County's problems are common to the community; that blacks have a substantial voice in the election of all members of the delegation; that both political parties, in campaigning and in establishing policies, know that they must "take the potency of the Negro vote into account and that they therefore do appeal to the black voters, as shown by the presence of three black Representatives on the Marion County delegation; that this influence would be lost if single-member districts were created because most of the Marion County Representatives would not be responsible to black voters; and, finally, on cross-examination, he testified that Marion County has a significant advantage in the legislature because of its large block of legislators speaking with a single voice

Plaintiffs' Rebuttal Witness

Appendix Page	Witness	Summary
324-30	William Schreiber (recalled)	Identified two additional maps, showing residences of legislators elected from 1960-68, and outlining the boundaries of the ghetto area alleged by plaintiffs

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

DEC 30 1971

Armand Derfner, Esquire
Lawyers Committee for Civil
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Dear Mr. Derfner:

The information you requested in your letter of December 28, 1971 is available in our public files in this office. You are invited to come in, go through those public files, and to obtain such information as you desire in accordance with the regulations adopted under Section 5 of the Voting Rights Act of 1965.

It appears that during 1971 we have received 11 submissions of the kind you describe. Of that number there are 3 pending (plus one request for reconsideration), 6 objections, and 2 no objections. I should point out that, in my judgment, the Attorney General's action in objecting or failing to object to changes submitted under Section 5 in one case is of no legal or evidentiary significance in another.

A skeleton list of the submissions you asked about has been compiled and is attached. Also attached are copies of the letters you requested which, under the regulation, are being made available to you at a cost of $22.25.

Sincerely,

David L. Norman

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

Submissions to The Attorney General pursuant to Section 5 of the Voting Rights Act since Janaury 1, 1971

Changes involving numbered posts and majority requirements

Submission and Date Received	Determination	
Conyers, Georgia		
11/1/71 Posts, maj req	Objection	12/2/71
12/13/71 Posts, maj req (request for reconsideration)	Pending	
Jonesboro, Georgia		
10/14/71 Posts, maj req	Add info required	
12/7/71 Posts, maj req	Pending	
LaFayette, Georgia		
11/4/71 Majority req	Pending	
Waynesboro, Georgia		
10/12/71 Posts, maj req	Add info required	
12/8/71	Pending	
State of Louisiana		
7/2/71 Posts	Objection (although not to posts)	8/20/71
Birmingham, Alabama		
3/31/71 Posts	Add info req	4/16/71
5/10/71	Objection	7/9/71
7/22/71 (Req for reconsideration)	Objection	7/14/71
Grantville, Georgia		
3/15/71 Posts	No Objection	5/14/71
Hinesville, Georgia		
8/17/71 Posts, maj req	Objection D.J. filed suit when municipality continued with election	10/1/71

Submission and Date Received		Determination	
Newnan, Georgia			
8/3/71	Posts, maj req	Add info req	9/10/71
9/14/71		Objection	10/13/71
State of North Carolina			
2/2/71	Posts	Objection	4/23/71
6/1/71	(Req for reconsideration)	Objection	7/30/71
Florence, South Carolina			
4/23/71	Posts	No Objection	6/22/71

1730 M STREET, N.W., WASHINGTON, D.C. 20036 • TEL. (202) 296-1770

memorandum

The League of Women Voters of the United States

FEB 11 1971

TO: State and Local League Presidents

FROM: Lucy Wilson Benson

RE: Apportionment

The national Board at its January meeting considered the response to its experiment in asking members whether or not they agreed that the League's position on legislative apportionment could be applied to Congressional districting and that Leagues could act to support districting plans that best provided fair representation to all citizens. At the time the Board met there were 9,693 replies -- 9,462 "yes" and 231 "no". Although the returns show a very high affirmative response, 97-98% "yes" votes remaining constant over the entire counting period, the Board felt that the total number of returns was not substantial enough to declare the decision confirmed as yet.

Replies are still coming in and as of February 5 there are 10,469: 10,729 "yes" and 260 "no". Totals, state-by-state, are shown on the back of this page.

MEMBER RETURNS AS OF 2/5/71 -- TOTAL YES 10,469 (97.6%) TOTAL NO 260 (2.4%) TOTAL 10,729

State	Yes	No	Total	State	Yes	No	Total
Ala.	39	0	39	Nebr.	52	1	53
Alaska	12	3	15	Nev.	23	1	24
Ariz.	90	6	96	N.H.	72	2	74
Ark.	30	0	30	N.J.	542	15	557
Calif.	1188	40	1228	N.M.	60	12	72
Colo.	197	3	200	N.Y.	839	15	854
Conn.	415	9	424	N.C.	134	1	135
Del.	67	2	69	N.D.	11	0	11
Fla.	263	11	274	Ohio	615	17	632
Ga.	113	5	118	Okla.	64	1	65
Hawaii	10	0	10	Ore.	179	4	183
Idaho	25	0	25	Pa.	601	10	611
Ill.	648	7	655	R.I.	44	0	44
Ind.	198	3	201	S.C.	39	0	39
Iowa	192	4	196	S.D.	15	1	16
Kan.	119	7	126	Tenn.	119	3	122
Ky.	69	2	71	Tex.	249	11	260
La.	64	2	66	Utah	41	2	43
Maine	47	2	49	Ver.	59	1	60
Md.	406	2	408	Va.	256	5	261
Mass.	720	7	727	Wash.	209	4	213
Mich.	305	7	312	W.Va.	36	5	41
Minn.	389	23	412	Wisc.	298	1	299
Miss.	8	0	8	Wyo.	9	0	9
Mo.	200	2	202	D.C.	67	1	68
Mont.	14	0	14	P. Rico	3	0	3
				V. Is.	3	0	3

1730 M STREET, N.W., WASHINGTON, D.C. 20036 • TEL. (202) 296-1770

memorandum

The League of Women Voters of the United States

December 16, 1970

DEC 21 1970

TO: State League Presidents
FROM: Mrs. Bruce B. Benson, President
RE: Apportionment

You should have already received the memo sent to local Leagues on December 15 about apportionment. The experiment the national Board is undertaking is to involve members in the decision to apply the national League position on the apportioning of state legislatures to congressional districting and to allow state Leagues to support the most equitable among choices of congressional and state legislative districting plans based substantially on population.

Since redistricting problems will vary among states, the responsibility for examining congressional and legislative districting plans for other inequities as well as population variations will rest with each state Board. Therefore, in the event that there is substantial agreement with the national Board's recommendation, in order to be prepared for appropriate action, state boards should be watching and evaluating what is happening in the 1971 legislatures on both congressional and legislative apportionment.

Some state Leagues have positions on aspects of legislative apportioning: who shall apportion state legislatures, for example, sizes of the two houses, guidelines for drawing of district lines, etc. Although there is no national position under which Leagues can take action on congressional districting, some Leagues can take action on congressional districting, some Leagues do have positions, for example -- standards of contiguity and compactness. Nothing in the national Board's recommendation would interfere with such state League positions.

The Board plans to assess membership response to this issue at its late January meeting. If the response is affirmative, there will be many ways state Leagues can work for equitable redistricting. Board members might suggest to legislative leaders that they invite interested citizens and organizations to submit redistricting plans. Perhaps redistricting commissions could be appointed even where state law does not provide for them. A state League could prepare its own plan or organize an ad hoc group with enough expertise to devise one.

Again, this procedure is an experiment. Since Leagues are already agreed on the concept of "one-man, one vote", and since there has been so much League interest in member involvement, the Board felt this particular immediate problem lends itself very well to such a procedure.

1730 M STREET, N.W., WASHINGTON, D.C. 20036 • TEL. (202) 296-1770

memorandum

The League of Women Voters of the United States

December 9, 1970

TO: Local and State League Presidents
FROM: Mrs. Bruce B. Benson, President
RE: Apportionment

Most state legislatures will meet in 1971 and confront the problem of reapportioning both congressional and legislative districts. The new census figures show population shifts affecting both legislative and congressional district lines. Some states are entitled to fewer representatives in Congress, and some to more; in these states the problem will be compounded.

The effects of these decisions will be far reaching, in most cases lasting for 10 years until the next census. The U.S. Supreme Court has ruled that congressional and state legislative districts must meet the requirement of substantial equality of population; however, there may be obvious and/or subtle efforts to entrench political power, to dilute powers of minority groups or to deny them fair representation.

In November, the national Board discussed the importance of fair representation in how the new districts are drawn. The League already has related positions - apportionment of state legislatures substantially on population, our new bylaw which supports protection of the citizen in his right to vote, and our human resources position for equality of opportunity in education, employment, and housing. Protection is needed for fair representation of minorities if they are not to be discriminated against in the drawing of district lines. Leagues have already noted these problems and have expressed their concern.

The problem is immediate. Our present national League position permits action only on state legislative districting. The Board, therefore, recommends that the League apportionment position shall allow state Leagues to choose and work for the most equitable congressional and state legislative districting plans which are based substantially on population. State Boards will have the responsibility for examining and evaluating the various redistricting proposals.

League members discussed and supported substantial equality of population among state legislative districts in reaching our apportionment position in 1965. The 1970 Convention readopted it. The issue is simple and straight-forward.

The national Board proposes an experiment in involving the members in this new application of the position. An article will appear in the January National VOTER, explaining the Board's recommendation and asking for member response. The VOTER will contain a tear-off post card asking members if they agree or disagree with the national Board's thinking.

We naturally want to hear from as many members as possible. You can help by alerting members in the January Bulletins, or in some other way, that members will have an opportunity to be involved in this decision. The question that will appear is:

> Do you agree that the League position on legislative apportionment based substantially on population should be applied to congressional districting as well: and that under this position state Leagues may act in support of those districting plans that best provide fair representation for all citizens?

League of Women Voters
of the United States

Memorandum

1730 M Street, N.W.- Washington, D. C. 20036
(202) 296-1770

This goes on State Board Supplement

February 27, 1970

TO: State League Presidents

FROM: National Office

RE: Apportionment of state legislatures

On Wednesday, February 25, the U.S. Supreme Court ruled in a case arising over the election of six trustees of the junior college district operating three junior colleges in the Kansas City, Missouri, area.

The Court ruled, in a 5 to 3 decision (Justices Burger, Harlan, and Stewart dissenting) "that election of school board members and most if not all other local officials must adhere to the principle of one-man, one-vote." (New York Times, February 26, 1970)

Effect on Legislative Resolutions for a U.S. Constitutional Convention.
It is quite possible that in some areas resentment over this ruling may trigger introduction and/or passage of legislative resolutions petitioning Congress to call a constitutional convention to propose an amendment allowing apportionemnt of one house of state legislatures on factors other than population.

Only one more state is needed to reach the required number of 34.

These resolutions may be quickly introduced and passed without advance notice. As you know from the past, careful watching and reporting has been of great value and has earned the Leagues an enviable reputation for knowledgeable action and persistence on legislative apportionment substantially on population.

The New Jersey League has reported the introduction in the New Jersey legislature of a resolution petitioning for a convention on apportionment. States whose legislatures have not yet petitioned include: Alaska, California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin. Will Leagues in these states please keep us informed?

Effect on Rescinding Resolutions.
In its 1970 session, the Kansas House passed a rescinding resolution (as it did in the 1968 session). Chances for passage in the Senate are reported to be fairly good.

Resolutions to rescind have been introduced in 1970 in both houses in Iowa, but no action is expected. Efforts toward recision are also beginning in Kentucky and Washington. A rescinding resolution was also introduced in Georgia in the interim before the 1970 session.

Yesterday's U.S. Supreme Court decision may trigger petitions for a convention on apportionment; it may for the same reasons slow down rescinding efforts. The national League office would also like to hear from you about resolutions to rescind and your judgment about their chances.

Rumor Department.
Sometimes legislators, reporters, and others say such things as: "You have nothing to fear. The proposals vary too much, one from another. Some can no longer be counted, like Oklahoma's. Wyoming's and Washington's are now nearly seven years old, and will soon be invalid."

What must be remembered is that the only rule there is for counting is the constitutional provision in Article V, U.S. Constitution. It says nothing about uniformity of legislative applications, length of time they are valid, or the form in which they are to be presented. While all kinds of questions may be raised (hopefully there may never be the occasion) in congressional debate, it would be short-sighted to rely on our own or others speculations about what is or is not a valid petition.

SEE ALSO:
Representative Government Sections of the September 1969 and January 1970 NATIONAL BOARD REPORTS
"Apportionment Still a Cliff Hanger," October 1969 NATIONAL VOTER

League of Women Voters
of the United States

Memorandum

1730 M Street, N.W. - Washington, D. C. 20036
(202) 296-1770

This does not go on State Board Supplement

January 9, 1970

TO: State League Presidents

FROM: National Office

RE: Apportionment of State Legislatures

In over half of the states, legislative sessions will meet in 1970. More states, in addition to the four with regular sessions in even numbered years, because of constitutional changes permitting annual sessions or fiscal sessions in alternate years, are meeting in 1970 than in prior even-numbered years.

Therefore it is of utmost importance to watch for introduction of legislative resolutions petitioning for a constitutional convention to submit an amendment which would allow apportionment of one house of state legislatures on factors other than population. Such a resolution has been introduced in the New Jersey legislature in 1970 and has been referred to committee. On November 4, 1969, the Dirksen type resolution was defeated in the Wisconsin Assembly by a vote of 62-36. However, a new move is under way to petition for a constitutional convention to propose an amendment which would allow for popular election of U. S. Supreme Court justices. In Wisconsin, supporters believe it could be added to the 33 petitions asking for a convention to propose an apportionment amendment. In 1969, this resolution cleared the Wisconsin Assembly by a 52-47 vote and the Senate by an 18-14 vote. However, after a vote to reconsider, on the second attempt at Senate passage, the vote was 16-16. Another try will be made in January 1970.

Efforts to rescind should be supported in order to reduce the current number, 33 (just one short of the required two-thirds). (See September 1969 Board Report section on Representative Government, for a full report of such activities).

Be sure to keep the national office informed of developments in your state. We can supply names of organizations that would help you in your efforts either to support rescission or to oppose petitions and can easily contact national headquarters of these organizations.

We have been able, because of prompt and accurate state League reporting, to provide up-to-date information to radio and TV stations, newspapers, other organizations, congressmen and interested citizens. With your help, we can continue to be a good "news" source.

Boyd

MAR 8 1967

February 27, 1967

Mr. William J. D. Boyd
National Municipal League
47 East 68th Street
New York, N. Y. 10021

Dear Mr. Boyd,

The Texas Legislature adopted a resolution in support of a National Constitutinnal Convention to propose a Dirkson Amendment. This resolution was adopted by the 59th Legislature early in February 1965 by an averwhelming vote.

The Texas Legislature has been aware that it will be necessary to redistrict the House of Representatives during the current session to eliminate flotorial districts. However, members were apparently very surprised at the U. S. Supreme Court decision earlier in this month that seems to require total reconsideration to meet tighter population requirement. This would thus seem to be a very unauspicious time for any move to recall the resolution.

Sincerely yours,

Mrs. Wilson Wolle,
Chairman, Reapportionment Item
1910 David Street
Austin, Texas 78705

cc: Mrs. William Joor
Campsraw

League of Women Voters
of the United States

MAR 20 1967

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
State Board Supplement

March 20, 1967

TO: State League Presidents
FROM: Mrs. Robert J. Stuart, President
RE: General Alert on Apportionment

From mid 1965 through most of 1966, the study of the emergency item on the basis of representation in state legislatures, the splendid response of the state and local Leagues, and the almost immediate effective and successful action after consensus to defeat the proposed Dirksen Amendment in the Senate were exciting and strenuous activities. This year, the 46 legislatures meeting are all apportioned substantially on population or nearly so. Reports coming from state Leagues reflect energetic legislative action in many areas in which individual state Leagues are involved, and many Leagues report an awakening interest in the community on what is taking place at their state capitals.

Now is the time to be alert for the activity that is still going on to promote a constitutional amendment to allow at least one house of state legislatures to be apportioned on factors other than population.

In the States. In the state legislatures there are disturbing signs of swift and unheralded action to try for passage of resolutions petitioning Congress to call a constitutional convention to draft an amendment to the Constitution that would permit one house of state legislatures to be apportioned on factors other than population.

In Illinois, on March 13 such a resolution passed the House and the Senate. Just a few days earlier, in Indiana, after passing the House in a swift and surprising move, it passed in the Senate by a vote of 29 to 20, although it was generally believed to have little chance. In Iowa, it passed the House but may have difficulty in the Senate. It has passed the Senate in Colorado and seems likely to pass in the House.

There are now 28 states that have passed resolutions calling for a constitutional convention on apportionment. The U. S. Constitution Article V, provides that:

> "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress:..."

Twenty-eight state legislatures have passed resolutions proposing a constitutional convention to draft an apportionment amendment to allow one house of state legislatures to be apportioned on factors other than population:

Alabama	Kentucky	New Hampshire
Arizona	Louisiana	New Mexico
Arkansas	Maryland	North Carolina
Florida	Minnesota	Oklahoma
Georgia	Mississippi	South Carolina
Idaho	Missouri	South Dakota
Illinois	Montana	Tennessee
Indiana	Nebraska	Texas
Kansas	Nevada	Utah
		Virginia

The number of applications from state legislatures needed to meet the constitutional requirement is 34. The total of petitioning states is approaching that number.

State Action Alert: In those states not having passed the resolution, careful attention to forestall swift and sudden moves is essential. Most large city newspapers, and supporters with whom you have worked before, will help you publicize the beginnings of surprise action and might help in its defeat in one house, should it suddenly pass in the other. It may be helpful to report to them any information you have about possible action.

In some states in which it has already passed, state Leagues might initiate action for withdrawal of the resolution. In several states in which court action to reapportion has been recent and feeling still runs high or in which the very attempt would be doomed to failure, state Leagues would not be wise to make the attempt. However, if in even a few legislatures recision could be accomplished, the effect would be extremely valuable.

There is the ever-present possibility that the 90th Congress, if the number of states petitioning should mount, might act by passing its own proposal. If it gets even a few recisions, resistance to a congressional proposal would be strengthened.

In the Congress. A large number of apportionment resolutions have been introduced in the House and referred to the House Judiciary Committee, ranging in intent from allowing one house of state legislatures to be apportioned on population if approved by a vote of the people, to allowing each state exclusive power to apportion and forbidding any action of the federal courts in legislative apportionment cases.

However, at this time, no hearings are planned. No apportionment resolutions have so far been introduced in the Senate.

X X X X X

Keep the national office informed of any signs of activity in your state legislatures, and of any of your efforts, either toward preventing passage in your legislature or toward recision of resolutions already submitted.

IF YOU LEARN THAT A VOTE ON THIS MATTER IS SCHEDULED PLEASE WIRE THE NATIONAL OFFICE. EVEN 24 HOURS NOTICE WILL HELP.

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
Duplicate Presidents Mailing

March 29, 1966

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Report on current U.S. Senate and Community Activity on S.J.R. 103 -- the proposed constitutional amendment to permit one house of state legislatures to be apportioned on factors other than population

U.S. Senate Action:

S.J.R. 103, which was scheduled to come to the floor of the Senate the week of March 14, has been postponed. Rumors are that it will be brought up after the April 7-13 Easter recess. The proponents of S.J.R. 103 are vague about their plans, and much of the strategy may depend on the effectiveness of the "grass roots" campaign. Some Capitol observers say that the postponement was inspired by the hope that the supporters of the constitutional amendment and the Committee for Government of the People would have more time to develop this "grass roots" support and to allow constitutuents in favor of S.J.R. 103 to approach Senators who go to their home states during the Easter recess.

In an effort to gain additional Senate support Senator Dirksen (R., Ill.), said at a press conference that he plans to propose two amendments to S.J.R. 103. As reported on March 25 in the Washington Post from a Los Angeles Times dispatch, one of the amendments would require that both houses of a legislature be apportioned by population before submitting a non-population plan to the voters (Note: Indiana Leagues -- this provision, known as the "prior compliance" plan, was rejected by Dirksen last year when proposed by Senator Birch Bayh of Indiana).

Campaign Efforts of Committee for Government of the People:

State Committees to support the Dirksen Amendment have been set up in nearly every state and we have received word that local committees are now being organized in some areas. We have even received reports that local League presidents have been approached by the Committee for Government of the People (which has hired the public relations firm of Whitaker and Baxter to manage its campaign) for support of S.J.R. 103. Other local organizations also are being approached for statements or resolutions of support. One League president met with the representative of the Committee so that she could find out, first hand, the approach that was being used. Her experience inspired her to get busily to work, contacting other organizations, urging members to write their Senators in opposition to S.J.R. 103, visiting editors of local papers to encourage editorials in opposition.

In the packet of materials distributed by the Committee for Government of the People is an attractive popular pamphlet entitled "Let the People Decide." It contains a number of ambiguous and misleading statements. Several Leagues have asked us to

prepare more specific information to help them refute the materials in the pamphlet. We have prepared this material, which is included with this memo.

League Efforts:

Local and state Leagues throughout the country have written to their Congressmen stating the League's position on Apportionment of State Legislatures and in opposition to S.J.R. 103. Some of the Leagues have sent copies of their letters to Congressmen to the national office. We have received copies of several hundred letters from Leagues in 46 states and understand that hundreds of individual letters have been received by many U.S. Senators. In addition, we have received copies of news stories, letters to editors, editorials and radio-television spot announcements. Some Leagues have reported they are working with other community organizations to stimulate opposition to S.J.R. 103. Much of the community activity reported seems to be in response to what the Committee for Government of the People has been doing at the state and local level.

In the next few weeks, Leagues will need to be alert for signs of activity by the "Committee." There may be need for special efforts with individual letters from League members and others in the community to U.S. Senators,* visits to influential people in the community, to other organizations, to newspaper editors, to city officials to enlist their support of legislative apportionment based substantially on population.

For additional background see:

Times for Action on apportionment of State Legislatures: March 11, 1966
February 14, 1966
January 17, 1966

January 10, 1966, Memo from Mrs. Stuart with statement of position
January 1966, National Board Report, pages 57-61
January 1966, NATIONAL VOTER, "Variations on an Old Theme"
July 1965, NATIONAL VOTER, Supplement "Representation for all Citizens"

Senate Report No. 1047 on Apportionment of State Ligislatures: The Senate Committee on the Judiciary has issued this Report together with individual views of members of the Committee on S.J.R. 103. It can be obtained free by writing to: Senate Committee on Judiciary, 2226 New Senate Office Building, Washington, D.C. 20510.

# # # # # #

NOTE: We have just received a report on some of the stepped up activity by the "Committee." In addition to the establishment of local and state committees, they are now writing to some school boards and other local and state officials to enlist their support for this Constitutional amendment.

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* At present, there is no activity on S.J.R. 103 in the House of Representatives. Any efforts should be concentrated on the U.S. Senate.

Natl Prog - Apportionment

League of Women Voters of Texas

612 NORTH 18TH STREET • WACO, TEXAS 76707

March 12, 1966

to: Joor, Casperson, Brown
from: Nolle
re: reapportionment action

MAR 17 1966

S.O.

I am enclosing a clipping from the 2-27-66 issue of Houston Chronicle in the ~~xi~~ envelope to Brown. Please, send Thermo-fax copies of this to Beulah and Ruth. It contains ~~of~~ a list of the ~~xxxxxxxxxxx~~ Texas appointees to Senator Dirkson's "Govermnemt of the People" committee.

We probably ought to consider whether or not some thing should be done in the areas where these people live in a general community education effort.

Probably will be better to handle it at the post-Board meeting. ~~xxxxxxxxxxxxxx~~ Anyway, let me know if you think something ought to be planned for the ~~xxxxxxxxx~~ Board or committee at the time of the pre-Convention board meeting.

Will try to get a borad report on this particular aspect ready for distribution at the time of our meeting.

Peggy

United States Senate

COMMITTEE ON BANKING AND CURRENCY

March 2, 1966

Mrs. Maurice H. Brown, President
League of Women Voters of Texas
612 North 18th Street
Waco, Texas

MAR 7 1966

Dear Mrs. Brown:

Thank you for your recent letter.

I believe that the Supreme Court's disregard of the wishes of the citizens of the states in the matter of composition of their legislatures, and the Court's abrogation of this right and responsibility of the states, is a serious matter.

I am hopeful that the Congress will see fit during this session to enact a reapportionment amendment. This measure, S. J. Res, 2, which I co-sponsored, is designed to "preserve to the people of each state power to determine the composition of its legislature and the apportionment of the membership thereof in accordance with law and the provisions of the United States Constitution."

Certainly the League of Women Voters of Texas are to be commended for their civic and community efforts.

Please do not hesitate to call upon me if you feel that I may be of further assistance to you.

Sincerely yours,

John G. Tower

John G. Tower

JGT:Tby

Natl Prog - Apportionment

RALPH W. YARBOROUGH
U.S.S., TEXAS

COMMITTEES
APPROPRIATION
POST OFFICE AND CIVIL SERVICE
LABOR AND PUBLIC WELFARE

United States Senate

WASHINGTON, D.C. 20510

March 11, 1966

MAR 28 1966

Mrs. Maurice H. Brown
612 N. 18th St.
Waco, Texas

Dear Mrs. Brown:

Thank you for your thoughtful letter of recent date regarding the proposed constitutional amendment on apportionment of state legislatures.

I am pleased to have the benefit of your views and I shall bear your recommendation in mind during consideration of this proposal.

Thanking you for your interest in matters of legislative concern, and with good wishes, I am

Sincerely yours,

Ralph W. Yarborough

RALPH W. YARBOROUGH
U.S. Senator

RWY:dym

Natl Prog - Apportionment

MAR 21 1966

246 Forest Drive
Lake Jackson, Texas 77566
March 17, 1966

Honorable John Tower
Senate Office Building
Washington, D. C.

Dear Senator Tower:

Members of the Lake Jackson League of Women Voters join me in urging you to support the principle of "one man, one vote". We believe that the protection of this basic right of the individual American citizen is vitally important to our republican form of government. The individual is the ultimate minority, after all.

We also believe that the states must have powers which enable them to function effectively in the 20th century. The problesm of industrialization and urbanizat ion which we face today demand complex solutions. We feel that state legislatures will function best to provide these solutions if our elected representatives represent the people - all the people, not just some of them. No other factors, no other standards, will do as well.

Therefore, we most sincerely urge you to oppose Senator Dirksen's proposed constitutional amendment, SJR 103.

Very truly yours,

Mrs. Leonard Levine
President
Lake Jackson, Texas LWV

bc: LWVUS, LWV of Texas
Similar letter to Sen. Yarborough

Time For ACTION

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES
1200 17TH STREET, N.W., WASHINGTON, D.C. 20036

This is going on Duplicate
Presidents Mailing

March 11, 1966

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Continuing action on Apportionment of State Legislatures --
Dirksen Amendment (S.J. Res. 103)*

According to information we received today, the Dirksen amendment is on the Senate Calender and scheduled to come to the floor of the Senate Tuesday, March 15, or Wednesday, March 16. We do not yet have any indication of how long the debate will go on. The opponents to S.J. Res. 103 hope to bring it to a vote within a week.

If your League has not yet contacted your Senators -- now is the time to do it. You might also want to set up a telephone committee to notify as many members as you can to get messages off to the Senators.

To date, local and state Leagues in 45 states have sent us copies of their letters, and I am sure there are many we have not received. From reports we get from the Hill, some Senators have been inundated with letters in opposition to S.J. Res. 103. We are making ourselves heard. Now is the time to add as many voices as we can.

* FOR ADDITIONAL BACKGROUND SEE: TIMES FOR ACTION, FEBRUARY 14, 1966, and JANUARY 17, 1966

cc: Nolle, Joor, Casperson

February 25, 1966

The Honorable Senator Ralph Yarborough
United States Senate
Washington, D. C. 20510

My dear Senator Yarborough:

I am writing to urge your continued support of the Supreme Court decision that representation in our state legislatures should be based substantially on population.

During the past year the Leagues in Texas have joined all of the other Leagues in the country in a study of the most suitable bases for legislative apportionment. At the end of the study, there was wide agreement that no factor other than population could be justified as a basis for apportioning legislative representation.

Reasons for this decision included, for example, some of the following considerations.

The philosophical bases of American political history contain no justification for giving greater weight to the minority groups at the expense of the majority. It may be noted that the districting bills enacted in the Texas Legislature reflected very little concern for "identity" or "Community" of interest" as a basis for districting.

The instances when Congress has excluded some area of legislation from judicial review have seldom been to the most creditable long-range interests of our country. Although Texas has a much better record of redistricting than many states, the absence of any recourse in the event the Legislature fails to act represents a gap in the checks and balances structure of our government.

We hope that you will continue to stand against any effort to erode the right of equal representation that has been so recently sustained. A copy of the formal statement compiled by the League of Women Voters of the United States from the individual reports from Leagues throughout the country is included with this letter. You will see that it is in accord with our Texas decision.

Sincerely,

Mrs. Maurice H. Brown
President

r.
Encl.

File

Nolle; Joor; Casperson

February 25, 1966

The Honorable Senator John Tower
United States Senate
Washington, D. C. 20510

My dear Senator Tower:

I am writing to urge your support of the Supreme Court decision that representation in our state legislatures should be based substantially on population.

During the past year the Leagues in Texas have joined all of the other Leagues in the country in a study of the most suitable bases for legislative apportionment. At the end of the study, there was wide agreement that no factor other than population could be justified as a basis for apportioning legislative representation.

Reasons for this decision included, for example, some of the following considerations.

The philosophical bases of American political history contain no justification for giving greater weight to the minority groups at the expense of the majority. It may be noted that the districting bills enacted in the Texas Legislature reflected very little concern for "identity" or "Community of interest" as a basis for districting.

The instances when Congress has excluded some area of legislation from judicial review have seldom been to the most creditable long-range interests of our country. Although Texas has a much better record of redistricting than many states, the absence of any recourse in the event the Legislature fails to act represents a gap in the checks and balances structure of our government.

We hope that you will stand against any effort to erode the right of equal representation that has been so recently sustained. A copy of the formal statement compiled by the League of Women Voters of the United States from the individual reports from Leagues throughout the country is included in this letter. You will see that it is in accord with our Texas decision.

Sincerely,

Mrs. Maurice H. Brown
President

r.
Encl.

Natl Proj - Apportionment

1910 David Street
Austin, Texas 78705

February 23, 1966

Adrain Kolter
Geography Department
Arizona State University
Tempe, Arizona

Dear Mr. Kolter,

Your letter has been forwarded to me from our state office. I notice that it is dated January 11th, and I apologize for the delay in replying. However, for some reason it was not received until last week - about the time that the Governor called a Special Session to deal with a topic of great League interest. Since I am state Legislative chairman as well as Reapportionment Item chairman, the work connected with the Legislature is taking priority.

The League's study of redistricting has dealt with the reapportionment of state legislatures. In Texas we have done this primarily in relation to the Baker v. Carr and later decisions and the subsequent Congressional reactions such as the Dirksen amendment, etc.

Since you are asking specifically about Congressional redistricting, I have no special data and do not presently have time to do any special work on this topic. I expect that you have checked standard references such as The Book of States and Congressional Quarterly as well as the court opinions in the case that forced the 1965 redistricting bill in Texas.

I am not sure what kind of law you have in mind in your inquiry. I will include the following brief quotes from two texts on Texas government.

"It must be emphasized that the Legislative Redistricting is concerned only with state legislative districts; it cannot touch congressional districts, which are entirely within the legislature's discretion. The last congressional redistricting in Texas occurred after the 1930 Census, some thirty years ago. Since that time the only action taken was in 1957 when a single congressional district (Harris County) was divided to make two."

p. 118 "The Government and Politics of Texas" by Clifton McCleskey Little, Brown and Company 1963

within the Legislature's discretion.

FEB 25 1966

"Power to Determine Congressional Districts

We have already seen how the legislature is supposed to redistrict the seats in the state legislature after each Federal decennial census. Also of great importance is the power to determine the districts from which the Texas members of the national House of Representatives are elected. If the legislature fails to redistrict, no one can force it to do so. In fact, no Congressional redistricting took place from 1933 to 1957. While the state gained no congressmen after the 1940 census, the 1950 Congressional reapportionment increased the number from twenty-one to ~~twenty~~-two. Since there were only twenty-one Congressional districts, the extra member (called a Congressman at Large) was elected from the entire state until the first election (1958) after the redistricting."

p. 50 "Texas Government" by Stuart MacCorkle and Dick Smith Fourth Edition 1960 McGraw-Hill Book Co. There is a later edition; I do not know if the passage quoted appears in it.

Your letter is not clear if you require details of the specific redistricting proposals considered by the 59th Legislature. That kind of information would be available at the Texas Legislative Council or the Texas Legislative Reference Library. I do not know whether any mandatory criteria occur in the Texas law. The above sources might be able to help you on this, too; both are located at the Capitol.

I assume that your last point is directed toward the political aspects of redistricting. A summary of this would take more time than I have at present. Newspaper reports would be the primary source.

The only source that I can suggest in addition to those above would be the Institute of Public Affairs at the University of Texas. If you feel that I might be of further help and if you are not in need of an immediate reply, please, write me again and ask in more detail for the specific information you need. Perhaps I can be of more help under these conditions.

If you paper becomes available for distribution, I would appreciate knowing about it so that I could read it.

Sincerely yours,

Mrs. Wilson Nolle
1910 David Street
Austin, Texas 78705

cc: State Office

also: Casperson, Joor

Nat'l Proj - Apportionment

League of Women Voters of Texas

612 NORTH 18TH STREET • WACO, TEXAS 76707

February 22, 1966

to: Joor, Brown, Casperson
from: Nolle
re: Reapportionment

In spite of the excellent material just sent from National, I do not feel ~~inclined~~ inclined to recommend urgent action to make a big splash locally. It might be a good idea to release copies of the National statement to the press with a covering memo to the effect ~~x~~ that this is entirely ~~consistent~~ consistent with the positions reached by Texas Leagues. I would suggest that a memo containing just a couple of sentences would be preferable to a letter ~~from~~ from Dorothy or a press release format quoting her. If you want to do this and want further suggestions, let me know.

In the letter that I sent in draft form, ~~the~~ in the letter to ~~Senator~~ Senator Yarbrough, please, add the word "continued" before support in the first and "continue to" before the word stand in the last paragraph.

It would be better to write ~~to~~ two different letters to the two senators, but I ~~don't~~ don't feel up to up. Actually ~~this~~ is the background kind of thing that ought ~~to~~ to have been handled in the non-existent interviews that we didn't ~~to~~ have. I have not seen any letters to ~~them~~ senators substituting for these interviews and ~~outlining~~ outlining League positions. I think something like this really ought to ~~go~~ go out immediately from State Office.

FEB 25 1966

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

SAMPLE PRESS RELEASE ON APPORTIONMENT OF STATE LEGISLATURES

League Favors "One Man, One Vote"

_____(dateline)_____ -- The League of Women Voters of _____ yesterday sent letters (wires) to Senators _____ and _____ urging them to oppose* the Dirksen amendment, the proposal which would allow state legislatures to be apportioned on factors other than population. The local group is joining with Leagues all over the country to put into action recent nationwide League consensus favoring the population standard for apportioning both houses of state legislatures.

/Here quote from both of your letters. Be sure you indicate that you are urging your Senators to vote against or to continue to vote against the "up-coming Senate Joint Resolution (SJR 103), a modification of the Illinois Senator's original proposal."/

M_____ said action is expected on SJR 103 sometime about March 1.

The League position on apportionment stresses the conviction that population is the "fairest and most equitable way of assuring that each man's vote is of equal value," the League president went on to say.

She added that other considerations taken into account by _____ League members in reaching their conclusion were /Quote from your own local consensus or the national statement of position/.

The _____ League position is reflected in the "truly nationwide consensus" for upholding the population standard which the national League announced January 12, according to M_____.

The national League of Women Voters received local consensus reports from local Leagues in all sections of the country and there was no evidence of a rural-urban or geographic split, she said.

Local chapters of other organizations supporting the "one-man, one-vote" principle include /Here mention other organizations who you know are on your side. Indicate any work you have done together./

---

* This section of the press release should be very carefully phrased. If both Senators are likely to support the amendment the above wording is all right as it is. If both Senators are likely to oppose the phrasing might be "urging them to continue their opposition"; if one Senator is for and one against the wording might be "informing them of the League's stand against the Dirksen Amendment, etc."

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

SAMPLE EDITORIAL ON THE APPORTIONMENT OF STATE LEGISLATURES

Until the recent Supreme Court decisions set the standard for apportioning state legislatures substantially on population, municipalities and the suburban areas had been grossly underrepresented in the state law-making bodies. By 1962, because of population shifts and the chronic reluctance of state legislatures to reapportion even in line with their own state constitutional provisions, 34 states had population differences in senate legislative districts ranging from 6 to 1 to 422 to 1. Thus one state senator might represent from 6 to 422 times as many people as another. In the lower house, in 32 states comparable disparities ranged from 6 to 1 to 1,443 to 1. Majorities of legislators in both houses in most of the states were responsible to minorities of the states' population.

Since the Supreme Court decisions of 1962 and 1964, almost every state in the union is apportioned substantially on population or has plans approved or near approval for the 1966 state elections. At last the people will be in a position through the ballot to exercise control over their state law-making bodies, a right long denied them.

Early in March, Senator Dirksen plans to propose again a constitutional amendment to threaten the right of the individual to equal protection of the laws. His proposal, SJR 103, would allow one house to be based on factors other than population. Such an amendment would dilute the value of the vote at a time when over the nation the franchise is being extended.

This is an important issue -- important to the development of the strength of state government and to the avenues now opening for more effective solutions to state problems. Certainly this is not the time to deny the citizen's right to fair representation nor to reduce the chances for more effective state government.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

SUMMARY OF LIBRARY OF CONGRESS' ANALYSIS OF PROPOSED CONSTITUTIONAL AMENDMENTS ON STATE LEGISLATIVE APPORTIONMENT

According to an analysis by Johnny H. Killian for the Legislative Reference Service of the Library of Congress, dated December 7, 1965,* there are ambiguities in SJR 103 which lend themselves to a variety of interpretations. A constitutional amendment, much more than an Act of Congress, is difficult to correct.

Radification

Article V of the U.S. Constitution states that amendments to the Constitution must be ratified by a three-fourths of the states or by conventions. The introduction to SJR 103 states that the ratifying states "... shall include one house apportioned on the basis of substantial equality of population" in accordance with the most recent decennial census.

Question: Can Congress impose a condition: that one house of ratifying legislature be apportioned on population?

If both houses of ratifying legislature be required to be based on population, then the amendment would merely be restating what the Supreme Court says the Constitution now provides. Can an amendment legally require only one-half of what is now the law of the land?

Question: Who is to determine if one house is based substantially on population?

Congress has ultimate authority to pass on questions of adoption of an amendment. If the Court is to decide that one house of a ratifying legislature is or is not based on population, and if Congress has the authority also in this instance, there might be set up in the language of SJR 103 a political conflict between two co-equal branches of the federal government.

Further, in instances where court cases had arisen and decision had been handed down, Congress might accept existing rulings; but what about a state (Maine, for example) in which there had been no case? And after the next decennial census when changes in the apportionment of the one house based on population would have to be made to take into account population changes, who would determine, in the absence of a suit, in states ratifying then?

Judicial Review

SJR 103 provides that a plan of apportionment "shall become effective" after approval of the people.

Question: Does this statement preclude judicial review?

Question: Does the language prevent apportionment by the court if the legislature fails to act at all and does not submit plans to the people?

*Reproduced in the Congressional Record, January 24, 1966, pp. 944-949.

Suppose after a decennial census, the legislature fails to submit to the voters as prescribed by the amendment two plans for the "other house' (one plan on population; one plan on population, geography, and political divisions)? Does the Court then prepare two plans for the vote of the people? Suppose it does but the legislature fails to call an election or fails to appropriate money for one. If the Court itself actually cannot apportion, as it now can, it could only direct the legislature to act and could only cite it for contempt for failure to do so.

Factors Other Than Population

The language of the amendment says that one house shall be based substantially on population "and the members of the other house may be apportioned among the people on the basis of population, geography, and political subdivisions in order to insure effective representation in the State's legislature of the various groups and interests making up the electorate."

If SJR 103 precludes judicial review for apportionment of the "other house," then of course there would be no remedy for any kind of drawing of districts for representation, provided a majority of the people accepted it. It is quite possible to apportion technically according to a given standard so that the effect is to discriminate. At present court review provides an avenue of relief. If judicial review is not precluded in SJR 103, then there would be remedy for racial discrimination if it were accomplished within the factors allowed.

Question: Assuming judicial review, how does one define "effective representation"?

Justices Stewart and Clark, dissented in Reynolds v. Sims. In elaborating on "effective representation of the various groups and interests making up the electorate" in their subsequent dissent in Lucas v. Colorado, these Justices said, "...the ideal is approximated in the particular apportionment system of any State by a realistic accommodation of the diverse and often conflicting political forces operating within the State."

Yet even these two justices, while they agreed in six cases, in four of nine cases decided the following week disagreed in their interpretation of "effective representation."

What is effective representation? Is it the number of representatives proportionate to the number of people with a particular interest? Is it the ability to pass a measure, to veto it, or simply enough representation to be heard? How are the various groups and interests to be defined? Would this phrase in SJR 103 multiply the number of cases that might be brought before the Courts?

Referral to the People

Apportionment after each decennial census violates some state Constitutions which provide other periods of time, i.e., Indiana, every six years; Kansas, every five years; Rhode Island, after every presidential election. This provision might not be difficult, however, in most states.

SJR 103 seems to assume population as a base for the house that must be based on population, since the referral to the people is to follow a federal census. Many states use other bases: registered voters, population over 21 years, votes cast in a gubernatorial election. However, even though the language is ambiguous, the word "number" might be interpreted to read "number as defined by the state."

But the phrase "...if otherwise submitted", referring to the plans to be submitted to the people for a choice for apportionment of the "other house," and the referral to the people for a majority vote raises more difficult questions.

Question: Does "if otherwise submitted" (otherwise than by a majority vote of both houses of a bicameral legislature, one house of which must be based on population) mean that any plan submitted by an apportionment board (authorized in many states to apportion) need court approval? SJR 103 states that plans otherwise submitted must be found by the courts to be consistent with the amendment. Usually the court does not rule on matters before they are passed and then only if there is a registered complaint. Does SJR 103 set a precedent for Court decisions on matters not yet enacted into law? Further, would court approval be needed for plans submitted for a referendum by an initiative petition?

Question: Until the people actually do vote, might not the court hold that the ruling of Reynolds v. Sims is the law of the land and no plan deviating from the population base could be upheld before a vote of the people?

Question: What if no plan received a majority? Suppose voters opposed both the straight population plan because of the way the districting was designed, and opposed also the "other factors" plan, and voted "no" on both? Or suppose that more 2 plans were submitted -- say a third plan by an initiative petition?

For a fuller explanation of these and other objections to SJR 103 on technical grounds, see the Congressional Record, January 24, 1966, pp. 944-949.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

BACKGROUND ON THE PROPOSED AMENDMENT FOR

APPORTIONMENT OF STATE LEGISLATURES

On January 6, 1965, Senator Dirksen (R., Ill.) introduced SJR 2, an amendment to allow for factors other than population in apportionment of one house, but was unable to get the approval of the Senate Judiciary Committee. On July 22, debate began on another version, which came to the floor of the Senate as a substitution for a resolution designating a National American Legion Baseball Week (SJR 66). On August 4, SJR 66 was defeated -- 57 years, 39 nays (A constitutional amendment requires a two-thirds vote for passage). On September 8, yet another modified version, SJR 103 (see pp. 9-10, September 1965 National Board Report for text) was reported out of the Senate Judiciary Committee without recommendation, a tie vote on it having been broken by the change of one vote to avoid a threated filibuster on the then pending immigration bill.

Following is the roll call vote, August 4, on the Dirksen Amendment, SJR 66, substituted for the Baseball Week Resolution:

57 Senators Voting for the Dirksen Amendment

Aiken - Vt.
Allott - Colo.
Bartlett - Alaska
Bennett - Utah
Bible - Nev.
Byrd - Va.
Byrd - W. Va.
Cannon - Nev.
Carlson - Kansas
Church - Idaho
Cooper - Ky.
Cotton - N.H.
Curtis - Nebr.
Dirksen - Ill.
Dominick - Colo.
Eastland - Miss.
Ellender - La.
Ervin - N.C.
Fannin - Ariz.
Fong - Hawaii
Fulbright - Ark.
Gruening - Alaska
Harris - Okla.
Hickenlooper - Iowa
Hill - Ala.
Holland - Fla.
Hruska - Nebr.
Jordan - N.C.
Jordan - Idaho
Kuchel - Calif.
Lausche - Ohio
Mansfield - Mont.
McClelland - Ark.
*Metcalf - Mont.
Miller - Iowa
Monroney - Okla.
Morton - Ky.
Moss - Utah
Mundt - S.D.
Murphy - Calif.
Pearson - Kansas
Prouty - Vt.
Robertson - Va.
Russell - S.C.
Russell - Ga.
Saltonstall - Mass.
Scott - Pa.
Simpson - Wyo.
Smathers - Fla.
Smith - Maine
Sparkman - Ala.
Stennis - Miss.
Talmadge - Ga.
Thurmond - S.C.
Tower - Tex.
Williams - Del.
Young - N.D.

39 Senators Voting Against the Dirksen Amendment

Anderson - N. Mex.	Inouye - Hawaii	Morse - Oreg.
Bass - Tenn.	Jackson - Wn.	Muskie - Maine
Bayh - Ind.	Javits - N.Y.	Nelson - Wis.
Boggs - Del.	Kennedy - Mass.	Neuberger - Oreg.
Brewster - Md.	Kennedy - N.Y.	Pastore - R.I.
Burdick - N.D.	Long - Mo.	Pell - R.I.
Case - N.J.	Magnuson - Wn.	Proxmire - Wis.
Clark - Pa.	McGee - Wyo.	Randolph - W.Va.
Dodd - Conn.	McGovern - S.D.	Ribicoff - Conn.
Douglas - Ill.	McIntyre - N.H.	Tydings - Md.
Gore - Tenn.	McNamara - Mich.	Williams - N.J.
Hart - Mich.	Mondale - Minn.	Yarborough - Tex.
Hartke - Ind.	Montoya - N. Mex.	Young - Ohio

Not Voting

Hayden, Ariz.

Long (La.) paired for, McCarthy (Minn.) and Symington (Mo.) paired against (double pair since two-thirds vote needed.)

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*Montana Leagues Note: Senator Metcalf voted for the Dirksen Amendment. However, in his February 3 letter to Mrs. Stuart he indicated he now supports our position -- "Dear Mrs. Stuart: Thank you for your recent letter advising me of the League of Women Voters' position on state legislative apportionment. I appreciate knowing your position and I concur. Best wishes. Very truly yours, Lee Metcalf"

Time For ACTION

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES
1200 17TH STREET, N.W., WASHINGTON, D.C. 20036

This is going on Duplicate
Presidents Mailing

February 14, 1966

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Apportionment of State Legislatures -- Dirksen Amendment

We have received copies of many of the excellent letters you have written to your Senators and Representatives in response to the January 17 Time for Action. Our new position is becoming well known on Capitol Hill -- the purpose of the initial Time for Action. In addition we have had an assist from Senator Paul Douglas of Illinois. The Senator included the national League statement and press release with his own comments in the Congressional Record of January 17 (page 373). The Senator said: "I think the Nation owes the League of Women Voters its highest commendation for undertaking a thorough study of this fundamental question nationwide. Its effort and its report are in the highest tradition of the League's civic leadership, and its longstanding interest in more effective state government." Senator Douglas placed the letter from the League of Women Voters of Illinois in the Congressional Record (January 26, page 1160) as well as letters from 20 local Leagues in northern Illinois (February 7, page 2136). In addition Senator Douglas sent telegrams to all the Senators who voted against the Dirksen amendment last fall suggesting that they watch for these letters from the League and that they put them in the Congressional Record. Senator Mondale (Minnesota) included 10 letters from Minnesota Leagues in the Record of February 7 (page 2129).

SENATE ACTION EXPECTED:

At a press conference last week, Senator Dirksen said that he plans to make his move on SJR 103 about March 1. It could possibly be brought up before March 1, depending on the length of the Senate debate on the supplemental military authorization for Viet Nam which begins February 16.

This is our big opportunity. If the Dirksen amendment is defeated when it comes to the floor this time, it will probably be a dead issue for the rest of this session of Congress.

Even though most of the Senators know our position, now is the time to reinforce this stand -- to give added strength to those who are on our side -- to let them know they have support back home, and to try to change the votes of those who voted for the Dirksen amendment last August 4.

League members throughout the country have agreed that the most equitable basis for legislative apportionment is substantially on population. Leagues reported finding themselves unable to find logical reasons for singling out any group of voters for overrepresentation. There was awareness that the present standard for representation, although it would change the compositions of legislatures, would not in and of itself solve the problems that beset state governments; but there is a strong feeling in the League that there will be opportunity for strengthening state governments by the more effective citizen control now possible. Further, Leagues were opposed

to amending the constitution at this time to provide for any factors other than population. Especially at a time when voting rights are being extended, there ought to be no dilution of the vote. There should be no amendment to limit "equal protection of the laws."

WHAT THE LEAGUE CAN DO:

As we reported to you in the January 1966 Board Report (page 60), the Citizens Committee for Balanced Legislative Representation (now called The Committee for Government of the People) is organizing a nation-wide campaign in support of the Dirksen amendment. We understand it has already set up state committees in many states and that letters are beginning to come in to Congressmen. News stories telling of prominent citizens joining the committee are also beginning to appear. If you notice any in your papers please let us have copies.

The Committee for Government of the People has produced a kit of materials to be used by their groups supporting the Dirksen amendment. If you are interested in what the opposition is doing, you might be able to get one of their kits by writing to their national headquarters: 733 15th Street, N.W., Washington, D.C. 20005.

In the Community:

We should now try to mobilize as much opposition to the amendment as possible. Thirty-one national organizations belong to the National Committee for Fair Representation, which supports the "one man, one vote" principle. Many of these organizations may be represented in your community, and you may be able to enlist their support (including a letter writing campaign) to defeat the Dirksen amendment when it comes up in early March.

Cooperating Organizations in the National Committee for Fair Representation:

Amalgamated Clothing Workers of America, AFL-CIO
American Civil Liberties Union
American Ethical Union
American Federation of State, County and Municipal Employees
American Jewish Congress
American Newspaper Guild
American Veterans Committee
Americans for Democratic Action
B'Nai B'Rith Women
Anti-Defamation League of B'Nai B'Rith
Citizen's Lobby for Freedom and Fair Play
Congress of Racial Equality
Delta Sigma Theta Sorority
Hadassah
Industrial Union Department AFL-CIO
International Ladies Garment Workers Union
Jewish War Veterans
Labor Zionist Organization of America
National Association of Negro Business & Professional Women's Clubs, Inc.
National Catholic Conference for Interracial Justice
National Council of Jewish Women
Retail Wholesale and Department Store Union (AFL-CIO)
Textile Workers Union of America
Union of American Hebrew Congregations
United Automobile Workers of America
United Presbyterian Church Office of Church and Society

Women's International League for Peace and Freedom
Young Women's Christian Association National Board
Southern Christian Leadership Conference
American Federation of Teachers
National Jewish Welfare Board

The National League of Cities, to which the governments of 13,000 American cities belong, supports apportioning legislatures substantially on population. The National Municipal League, an organization of individuals interested in city government, is also a supporter. If your city or city officials belong to either, you might want to talk to the Mayor to see if he will cooperate in this campaign. He may be willing to write a letter to the editor, to the Senators, or be quoted in a news story.

Press Releases

If you have not made a public statement of our new position to the press, you might want to issue one now. The press release could include copies of your letters to the Senators. If you are able to get the help of other local organizations, this could be included also. (Sample press release enclosed.) If you do issue a local press release, please send a copy to the national office. We may be able to get it put into the Congressional Record.

Sample Editorial

Enclosed is a sample editorial, which you can adapt to your own local situation. This can be used with your daily or weekly newspapers, and if any of your radio or television stations editorialize, you might want to submit it to them.

Letters to Senators

It is valuable to write the Senators who voted against the Dirksen amendment on August 4, to let them know they have support back home, and that we hope they will continue to oppose the Dirksen amendment when it comes up around March 1 in the Senate. If your Senator has been one of the leaders in the battle against the Dirksen amendment, a special word of commendation is always appreciated. Among the Senators who have contributed leadership in fighting the Dirksen amendment are: Senators Douglas (Ill.), Proxmire (Wis.), Tydings (Md.), Clark (Pa.), Mondale (Minn.), Anderson (N.M.), Bayh (Ind.), Kennedy (Mass.), and Kennedy (N.Y.). It is equally important to write those who favor the Dirksen amendment, to indicate to them that segments of their constituencies are opposed and why (for August 4 vote see enclosed "Background on Proposed Amendment").

The Reference Service of the Library of Congress has done an analysis of SJR 103. A summary of this report is enclosed with the Time for Action. Even though some of the Senators who support the Dirksen position will not change their opinions, you might be able to get them to reconsider their upcoming vote on SJR 103 in light of its many technical defects.

League Background Information

January 17, 1966 Time for Action
January 10, 1966 Memo from Mrs. Stuart with statement of position
January 1966, National Board Report, pages 57-61
January 1966, NATIONAL VOTER "Variations on an Old Theme"
July 1965, NATIONAL VOTER Supplement "Representations for all Citizens"

Information on Whitaker and Baxter

The Committee for Government of the People has retained the California public relations firm of Whitaker and Baxter to organize a nationwide grass-roots campaign in support of the Dirksen amendment or similar legislation. Founded in 1933, Whitaker and Baxter have a long record of successful campaigns behind them. According to their own statements they do not believe in lobbying. Rather they convince the people. A favorite Whitaker and Baxter quote is the one from Abraham Lincoln: "Public sentiment is everything. With public sentiment nothing can fail; without it, nothing can succeed. He who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes or decisions possible or impossible to execute." Whitaker and Baxter are interested in building public attitudes and in standardizing opinions about particular political issues.

They gained fame from 1949-53 for their nationwide campaign on behalf of the American Medical Association against the Truman Administration's national health insurance proposals. Whitaker and Baxter believe in a simple, direct offensive. They begin by planning a blueprint for their opposition. Then they adjust their approach to meet it. The purpose is to get the opposition on the defensive. To be on the defensive is always a disadvantage.

The slogan of the Whitaker and Baxter materials on SJR 103 is "Let the People Decide." That and the name of the organization, Committee for Government of the People, reflect the kind of appeal.

In reality, these are slogans that could well be used by those opposing the Dirksen amendment -- for letting the people decide is what the present population standard would do -- and state governments, apportioned automatically on population, would accomplish government of the people.

The popular pamphlet, "Let the People Decide" -- is filled with misstatements and half-truths, such as this one: "Most legislatures have reapportioned their legislatures periodically -- within the framework of the particular system deemed most suitable by the people of the state -- to keep abreast of changing population shifts." Unless we are in first with a simple statement about the very widespread malapportionment before 1962, our facts and figures are defensive. (See sample editorial.)

Additional Materials enclosed with Time for Action

Sample Press Release
Sample Editorial
Summary of Library of Congress Analysis of Proposed Constitutional Amendments
Background on the Proposed Amendment for Apportionment of State Legislatures

- - -

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

SAMPLE PRESS RELEASE ON APPORTIONMENT OF STATE LEGISLATURES

League Favors "One Man, One Vote"

_____(dateline)_____ -- The League of Women Voters of _____ yesterday sent letters (wires) to Senators _____ and _____ urging them to oppose* the Dirksen amendment, the proposal which would allow state legislatures to be apportioned on factors other than population. The local group is joining with Leagues all over the country to put into action recent nationwide League consensus favoring the population standard for apportioning both houses of state legislatures.

/Here quote from both of your letters. Be sure you indicate that you are urging your Senators to vote against or to continue to vote against the "up-coming Senate Joint Resolution (SJR 103), a modification of the Illinois Senator's original proposal."/

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The League position on apportionment stresses the conviction that population is the "fairest and most equitable way of assuring that each man's vote is of equal value," the League president went on to say.

She added that other considerations taken into account by _____ League members in reaching their conclusion were /Quote from your own local consensus or the national statement of position/.

The _____ League position is reflected in the "truly nationwide consensus" for upholding the population standard which the national League announced January 12, according to M_____.

The national League of Women Voters received local consensus reports from local Leagues in all sections of the country and there was no evidence of a rural-urban or geographic split, she said.

Local chapters of other organizations supporting the "one-man, one-vote" principle include /Here mention other organizations who you know are on your side. Indicate any work you have done together./

---

* This section of the press release should be very carefully phrased. If both Senators are likely to support the amendment the above wording is all right as it is. If both Senators are likely to oppose the phrasing might be "urging them to continue their opposition"; if one Senator is for and one against the wording might be "informing them of the League's stand against the Dirksen Amendment, etc."

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February 14, 1966

SAMPLE EDITORIAL ON THE APPORTIONMENT OF STATE LEGISLATURES

Until the recent Supreme Court decisions set the standard for apportioning state legislatures substantially on population, municipalities and the suburban areas had been grossly underrepresented in the state law-making bodies. By 1962, because of population shifts and the chronic reluctance of state legislatures to reapportion even in line with their own state constitutional provisions, 34 states had population differences in senate legislative districts ranging from 6 to 1 to 422 to 1. Thus one state senator might represent from 6 to 422 times as many people as another. In the lower house, in 32 states comparable disparities ranged from 6 to 1 to 1,443 to 1. Majorities of legislators in both houses in most of the states were responsible to minorities of the states' population.

Since the Supreme Court decisions of 1962 and 1964, almost every state in the union is apportioned substantially on population or has plans approved or near approval for the 1966 state elections. At last the people will be in a position through the ballot to exercise control over their state law-making bodies, a right long denied them.

Early in March, Senator Dirksen plans to propose again a constitutional amendment to threaten the right of the individual to equal protection of the laws. His proposal, SJR 103, would allow one house to be based on factors other than population. Such an amendment would dilute the value of the vote at a time when over the nation the franchise is being extended.

This is an important issue -- important to the development of the strength of state government and to the avenues now opening for more effective solutions to state problems. Certainly this is not the time to deny the citizen's right to fair representation nor to reduce the chances for more effective state government.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

SUMMARY OF LIBRARY OF CONGRESS' ANALYSIS OF PROPOSED CONSTITUTIONAL AMENDMENTS ON STATE LEGISLATIVE APPORTIONMENT

According to an analysis by Johnny H. Killian for the Legislative Reference Service of the Library of Congress, dated December 7, 1965,* there are ambiguities in SJR 103 which lend themselves to a variety of interpretations. A constitutional amendment, much more than an Act of Congress, is difficult to correct.

Radification

Article V of the U.S. Constitution states that amendments to the Constitution must be ratified by a three-fourths of the states or by conventions. The introduction to SJR 103 states that the ratifying states "... shall include one house apportioned on the basis of substantial equality of population" in accordance with the most recent decennial census.

Question: Can Congress impose a condition: that one house of ratifying legislature be apportioned on population?

If both houses of ratifying legislature be required to be based on population, then the amendment would merely be restating what the Supreme Court says the Constitution now provides. Can an amendment legally require only one-half of what is now the law of the land?

Question: Who is to determine if one house is based substantially on population?

Congress has ultimate authority to pass on questions of adoption of an amendment. If the Court is to decide that one house of a ratifying legislature is or is not based on population, and if Congress has the authority also in this instance, there might be set up in the language of SJR 103 a political conflict between two co-equal branches of the federal government.

Further, in instances where court cases had arisen and decision had been handed down, Congress might accept existing rulings; but what about a state (Maine, for example) in which there had been no case? And after the next decennial census when changes in the apportionment of the one house based on population would have to be made to take into account population changes, who would determine, in the absence of a suit, in states ratifying then?

Judicial Review

SJR 103 provides that a plan of apportionment "shall become effective" after approval of the people.

Question: Does this statement preclude judicial review?

Question: Does the language prevent apportionment by the court if the legislature fails to act at all and does not submit plans to the people?

*Reproduced in the Congressional Record, January 24, 1966, pp. 944-949.

Suppose after a decennial census, the legislature fails to submit to the voters as prescribed by the amendment two plans for the "other house" (one plan on population; one plan on population, geography, and political divisions)? Does the Court then prepare two plans for the vote of the people? Suppose it does but the legislature fails to call an election or fails to appropriate money for one. If the Court itself actually cannot apportion, as it now can, it could only direct the legislature to act and could only cite it for contempt for failure to do so.

Factors Other Than Population

The language of the amendment says that one house shall be based substantially on population "and the members of the other house may be apportioned among the people on the basis of population, geography, and political subdivisions in order to insure effective representation in the State's legislature of the various groups and interests making up the electorate."

If SJR 103 precludes judicial review for apportionment of the "other house," then of course there would be no remedy for any kind of drawing of districts for representation, provided a majority of the people accepted it. It is quite possible to apportion technically according to a given standard so that the effect is to discriminate. At present court review provides an avenue of relief. If judicial review is not precluded in SJR 103, then there would be remedy for racial discrimination if it were accomplished within the factors allowed.

Question: Assuming judicial review, how does one define "effective representation"?

Justices Stewart and Clark, dissented in Reynolds v. Sims. In elaborating on "effective representation of the various groups and interests making up the electorate" in their subsequent dissent in Lucas v. Colorado, these Justices said, "...the ideal is approximated in the particular apportionment system of any State by a realistic accommodation of the diverse and often conflicting political forces operating within the State."

Yet even these two justices, while they agreed in six cases, in four of nine cases decided the following week disagreed in their interpretation of "effective representation."

What is effective representation? Is it the number of representatives proportionate to the number of people with a particular interest? Is it the ability to pass a measure, to veto it, or simply enough representation to be heard? How are the various groups and interests to be defined? Would this phrase in SJR 103 multiply the number of cases that might be brought before the Courts?

Referral to the People

Apportionment after each decennial census violates some state Constitutions which provide other periods of time, i.e., Indiana, every six years; Kansas, every five years; Rhode Island, after every presidential election. This provision might not be difficult, however, in most states.

SJR 103 seems to assume population as a base for the house that must be based on population, since the referral to the people is to follow a federal census. Many states use other bases: registered voters, population over 21 years, votes cast in a gubernatorial election. However, even though the language is ambiguous, the word "number" might be interpreted to read "number as defined by the state."

But the phrase "...if otherwise submitted", referring to the plans to be submitted to the people for a choice for apportionment of the "other house," and the referral to the people for a majority vote raises more difficult questions.

Question: Does "if otherwise submitted" (otherwise than by a majority vote of both houses of a bicameral legislature, one house of which must be based on population) mean that any plan submitted by an apportionment board (authorized in many states to apportion) need court approval? SJR 103 states that plans otherwise submitted must be found by the courts to be consistent with the amendment. Usually the court does not rule on matters before they are passed and then only if there is a registered complaint. Does SJR 103 set a precedent for Court decisions on matters not yet enacted into law? Further, would court approval be needed for plans submitted for a referendum by an initiative petition?

Question: Until the people actually do vote, might not the court hold that the ruling of Reynolds v. Sims is the law of the land and no plan deviating from the population base could be upheld before a vote of the people?

Question: What if no plan received a majority? Suppose voters opposed both the straight population plan because of the way the districting was designed, and opposed also the "other factors" plan, and voted "no" on both? Or suppose that more 2 plans were submitted -- say a third plan by an initiative petition?

For a fuller explanation of these and other objections to SJR 103 on technical grounds, see the Congressional Record, January 24, 1966, pp. 944-949.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

February 14, 1966

BACKGROUND ON THE PROPOSED AMENDMENT FOR

APPORTIONMENT OF STATE LEGISLATURES

On January 6, 1965, Senator Dirksen (R., Ill.) introduced SJR 2, an amendment to allow for factors other than population in apportionment of one house, but was unable to get the approval of the Senate Judiciary Committee. On July 22, debate began on another version, which came to the floor of the Senate as a substitution for a resolution designating a National American Legion Baseball Week (SJR 66). On August 4, SJR 66 was defeated -- 57 years, 39 nays (A constitutional amendment requires a two-thirds vote for passage). On September 8, yet another modified version, SJR 103 (see pp. 9-10, September 1965 National Board Report for text) was reported out of the Senate Judiciary Committee without recommendation, a tie vote on it having been broken by the change of one vote to avoid a threated filibuster on the then pending immigration bill.

Following is the roll call vote, August 4, on the Dirksen Amendment, SJR 66, substituted for the Baseball Week Resolution:

57 Senators Voting for the Dirksen Amendment

Aiken - Vt.
Allott - Colo.
Bartlett - Alaska
Bennett - Utah
Bible - Nev.
Byrd - Va.
Byrd - W. Va.
Cannon - Nev.
Carlson - Kansas
Church - Idaho
Cooper - Ky.
Cotton - N.H.
Curtis - Nebr.
Dirksen - Ill.
Dominick - Colo.
Eastland - Miss.
Ellender - La.
Ervin - N.C.
Fannin - Ariz.
Fong - Hawaii
Fulbright - Ark.
Gruening - Alaska
Harris - Okla.
Hickenlooper - Iowa
Hill - Ala.
Holland - Fla.
Hruska - Nebr.
Jordan - N.C.
Jordan - Idaho
Kuchel - Calif.
Lausche - Ohio
Mansfield - Mont.
McClelland - Ark.
*Metcalf - Mont.
Miller - Iowa
Monroney - Okla.
Morton - Ky.
Moss - Utah
Mundt - S.D.
Murphy - Calif.
Pearson - Kansas
Prouty - Vt.
Robertson - Va.
Russell - S.C.
Russell - Ga.
Saltonstall - Mass.
Scott - Pa.
Simpson - Wyo.
Smathers - Fla.
Smith - Maine
Sparkman - Ala.
Stennis - Miss.
Talmadge - Ga.
Thurmond - S.C.
Tower - Tex.
Williams - Del.
Young - N.D.

39 Senators Voting Against the Dirksen Amendment

Anderson - N. Mex.	Inouye - Hawaii	Morse - Oreg.
Bass - Tenn.	Jackson - Wn.	Muskie - Maine
Bayh - Ind.	Javits - N.Y.	Nelson - Wis.
Boggs - Del.	Kennedy - Mass.	Neuberger - Oreg.
Brewster - Md.	Kennedy - N.Y.	Pastore - R.I.
Burdick - N.D.	Long - Mo.	Pell - R.I.
Case - N.J.	Magnuson - Wn.	Proxmire - Wis.
Clark - Pa.	McGee - Wyo.	Randolph - W.Va.
Dodd - Conn.	McGovern - S.D.	Ribicoff - Conn.
Douglas - Ill.	McIntyre - N.H.	Tydings - Md.
Gore - Tenn.	McNamara - Mich.	Williams - N.J.
Hart - Mich.	Mondale - Minn.	Yarborough - Tex.
Hartke - Ind.	Montoya - N. Mex.	Young - Ohio

Not Voting

Hayden, Ariz.

Long (La.) paired for, McCarthy (Minn.) and Symington (Mo.) paired against (double pair since two-thirds vote needed.)

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*Montana Leagues Note: Senator Metcalf voted for the Dirksen Amendment. However, in his February 3 letter to Mrs. Stuart he indicated he now supports our position -- "Dear Mrs. Stuart: Thank you for your recent letter advising me of the League of Women Voters' position on state legislative apportionment. I appreciate knowing your position and I concur. Best wishes. Very truly yours, Lee Metcalf"

Nat'l Prof
Apportionment

National Municipal League

February 10, 1966

TO: All Correspondents on Legislative Apportionment

FROM: William J. D. Boyd

Re: Court Decisions on Legislative Apportionment - Volumes XVIII & XIX*

VOLUME XVIII

State	Case	Date
Alabama	Moore v. Moore** (Opinion and Decree)	October 4, 1965
California	Silver v. Brown	Sept. 1, 1965
Illinois	Germano v. Kerner	August 25, 1965
Illinois	Kirby v. Illinois State Election Board and Kusek v. Kerner	October 13, 1965
Michigan	In the Matter of Apportionment of the Michigan Legislature	November 2, 1965

**Congressional districting case

160 pages $8.00

VOLUME XIX *

Indiana	Stout v. Bottorff and Grills V. Branigin	Dec. 16, 1965
Montana	Herweg v. The Thirty Ninth Legislative Assembly of the State of Montana	Aug. 6, 1965
New York	Glinski v. Lomenzo	July 7, 1965
New York	Glinski v. Lomenzo	July 9, 1965
New York	Orans v. Rockefeller	Aug. 24, 1965
New York	Rockefeller v. Orans	Oct. 11, 1965
New York	Screvane v. Lomenzo	Oct. 11, 1965
New York	Travia v. Lomenzo	July 16 & Oct.11 '65
New York	WMCA v. Lomenzo	July 13,1965
New York	WMCA v. Lomenzo	Oct. 11,1965
North Carolina	Drum v. Seawell	Nov. 30,1965
North Dakota	Paulson v. Meier	Aug. 10, 1965

*Available within the next few weeks.

127 pages $6.50

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
Duplicate Presidents Mailing

January 10, 1966

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Consensus on Apportionment of State Legislatures

Enclosed is the position of the League of Women Voters of the United States on apportionment of state legislatures, to be announced by the national Board and released to the press on January 12, 1966.

A full account of the quality of the consensus on which the position is based will be included in the January Board Report. We thought you would want to know as soon as possible, however, since you may receive inquiries from the press, that an exceptionally large number of Leagues had reported to the national office their membership agreement by the time the Board met on January 7 and that the consensus in favor of apportioning both houses of state legislatures substantially on population was solid and widespread. Large Leagues and small Leagues, rural Leagues and city Leagues, Leagues in the North, South, East, and West, expressed their approval of maintaining the population standard established by recent Supreme Court decisions. There was no indication of a rural-urban or geographic split within the League; rather, the pattern of reporting reflects a truly nationwide consesus.

The establishment of this new position comes at a time when the League can be particularly effective. Congress convenes today and it is expected that early in the session Senator Dirksen will introduce the same or a new version of his amendment to change the Constitution to allow for factors other than population to be considered in apportioning at least one house of state legislatures. The national Board, in session through January 12, will be planning action strategy to counter the offensive of those favoring a constitutional amendment. This is to alert you that you may be receiving a Time for Action in the near future.

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
State Board Supplement

January 27, 1966

TO: State League Presidents
FROM: Mrs. Robert J. Stuart
RE: State League Action on Legislative Apportionment Within the States

The League of Women Voters of the United States now has a national position that both houses of state legislatures should be apportioned substantially on population and that the U.S. Constitution should not be amended to allow for factors other than population. The usual procedures for action in the community and in response to a national Time for Action at the Congressional level now apply. (See Local League Handbook, pp. 25-26.)

Questions may arise, however, about what action may be taken under the authority of the national position with state legislatures and within the states. Hopefully this memo may clarify and provide general guidelines for action at the state level.

Action that may be Taken by All State Leagues

On the basis of the national League position on apportionment, all state Leagues may oppose in their state legislatures the resolutions petitioning Congress to call a Constitutional Convention for the purpose of amending the U.S. Constitution to permit apportionment of one house of the state legislatures on factors other than population. State Leagues may also work to have their legislatures withdraw such resolutions already passed. In several states, legislatures will be meeting this year. State Leagues will have an opportunity to watch for and help defeat petitions to Congress. The success of the Leagues in their watch-dogging and defeating the Liberty Amendments in state legislatures in the past shows how successful this kind of state League activity can be.

In those states already having passed such resolutions, efforts can be made to rescind. It is not too early to begin talking to friends in the legislatures, urging the introduction of resolutions to withdraw petitions submitted to Congress by past legislatures. At the close of this memo is a list of states that have passed and sent to Congress such resolutions.

Should the Dirksen Amendment or a similar proposal fail to pass in this session, efforts will continue in the states to exert on Congress the pressures of the passage of such resolutions.

In addition, even though they may not have a state program item, state Leagues may speak in general terms in their states for compliance with the standard that both houses of state legislatures should be apportioned substantially on population.

The national League position relates only to apportionment of state legislatures. Action for the application of the principle of apportionment substantially on the basis of population to other governmental bodies within the states can be undertaken only on the basis of state or local League study and state or local League consensus.

State Leagues with State Apportionment Consensus in Conformity with National Consensus

The many state Leagues whose state apportionment positions are in agreement with the national League consensus may continue to act for compliance with the standard for state legislative apportionment based substantially on population. Such Leagues would be acting in accordance with both their state and the national League positions.

Such states may have additional positions relating to districting, who should apportion, when apportionment should be accomplished, applications to other governmental bodies within the states -- like county commissions, etc. They may continue to act in these areas under the authority of the state League position.

State Leagues with Positions Involving Factors Other Than Population

The national League consensus now prevails. State positions permitting factors other than population in either or both houses of their state legislatures no longer apply. State Leagues with such positions may wish to set in motion procedures to amend wordings of state items and explanations of the scope of such items at state Councils or state Conventions. Positions relative to times of periodic reapportionment, districting, enumeration, agencies to apportion, etc., would still hold as long as they do not conflict with the new national League position. For example, a state position might favor districting without violating county lines. If such districting is possible within the standard of substantially on population, then the state position could be maintained. If, however, keeping county lines intact must result in violation of the standard, this state position would no longer be valid.

In any case, it might be the better part of wisdom to involve League members in a reappraisal of state positions in the light of the new national League position on apportionment. If there are questions as to how state positions relate to the national League position, discussion at state Councils and/or Conventions could serve a useful purpose for clarification.

If there are specific questions that the national office can help you answer, please don't hesitate to write. We'll do our best to help clarify areas relating to particular situations in individual states.

* * * * * *

States Which Have Passed Resolutions Petitioning Congress to Call a Constitutional Convention for Drafting an Amendment to Allow Other Factors Than Population in One House of the State Legislatures.

Alabama	Idaho	Minnesota	Nebraska	North Carolina	Tennessee
Arizona	Kansas	Mississippi	Nevada	Oklahoma	Texas
Arkansas	Kentucky	Missouri	New Hampshire	South Carolina	Utah
Florida	Louisiana	Montana	New Mexico	South Dakota	Virginia
Georgia	Maryland				

In addition, four states have requested Congress to enact such an amendment. These states are:

Alaska	California	North Dakota	Rhode Island

* * * * * *

NOTE: The organization which has employed the public relations firm of Whitaker and Baxter is now called the Committee for Government of the People, with National Headquarters at 733 - 15th Street, N.W., Washington, D.C. It has already begun a wide-spread campaign in support of the Dirksen Amendment. See the January 1966 Board Report for further details of its plans.

# # # # # #

Time For ACTION

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES
1200 17TH STREET, N.W., WASHINGTON, D.C. 20036

January 17, 1966
This is going on
Duplicate Presidents Mailing

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Apportionment of State Legislatures

Last week you received a statement of the League's new position on state legislative apportionment and we indicated that you might be receiving Time for Action soon. Since the national Board was in session, it was able to give its considered attention to planning action strategy. Moreover, the time of the announcement of the position on apportionment, the convening of the Congress, and the happy coincidence of the national Board's being in Washington seemed to point to taking advantage of these factors.

First, Mrs. Campbell, National Chairman of the Apportionment Item, visited the offices of Senator Paul Douglas of Illinois and Senator Birch Bayh of Indiana. (Senator Douglas has been one of the key Senate leaders opposing any constitutional amendment, and Senator Bayh is Chairman of the Senate Constitutional Amendments Subcommittee.) Next, each national Board member sent a copy of the League's new position with a personal note to her Senators. On January 12, the news of the League's position was released to the press with information indicating the depth of consensus, that it was nationwide, and that there was in fact no urban-rural or geographic split. On January 13, the statement of position and press release with a personal note from me was sent to each Senator not already contacted by a national Board member.

Now we are ready for the strong backup of these efforts from local and state Leagues to show there really is a "nationwide" League consensus.

Because all indications point to the early introduction in the Senate of the Dirksen amendment or similar proposals, efforts on the part of the national Board were concentrated in the Senate and on indicating the national scope of agreement on apportionment.

Letters now, from League members from all parts of the country, to Senators and Representatives will convey to each Congressman what his own constituents believe. In conveying to him what you believe, however, it will be well to point out that the League as a whole has just made this study and evaluation of the basis of representation in state legislatures, that nationwide it came to agreement, and that there is no significant variation in the way League members in different parts of the country feel about the issue.

Enclosures: Statement of Position
January 12 Press Release

League of Women Voters of the U.S.
1200 17th Street, N.W.
Washington, D.C. 20036

January 12, 1966

STATEMENT OF POSITION ON APPORTIONMENT OF STATE LEGISLATURES

As announced by the National Board of the
League of Women Voters of the United States
January 12, 1966

The members of the League of Women Voters of the United States believe that both houses of state legislatures should be apportioned substantially on population. The League is convinced that this standard, established by recent apportionment decisions of the Supreme Court, should be maintained and that the U.S. Constitution should not be amended to allow for consideration of factors other than population in apportioning either or both houses of state legislatures.

Of overriding importance to the League in coming to this decision is the conviction that a population standard is the fairest and most equitable way of assuring that each man's vote is of equal value in a democratic and representative system of government. Other considerations influencing League decisions are that the U. S. Constitution should not be amended hastily or without due consideration because of an "unpopular" court decision, and that individual rights now protected by the Constitution should not be weakened or abridged.

Against the background of its long-standing interest in state government, the League also hopes that by maintaining a population standard state government may be strengthened by insuring that state legislatures are more representative of people wherever they live. Finally, the League feels certain that the term "substantially" used in Supreme Court decisions allows adequate leeway for districting to provide for any necessary local diversities.

Brown

JAN 12 1966

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
Duplicate Presidents Mailing

January 10, 1966

TO: Local and State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Consensus on Apportionment of State Legislatures

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A full account of the quality of the consensus on which the position is based will be included in the January Board Report. We thought you would want to know as soon as possible, however, since you may receive inquiries from the press, that an exceptionally large number of Leagues had reported to the national office their membership agreement by the time the Board met on January 7 and that the consensus in favor of apportioning both houses of state legislatures substantially on population was solid and widespread. Large Leagues and small Leagues, rural Leagues and city Leagues, Leagues in the North, South, East and West, expressed their approval of maintaining the population standard established by recent Supreme Court decisions. There was no indication of a rural-urban or geographic split within the League; rather, the pattern of reporting reflects a truly nationwide consensus.

The establishment of this new position comes at a time when the League can be particularly effective. Congress convenes today and it is expected that early in the session Senator Dirksen will introduce the same or a new version of his amendment to change the Constitution to allow for factors other than population to be considered in apportioning at least one house of state legislatures. The national Board, in session through January 12, will be planning action strategy to counter the offensive of those favoring a constitutional amendment. This is to alert you that you may be receiving a Time for Action in the near future.

DEC 7 1965

Natl Proj - Apportionment

December 3, 1965

Dear Beverly,

Thanks for checking on the possibility of a copy of Ina Mae McCollom's paper on Apportionment. My delay in answering is ~~prob~~ probably shock at the thought of spending $17.50 for almost anything. I wonder if the paper will be submitted as either a dissertation or an article in a journal. If either of these, it might be possible to get a cheaper reproduction via the University system. If you have a convenient opportunity to get that information, let me know in January. It would not be worth any special effort but I have gotten interested in the subject now?

We heard the Lt-Gov of Nebraska at the National Municipal League when he talked on the unicameral system of Nebraska; it was interesting and ~~informative~~ informative. I hope that some other states make this change but agree that Texas should not be one of the first. We are too big to try it without more cases to go on.

On another subject. I have not been getting any Voters from Odessa. Is this me or them? Is this something that you can mention or would it be better to send a note directly to someone in Odessa other than SB person?

Thanks for checking on the paper, and I am sorry that it is not available.

Love,

cc: Brown, Capers

Natl Prog -
Apportionment

October 24, 1965

Mrs. James W. Craig
LWV of Torrance
[redacted]

Dear Mrs. Craig,

Your letter has been forwarded to me, and I'll try to give you some approximate answers. Since the Texas LWV has not studied Reapportionment as a state-level item, we have not assembled any data on the topic as to applies specifically to Texas.

I believe the information encluded is correct, but it may not been sufficiently detailed to meet your requirements. If you need more specific information, please, let me know.

Sincerely yours,
Margaret Nolle
Mrs. Wilson Nolle
[redacted]

ccs: LWV of Texas - Pres. & PVP
LWV of California

Institute

Reply to California LWV questionnaire

1) What action has been taken in your state by your legislature or a constitutional convention?

1965 Legislature adopted resolution requesting Congress to call Constitutional Convention for amendment to permit non-population basis of apportionment.

1965 Legislature passed Congressional, state Senate, and state House redistricting acts. 1961 Legislature had redistricted as required by Texas Constitution; those districts were declared invalid in court decisions (1963-4) and the 1965 acts were passed to meet a court-imposed deadline of August 1965.

A proposed Constitutional amendment to increase state State by 8 members (to 39) and thus lessen the number of incumbents who would be forced into the same districts was defeated in a special election in August 1965.

2) Has this action been or is it being challenged in the courts? Why?

The 1965 redistricting acts are under challenge in the courts in which originally filed; generally the same plaintiffs are alleging the acts are insufficient remedy. The briefs have been filed and decision is now pending.

The redistricting acts are being challenged on such grounds as --
multi-member, county-wide districts are less equitable (esp. to social, racial, and political minorities) than single-member subdivisions of counties would be
excessive gerrymandering ~~given~~ (implied) tieing ~~small~~ segment of urban county to largely rural district
flotorial districts unfair to smaller district thus attached to larger district
population variance of approximately 20% too high in view of other rejected plans with much less divergence.
These factors do not apply with equal weight to the 3 different acts, but the districts in all three acts show the effects of legislative desires to protect incumbents at the expense of rational districting plans.

3) What is your state definition of "population" ~~for~~ for this purpose? (Who is counted as population for your new apportionment plans?)

Population has been defined on census basis for state House of Representatives and on basis of eligible voters for state Senate (eligible voters - based ~~on poll tax payments~~ on poll tax payments & exemption certificates obtained or estimated where not required in rural counties). I cannot recall any specific statement on bases for present acts, but suspect the same as above would be offered. In practice, it is questionable that any strict adherence to either plan was the decisive factor.

4) Can you briefly explain the plan for your state legislature such as to length of terms of office, numbers of members, etc.?

4 cont.

State Senate has 31 members elected for 4-year terms, half being elected each two years. All members must run if the federal census necessitates a new redistricting act under the provisions of Texas Constitution. Effort to increase from 31 to 39 defeated in August 1965 special election. A constitutional provision limiting a county to only one senator regarless of population was invalidated by court ruling. Act passed by 1965 Legislature has redistricted so that four largest counties have increased senatorial representation.

House has 150 members; one member elected to serve as Speaker. Term is for 2-years but an amendment to be voted on Nov. 1965 proposes 4-year terms with over-lapping expiration dates. No district less than a county (except for new provision for Harris County being questioned in courts at present); if a county is eligible for more than one member, these are elected at large by total county but run in a place system. Pictorial districts combining two districts with "reminders" are used in various combinations and are also being questioned in court. House of Representatives was formerly calculated to require increased population increment to earn additional representation after a total of seven had been reached.

5) What variance in population count do you have from district to district under your new plans?

I have not checked these figures. The most frequently mentioned figure in news accounts haw been 20%. It would delay returning this questionnaire for about a week to get more accurate information, so I shall not attempt to provide this data. If it is essential to your study, plase, let me know and in what detail you require the information.

ccs: LWV of Texas - President, PVP
LWV of California

I'm ready and clear what procedure would be best for dealing with this kind of situation when it arises in another state. But frankly decided to be as helpful as possible.

Natl Prog - Apportionment

League of Women Voters of Texas

OCT 21 1965

[redacted] • [redacted]

October 18, 1965

Dear Peggy,

I told you I would check on Ina Mae McCollom's paper on Apportionment. Unfortunately, her paper was not published and is only in the hands of her professor and herself, with NO extra copy.

It is seventy pages long, complete with maps, etc. Sorry that I am in no position to volunteer typing you a copy, and at 25¢ a page, cost of Xerox reproduction is prohibitive.

I am sorry that we won't have an opportunity to have this information, at least for file. She did a program for Odessa and Midland Wednesday, and is a mountain of information. Unfortunately, when the program was set up, they limited the scope of her presentation to Congressional districts -- why I don't know! Her real forte seems to be state legislative alignment.

She went to Lincoln, Nebraska to discuss with the Secretary of State, their new set-up and how it works. Incidentally, while she thinks the bi-cameral system works well (so far, at least) for Nebraska, that it would not be adaptable for Texas because of size, diverse economic interests, etc.

If this would be worth $17.50 for Xerox reproduction, let me know and I'll get on it.

Love,

Beverly

cc: Brown, Casperson

National Municipal League

August 13, 1965

MEMORANDUM

TO: All Correspondents on Legislative Apportionment

FROM: William J. D. Boyd

Re: Court Decisions on Legislative Apportionment -- Volumes XVI and XVII

VOLUME XVI

State	Case	Date
Alabama*	Moore v. Moore	August 28, 1964
Alabama*	Moore v. Moore	April 16, 1965
Arkansas	Yancey v. Faubus	January 28, 1965
California	Jordan v. Silver	June 1, 1965
District of Columbia*	Lampkin v. Connor	March 29, 1965
Georgia	Toombs v. Fortson	April 1, 1965
Hawaii	Holt v. Richardson	March 9, 1965 & April 28, 1965
Idaho	Hearne et al v. Smylie	June 1, 1965
Illinois	Germano v. Kerner	January 22, 1965
Illinois	The People ex. rel. Engle v. Kerner	February 4, 1965
Illinois	Scott v. Germano	June 1, 1965
Kansas	Harris v. Anderson **	March 1, 1965

*Congressional Districting Case
**Majority opinion only

182 pages ----$9.00

VOLUME XVII

State	Case	Date
Montana	Herweg v. Thirty-Ninth Legislative Assembly	January 13, 1965
Nebraska	League of Nebraska Municipalities v. Marsh	May 12, 1965
New York	In the Matter of Jerome T. Orans	March 15, 1965
New York	In the Matter of Jerome T. Orans	April 14, 1965
New York	Travia v. Lomenzo	June 1, 1965
Virginia*	Wilkins v. Davis	January 18, 1965
Virginia	Mann v. Davis	April 9, 1965
Washington	Thigpen v. Kramer	March 9, 1965

*Congressional Districting Case

138 pages -----$7.00

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is not going on
State Board Supplement

January 5, 1965

TO: State League Presidents
FROM: Julia Stuart
RE: Reapportionment

URGENT

By return mail please

At its meeting starting at the end of this week the national Board will be giving very serious consideration to the proposal for an emergency current agenda item on reapportionment. Our files have a great deal of information on your work in this field but for Board discussion we need a complete, accurate, and up to the minute summary of the positions of the state Leagues in regard to state legislative apportionment. Will you, by return mail, please send us a brief statement of your state League position. Has your position been affected by the Supreme Court decision of June 1964 requiring that both houses be apportioned substantially on population? If so, in what way?

If your League is in this program field but has no position, please explain.

If your League is not in the field, you need not report. We just want to be sure not to leave anyone out.

Thank you for your cooperation.

Natl Prog - Apportionment

League of Women Voters of Texas

612 NORTH 18TH STREET • WACO, TEXAS 76707

August 28, 1965

to: State Office
from: Nolle

AUG 31 1965

re: request for book

August 30th sending to Ida

Since you have already recommended "History of Apportionment in Texas" to the local leagues, I think that it will be well for me to read it as soon as possible.

Will you, please, order a copy for me immediately. We will be leaving for Texas about September 2nd or 3rd, so it will be preferable to have it mailed directly to the Austin address.

Either have the bill sent to me directly or let me know how much it costs. I am sending a carbon copy of this request to Kay so that she will know the charge should not be handled as a usual expense if you chose to follow the second means of ~~xxxxx~~ payment.

I hope that you can do this for me since it will save me time and trouble when I get back to Austin. Hope to see you around the end of September.

Peggy

Natl Proj
Apportionment

AUG 9 1965

1910 David Street
Austin, Texas 78705
August 4, 1965

Lee J. Lovejoy
League of Women Voters of Dallas
2626 W. Mockingbird
Dallas, Texas 75235

cc: Mrs. Sam H. Faris
Mrs. Maurice Brown

Dear Mrs. Lovejoy,

I apologize for my delay in answering your letter. It has finally been forwarded to New Hampshire where I am visited for a while.

We had hoped to send a reprint of an article on Texas to you, but thus far have not received authorization to use it. However, the volume is undoubtedly in either your public library or one of the university libraries - surely it would be available at SMU. The article is "Texas Factions in a One-Party Setting" by M. Dicken Cherry of Baylor and forms the sixth chapter of THE POLITICS OF REAPPORTIONMENT edited by Malcolm Jewell. The book is the last one listed in the June 14th mailing from the National Office. Since the book itself costs $6.00 and the chapter in question is only pp. 128 - 129, we have not recommended that local leagues purchase the book. Mr. Cherry analyses the situation in the 1961 reapportionment of the legislature. The emphasis is on the political situation underlying and strongly influencing reapportionment questions in Texas. (Mr. Cherry is still on the Baylor faculty, but in the following two sessions he has also been a member of the House of Representatives from Waco.)

If you do not have the APPORTIONMENT OF STATE LEGISLATURES by the Advisory Commission on Intergovernmental Relations (also cited in the June 14th memo), I think this would be helpful in placing Texas relative to other states. It is only $1.00 and well worth obtaining.

The Institute of Public Affairs at the University of Texas publishes about ten times a year a four-or six-page pamphlet called Comment. One of the spring issues was concerned with some phases of redistricting in Texas. You can obtain one copy free by writing to the Institute. Probably some members of your Board are already on the mailing list for this series and could loan you a copy.

It is likely that some additional publications will be available in the future on the problems of redistricting in Texas. If and when such items are published, we will notify you. Unfortunately, nothing is yet ready as far as I know. These will be non-League publications; we are not planning to undertake such research ourselves. If you find anything that has not been mentioned, I would appreciate it if you would send me information about such materials.

I hesitate to evaluate the two bills(HB 195 & SB 547). There will be court review of these bills in the early fall. You have probably read of the ruling by the Attorney-General that required the House to return to the floterial-district method of handling surplus population in counties not entitled to another representative. The Texas Constitution has been held to prohibit sub-division of counties in such cases. This is one of the questions that may be settled in September. The specifics of the Senatorial districts could be altered by the vote in September on the size of the Texas Senate. It is true that the districts as set up in both cases are less than satisfactory from an academic or theoretical view; it remains to be seen whether the political compromise reached will be held legally satisfactory. I can send you the specific boundaries as approved for Dallas, but these are more readily available for you locally.

You suggest the possibility of a fact sheet for resource committee use. While this could not be done until sometime in September, I would certainly be willing to try to provide some material. Right now I am unclear as to what kind of information would be most useful to you. Will you send me some questions or topics that ought to be considered? And if you have any specific questions right now, I'll be glad to try to get some answers to you or further suggestions as to resources.

Thank you for your letter and your suggestions. I hope that the items mentioned above will be of some help and that you will let me know what other directions might need further attention.

Sincerely yours,

Mrs. Wilson Kolle

[redacted]

also ccs: Casperson
Linehan
Jooor

Natl Proj - Apportionment

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

July 30, 1965

TO: Local and State League Presidents

FROM: National Office - RE: APPORTIONMENT KITS

The APPORTIONMENT KITS sent to Leagues in June were directed to local and state League Presidents only. They were not sent on Duplicate Presidents Mailing. Orders for additional Kits were filled as long as the supply of full Kits lasted. This supply is now gone and we have prepared partial Kits which contain everything but the book on REAPPORTIONMENT by Glendon Schubert. Directions are included in the Kit for ordering REAPPORTIONMENT direct from the publisher. Please do not order it from the national office. We have no more copies for distribution.

Orders for full Kits are being filled by partial Kits now. If there has been delay in filling your order it has been due to the preparation of the partial Kits.

The supply of partial Kits will also be limited. Two articles in the partial Kit will be sold separately. These are PATTERNS OF APPORTIONMENT, by William J.Boyd at 15¢ each, and FACT SHEETS ON AMENDING THE CONSTITUTION OF THE U.S. at two for 10¢. The cost of the partial Kit is $2.50.

Natl Prog - Reapportionment

AUG 2 1965

July 28, 1965

TO: Nolle, Joor, Brown
FROM: Casperson
RE: Reapportionment item

Comments on your July 12 memo, Peggy: (and answered in the same order)

First - So far as I know, we are your committee and no other appointments were made. Since we're getting spread so thin, and time is relatively short.....looks as if we'll continue to be it! Now....I found what I was looking for...Dorothy's Collection Basket (May 24) that states you've agreed to assume the responsibility for the new national item with Ruth serving as co-chairman, sharing the committee.

I see there's no mention in our June Board minutes of official appointment to this portfolio - perhaps we should include this information when correcting the minutes at next Board meeting. How about inserting at the beginning of paragraph three under National Program (page 4) " As Chairman of the newly adopted item "Apportionment of State Legislatures" Mrs. Nolle reported" and then go on with the paragraph. Perhaps this was mentioned earlier in the meeting and should go on page 1 of the minutes under FIRST SESSION as an announcement from Dorothy. Just so there's official mention in the minutes how we're handling this item.

Second - SO business (re ordering Farm Bureau flyer.)

Third - Since this next National Voter (July) is to be the one with the 4 page supplement giving background information for every member, there's still no way of knowing exactly what they will have to read.....but I would bet it will be quite complete.

It's interesting that Senator Dirksen used the "Baseball Bill" as the place to substitute his reapportionment bill! At least it wasn't on Foreign Aid this time.....maybe more people in the United States pay attention to baseball than foreign aid! I don't think the august Senator does or says anything without judging the effect beforehand.

Fourth - Houston meeting. Hope attendance was good and it went well, Ruth.

Fifth - If SO schedule will allow for mimeographing the Cherry article from "Politics of Reapportionment" (and Dorothy gets permission to use it) it should be helpful to LL committees' understanding of Texas' situation in connection with redistricting. Peggy, a memo with this (if the article is sent to LLs) would be a necessity to avoid confusion. There's bound to be difficulty in understanding the differences in redistricting, apportionment, reapportionment, and how these terms are being used in relation to the U.S. Congress and state legislatures. It's old hat to some of the members....but not to many of them! Your article in the November, 1964 Texas VOTER is most helpful in clarifying this and perhaps reference to this again in the memo would be adequate. You may have noticed that LL VOTERS are beginning to mention the inequities in apportionment here in Texas - and in such a way that I'm hoping they are not confusing their members about what our National study consists of. Other LL VOTERS are handling it very well.

We're running behind schedule on publication of the SLR kit, and that may have something to do with Dorothy's answer about whether we can mimeograph the Cherry article.

Natl Prog - Apportionment

CHARLES SCRIBNER'S SONS

PUBLISHERS

597 FIFTH AVENUE NEW YORK 17, N.Y.

July 19, 1965

Mrs. Maurice H. Brown
[redacted]

Dear Mrs. Brown:

The National League of Women Voters recently sent out a "kit" of reading material to its various members. Included in this kit was a recent publication of ours, Reapportionment by Glendon Schubert.

If you find that you are having trouble acquiring the book, or if you need more copies, please direct your request to my attention and I will see that your order is filled promptly.

Enclosed is a list of our recent publications in an area which might interest you. If you would like to examine gratis copies of any of these books for possible League use, please let me know. Thank you for your interest in Reapportionment, and if I can be of further assistance, don't hesitate to call on me.

Sincerely yours,

Catherine Rodenmayer

Catherine Rodenmayer
College Department

Thermofax: Nolle
Jovee
Caspersen

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

JUL 2 - 1965

This is going on Duplicate
Presidents Mailing

June 25, 1965

TO: Local League Presidents (Copy to State League Presidents)
FROM: National Office
RE: Apportionment Kit

For reasons beyond our control some Apportionment Kits did not receive all the items listed in the Table of Contents.

If your Kit did not include: 1) Questions and Answers - American Farm Bureau Federation flyer
or
2) Patterns of Apportionment by William J.D.Boyd
or
Both 1) and 2)

Send us a post card or return this sheet with the missing items checked and the name and address to which they should be sent and we will send these materials to complete your Kit.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

This KIT is NOT going on
Duplicate Presidents Mailing

June 14, 1965

APPORTIONMENT KIT

Table of Contents

Additional Kits are available from the national office as long as they last at $5.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

This KIT is NOT going on
Duplicate Presidents Mailing

June 14, 1965

APPORTIONMENT KIT

Table of Contents

Additional Kits are available from the national office as long as they last at $5.

Natl Prog
Apportionment

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
Duplicate Presidents Mailing

June 14, 1965

TO: Local League Apportionment Chairmen
FROM: Mrs. John A. Campbell, Director
RE: Apportionment of state legislatures.

An emergency by definition requires changing normal procedures, and so the adoption of a national emergency Current Agenda item means a change in orthodox League leadership and member Program publications. This kit is a substitute for such familiar materials as LEADERS GUIDES or CURRENT REVIEWS containing information for resource committees. A four-page supplement to the July NATIONAL VOTER will take the place of a pamphlet or FACTS & ISSUES for all-member use. It was only in this way that we could be sure of getting material to you in time for you to prepare for reaching consensus by January 1, 1966. Because this kit of outside material is so expensive we can only send one to each League, although while our limited supply lasts additional copies may be ordered from the national office for $5 each.

The Kit: What's in It and How to Use It.

Our goal in compiling the kit was to provide solid background material and samples of the various arguments and points of view on the subject of apportionment. Glendon Schubert's REAPPORTIONMENT was the best basic publication we could find that includes extensive excerpts from court decisions as well as cogent articles on the theory and practical politics of legislative apportionment. As a special help to Leagues in states with no state item on apportionment and to those that have not worked in the field recently, we have also included PATTERNS OF APPORTIONMENT by William J.D.Boyd. Although this pamphlet is a little dated (it came out in 1962 and so does not include developments after the Baker v. Carr decision), it gives an exceptionally clear account of the basic issues.

To supplement these two basic publications, the kit contains a series of shorter essays and congressional testimony that illustrate different viewpoints on the issues raised by Reynolds v. Sims (1964). Also, two recent state League publications are included to give all Leagues an idea of the different ways state Leagues have approached problems of apportionment. Finally, we have added the factsheet on Amending the Constitution of the United States to give some technical background.

At first glance, the sheer weight of all this material may seem overpowering, especially to apportionment committees of the League that have done no work in the field. But, to refer back to the outline in the May 1965 National Board Report (pp. 10-11) on what is and is not to be included in the emergency item, there is no reason to be overwhelmed. In the first place, we are not going to consider the propriety of the Court's assumption of jurisdiction. This means that although resource committees should probably know in general what was decided in Baker v. Carr (Schubert, pp. 106-115), there is no need for them to consider in detail the kind of cases over which the Supreme Court does or does not have jurisdiction. In the second place, because the scope of this national item does not include technical specifics on how legislative apportionment should be carried out in

each state, a great many knotty and time-consuming questions are eliminated that would be part of a state League study of apportionment problems. And last, we are not including the question of Congressional districting.

To turn to the kind of questions that are included in the item: We are going to consider what the Constitution as interpreted by the U.S. Supreme Court now provides with respect to state legislative apportionment. This means that we should look very closely at Reynolds v. Sims and subsequent court opinions. (Schubert, pp. 141-163). What exactly is entailed in the "population" standard for apportionment demanded by the equal protection clause of the 14th Amendment? Is this standard rigid? flexible? does it completely rule out "factors other than population"? We than can go into other questions: Is the present constitutional standard desirable? Is it practical? Should the Constitution be amended to allow a basis of representation other than population? If so, why? What factors other than population (e.g. counties, cities, areas) should be allowed? Are there factors other than population (e.g. race, religion) that would be undesirable? Background information on these questions is contained in most of the articles in the kit.

Finally, your League may decide that the Constitution should not be changed or it may conclude that an amendment is needed. In either case, you will want to consider the form an amendment should take if factors other than population should be allowed as a basis of representation in state legislatures: Who should decide this question? the legislature? the people? When do they decide? How often should the question be reviewed and by whom? Which alternative plans for ratification of amendments of the U.S. Constitution would be appropriate? This second series of questions illustrates the very real ties between practical politics and more theoretical issues of democratic concepts of the basis of representation.

As your committee reads the material in the kit it may be helpful to keep in mind both series of questions, as well as others you may devise yourself. In this way, your research may have a direction and focus it might lack if you plunged in with no framework. It is also important that each committee member read on both sides of the issue, although of course no individual need read everything. For example, someone might read both Cornelius Kennedy and Dean Fordham; or Senator Aiken's speech could be matched with Herman Pritchett's address to the American Political Science Association.

CONSENSUS

In the May National Board Report wordings are given of the most talked-about proposals for constitutional amendment in regard to the apportionment of state legislatures. Extensive hearings have been held by the Senate subcommittee on the Judiciary. Any proposal reported out of committee is likely to embody some changes and subsequent action in the Senate and House may make further changes. Some ideas for change are given in the article in the May-June Voter. For these practical reasons as well as the basic nature of consensus as the League understands and uses the term, consensus should not be stated in the form of approval or disapproval of any particular proposed amendment but in terms of general objectives. As usual it will be the role of the national Board to decide whether or not a particular proposal helps the League reach its agreed-to-objective.

For this reason the consensus report form poses broad questions. The forms are included in this kit, one for the national office as soon as your consensus has been reached but no later than January 1, 1966, one for the state office, and one for your own files.

Membership Meetings

Leagues with active state items on apportionment may need only one meeting on the national item in order to reach consensus. But these League members should at the same time be discouraged from looking at the basic issues solely from the standpoint of familiar state problems. Constitution-building on the national level is fundamentally different from state politics or even from constitutional provisions appropriate to one state.

Leagues with no recent experience in the apportionment field may have to have at least two membership meetings on the national emergency item. It might be well in the first meeting to combine the more theoretical questions of what should be a basis of representation with a consideration of practical politics that led to the Court's intervention and the present controversy. (For background on the nationwide picture, we suggest you look carefully at PATTERNS OF APPORTIONMENT, the various essays in Schubert, pp. 7-91, as well as the statistical information on pp. 67-82.)

Whether or not Leagues feel the need of one meeting or two and whether or not they are already well aware of specific problems of state legislative apportionment, by adopting the emergency item on the basis of representation all Leagues have taken the responsibility of assessing proposals relating to fundamental changes in the Constitution of the United States. This in no sense can be considered trivial, for as Chief Justice Marshall stated in 1803 "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric had been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it be frequently repeated. The principles, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent."

The Council of the League of Women Voters of the United States decided in May that the current constitutional issue of state apportionment has become an emergency on the national level. This kind of emergency may require exertion on the part of local Leagues throughout the country. But no League is likely to regret exertion that deals with the permanent principle of the basis of representation in as important bodies as state legislatures.

Selected Bibliography in addition to titles in REAPPORTIONMENT by Glendon Schubert.

Advisory Commission on Intergovernmental Relations, APPORTIONMENT OF STATE LEGISLATURES. Commission Report A15. December 1962. $1.00. Available from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

The Commission made its own study of the historical background of the basis of representation, and factors to be considered, and makes recommendations. Minority opinion also reported.

McKay, Robert B., REAPPORTIONMENT AND THE FEDERAL ANALOGY. 1962. 50¢. National Municipal League, 47 East 68th Street, New York, New York 10021

This analyzes comparison of the U.S.Congress with state legislatures, with excerpts from court opinions and political science literature.

De Grazia, Alfred, ESSAY ON APPORTIONMENT AND REPRESENTATIVE GOVERNMENT. February 1963. $2.00. American Enterprise Institute, 1200 - 17th Street, N. W. Washington, D.C. 20036

A vigorous dissent from the court opinions and from the doctrine of one-man-one-vote.

Hacker, Andrew, CONGRESSIONAL DISTRICTING, The Issue of Equal Representation. Revised 1964. $1.95. The Brookings Institution, 1775 Massachusetts Avenue, N.W. Washington, D.C. 20036

Mr. Hacker, in the first two chapters enlarges his views expressed in the flyer sent in the kit. Excellent statistical table on weight of individual's vote, June 19, 1964, at about the date of Reynolds v. Sims.

Jewell, Malcolm E., editor, THE POLITICS OF REAPPORTIONMENT. 1962. $6.00. Atherton Press, 70 Fifth Avenue, New York, New York 10011

This includes Mr. Jewell's essay on POLITICAL PATTERNS IN APPORTIONMENT quoted in the Glendon Schubert anthology and a number of case studies by others on the politics which produced the situation in many states prior to Baker v. Carr, shedding light on the cause of the basic controversy.

Natl Prog -
Apportionment

254 Mulberry Street
Claremont, New Hampshire
July 12, 1965

to: Joor, Brown, Casperson
from: Nolle
re: reapportionment item

First, I seem to have neglected to bring the committee listings so I don't know who else ought to have been included. Will one of you, please, send me the committee membership for this item.

Second, I do not have the Farm Bureau flyer "Questions and Answers". A memo from National dated June 25 indicates that this is available by writing to national office and asking for that. Since the mailing came to State Office, I expect that the request ought to be handled by SO.

Third, I have not yet seen the National VOTER. Since the success of this effort will depend on that every-member item, it is difficult to assess the usefulness of the resource kit. I wish that they had not included the Schubert Reapportionment book since that is obtainable(and loanable) whereas the reprints are not as available. The price would have been must more useful in that several sets of reprints could have been ordered and the book that was about half the cost of the kit could have been shared or taken from a library. If there is any use in mentioning this to National in some context, it might be a help in future distributions.

Fourth, I am awaiting the reactions, questions, and comments from the Houston meeting. Before I suggest any additional help to LLs, I'd best hear what they are saying now.

Fifth, should we send a ~~memoxta~~ memo to LLs telling them about the Cherry article in the Jewell "Politics of Reapportionment" book or should we wait to see if we can get an OK to issue the article in an abridged form for LLs. The book is the last one listed in the additional bibliography in the June 14th mailing. Since Ruth was not at the June meeting when it was approved that Dorothy ask Dick Cherry for permission (and any other approval needed) for LWV to send the article out in mimeographed form. It is about the best summary of the situation in Texas prior to the present redistricting that is available. It runs 10 pages of large type and wide marigins but could be cut to eliminate some unnecessary (for our use) detail and reduce the number of pages. The book is $6 and does not warrant purchase - particularly since the kit is so expensive. But unless we can get this out before the end of the month, I think a memo should go in addition. Please, let me know right away. The IPA booklet will not be available until early fall and may not be appropriate. Can decide that when it is ready.

Sixth, if additional kits have not been ordered, I suggest that only one more be ordered and that this be circulated to the ~~xxxxxxxxx~~ Board members who need to see it. I just cannot

reconcile myself to spending our limited Program money on more of the kits that are needed. The book on Reapportioment is OK but we hardly need four or five copies. Could some of the interested members borrown a look at LL copies?

Finally, this seems to be all that I have thought of for this letter except to tell Ruth that I missed her at the June Board Meeting. I expect that Lucia, Beulah, and Dorothy have filled you in on what went on - not much was decided on National Item. Hope you enjoyed you time in New York state. And let me know how the meeting came out. I ought to have written sooner, but have been trasporting relatives and supervising nephews and niece in various combinations.

Peggy

If you have Irene's new address will you send it.

League of Women Voters of the U.S.
1200 17th Street, N.W.
Washington, D.C. 20036

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National Municipal League

June 22, 1965

PATTERNS OF APPORTIONMENT

William J. D. Boyd, Senior Associate
National Municipal League

The U.S. Supreme Court decision in the Tennessee case of Baker v. Carr[1] has suddenly focused public attention on the apportionment of state legislatures.

Apportionment -- the manner in which representatives are assigned to the various electoral districts or other regions of a state or nation -- is a key element of political power in a republican form of government. The high court's ruling has raised the possibility of a dramatic shift of this political power from rural to metropolitan areas. That the shift may be dramatic results not from the decision but simply from the immobile formulas for legislative apportionment that have failed to accommodate a highly mobile population.[2] After a half century of being widely ignored, the problem has become so acute that a means of gaining relief has been ordered. The question facing legislators and citizens is "What constitutes a just remedy?" The Supreme Court deliberately refrained from spelling out that answer and left it to the lower courts to "fashion relief."

THE COURTS AND APPORTIONMENT

The courts have consistently upheld the principle that the basis of democracy is majority rule with just protection of minority rights. They have not always been so willing, however, to apply this principle to the problem of apportionment.[3] The two great milestones in the judicial treatment of the subject are the U.S. Supreme Court decisions in Colegrove v. Green[4] and Baker v. Carr. The Colegrove case, a four-three decision, was widely interpreted to mean that the courts would not enter this "political thicket." The more recent Baker decision refuted that interpretation by a six-two margin and thus lent new weight to Justice Black's dissent in Colegrove in which he said: "No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote."

In the Baker case, Justice Douglas, writing a concurring opinion to the majority decision, stated "there is room for weighting" of votes but emphasized that "invidious discrimination" violated the Fourteenth Amendment. Just how much "room for weighting" is there? The Supreme Court specifically mentions geographical considerations as permissible factors, but just how far the court would go in such allowance was not stipulated. Opinions from lower courts have yet to provide any clear guidelines.

---

1 369 U.S. 186 (1962).

2 See for example, Paul T. David and Ralph Eisenberg, Devaluation of the Urban & Suburban Vote (Charlottesville, Bureau of Public Administration, University of Virginia, 1961).

3 See James E. Larson, Reapportionment and the Courts (University, Bureau of Public Administration, University of Alabama, 1962).

4 328 U.S. 548 (1946)

A BASIS FOR APPORTIONMENT

Americans long ago rejected differential representation by class or race, and no one has discovered a way to insure the representation of different levels of wit and wisdom. While it is difficult to find any moral or legal justification for giving more representation to a mountain that to a skyscraper, it may be possible to present a case for guaranteeing representation to groups of people who inhabit broad general regions and who share the common characteristic of being geographically separate from the rest of the state. Undoubtedly the justification for the weighting of votes on the basis of place of residence should be arranged specifically for a particular state, with some body of men assuming the delicate prerogative of establishing general principles for the differential treatment of voters in different sections. Whether the Supreme Court will sanction a pronounced differential treatment of voters as within the scope of equal protection has been seriously questioned by many leading constitutional scholars.

Sanders v. Gray,[5] a Federal District Court decision on the Georgia county unit system, established a rule that would allow an approximately 15 per cent deviation from the average in the assignment of units to individual counties. The same figure has been proposed in various model laws. It should be emphasized, however, that no court has as yet established this as a basis of differential treatment in state legislative districts.

THE CONFUSED PATTERN

It is hard to find any universal pattern of apportionment in the United States. The closest thing to general acceptance is that 49 states[6] require the apportionment of at least one house of the legislature to be based wholly or partially on population. Even then, there are limitations and infinite variations concerning what peoples should be counted in determining a basis for distribution according to population. Some states exempt "Indians not taxed," others specify civilian population only (e.g., in Alaska where the existence of a large military establishment would appear to make this a reasonable provision), and still more exempt those persons in institutions who are disqualified by law from voting. Some states limit the term population to mean those of voting age, others make the number of registered voters the standard, and some political scientists have advocated the use of a number determined by averaging the vote cast in each district at two successive elections.

Every state has a two-house (bicameral) legislature except Nebraska, which has used a single-house (unicameral) system since 1935. The basis for apportionment of seats in the 99 separate legislative chambers of American state governments is as follows: 32 use population, 8 use population but with weighted ratios, 45 combine both population and area considerations, 8 grant equal representation to each unit, 5 have a fixed constitutional apportionment and 1 (New Hampshire Senate) is based on state tax payments.[7]

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5 United States District Court, Northern District of Georgia, Atlanta Division (1962).

6 Delaware has fixed geographic districts for both chambers established by the constitution of 1897.

7 Gordon E. Baker, State Constitutions: Reapportionment (New York, National Municipal League, 1960), p. 5.

SETTING THE RULES

The rules governing apportionment are established by state constitutional or statutory law. In most states the legislature is charged with the execution of these laws. Both the existing laws and the practice of legislative control of their administration have been under criticism for many years. A report by the American Political Science Association's Committee on American Legislatures recommended:

1. The state should be divided into districts for the election of members of the legislature. For bicameral bodies, districts serving as the basis for election to the upper chamber should be larger than for the lower chamber. The controlling factors in drawing district lines should be: equal numbers of population in each district, no gerrymandering, district lines drawn to permit a wide representation of interests.
2. Provision for reapportionment of seats in both houses following each decennial federal census by a special administrative agency outside the legislature, which reapportionment shall go into effect either automatically or in case the legislature fails to act promptly.
3. Disregard of counties and other areas of local government in laying off representative districts in so far as is consistent with efficient election administration.
4. If bicameralism is to be retained, the use of different bases of representation for each house not inconsistent with the principle of equal population constituencies might be proposed to produce a more vital bicameralism. It is suggested that if single-member districts are retained for the lower house, the senate might be elected from multi-member districts laid off with regard to important economic regions with or without proportional representation for each district. Or such a plan might be used for the lower rather than the upper house, for both houses, or for a unicameral legislature.[8]

THE FEDERAL PLAN DISPUTE

The committee's recommendations have not met with universal approval. Two of the largest factions in the apportionment debate are:

1. Those who argue for a "federal" system in which one house is based on population and the other on geographic factors, and
2. Those who urge legislative apportionment solely on the basis of population.

The federal adherents claim a parallel in the United States Congress, with the House of Representatives reflecting population and the Senate granting equality to states. This system or modification of it exists in several states. Arizona, Idaho, Montana, Nevada, New Jersey, New Mexico and South Carolina provide exactly equal representation by county in their state senates. Vermont reverses the process and grants exact equality in the lower house to all towns.[9]

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8 Belle Zeller (ed.), American State Legislatures (New York, Thomas Y. Crowell Company, 1954), p. 46.

9 William J. D. Boyd (ed.), Compendium on Legislative Apportionment (2d ed., New York, National Municipal League, 1962).

This federal analogy is disputed on the grounds that the states are unitary forms of government -- not federations -- and that there is no parallel between the states within the federal system and the counties within the states. While the federal union was created by the states, which remained semisovereign units of government, no state was created by its counties. The counties, on the other hand, are mere administrative subdivisions created with little or no consideration of regional or population factors.

Adherents of distributing seats strictly according to population are criticized, however, for ignoring the rights of minorities that sometimes are geographically isolated from the rest of the state. Also there is ample historic precedent for making governmental subdivisions of a state the units to which apportionment is granted even though the number of seats assigned might be determined by population.

THE COURTS AND THE FEDERAL PLAN

The application of the federal system to a state was upheld by Judge O. Bowie Duckett of the Circuit Court for Anne Arundel County, Maryland, in his opinion in Maryland Committee for Fair Representation v. Tawes (May 24, 1962):

> Such an arrangement protects the minorities. It prevents hasty, although popular, legislation at the time. It is based upon history and reason and helps to protect the republican form of government guaranteed to the states by Article IV, Section 4, of the United States Constitution. It preserves the checks and balances in the state government which has worked so well under the federal. Moreover, there would be little advantage in having a bicameral legislature if the composition and qualifications of the members were similar.[10]

Michigan State Supreme Court Justice Eugene F. Black took the completely opposite stand in his concurring opinion in Scholle v. Secretary of State (June 6, 1960):

> Every schoolboy knows the historic reason for the "built-in" right of each state to two senators. The Federalists reluctantly consented to such feature of the national legislative structure for recorded reasons of fully debated compromise. The Constitution has ordained accordingly since ratification was concluded in 1790. But this provision became a part -- and an exclusive part -- of the national edifice only. The Fourteenth Amendment, on the other hand, did not become a part of the Constitution until 78 years later. Section 1 of that amendment, far from complementing or inferentially approving for each state the national plan of senatorial representation, was and now is a "built-in" order directed to each state; an order that no state shall deny "to any person" within that state the equal protection of the laws. So the Constitution by Article 1 "built into" its permanent national framework that which the Fourteenth Amendment has prohibited each state -- relevantly and reasonably -- from doing within its borders. Article 1 (supported later by amendatory Article 17) guarantees inequality of the representative value of a man's vote so far as concerns the national Senate; whereas the Fourteenth Amendment guarantees a substantial approximation of the very opposite within the framework of the government of each state. This is the way -- factually -- the great instrument stands at present.[11]

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[10] For a thorough analytical critique of Judge Duckett's statement, see Robert B. McKay, Reapportionment and the Federal Analogy (New York, National Municipal League, 1962).

[11] Several other courts have subsequently rendered opinions in agreement with Justice Black's statement. See U.S. District Court opinion in the Alabama Case of Sims v. Frink (July 21, 1962), Michigan State Supreme Court opinion in Scholle v. Hare (July 18,1962) and Rhode Island Supreme Court in Sweeney v. Notte (July 24, 1962).

THE BASIS OF THE BATTLE

While much energy is expended debating the virtues or vices of county representation as a theory of government, the protagonists' real complaints are:

1. Rural dominance, instituted through county representation, places men in control of the legislature who neither represent nor understand the problems of the majority of the people, or conversely
2. Domination of the state legislature by urban majorities is a threat to rural, generally agricultural, interests.

The rural champions argue that agriculture requires a separate economic approach and, since a rural economy employs fewer people but encompasses greater area, geographical weighting in apportionment formulas is essential. Block voting under the dictation of an urban political boss is greatly feared, and the performance of some large urban legislative delegations has not dissipated this fear.

Urbanites, on the other hand, claim that a minority's right to control one branch of the legislature sets up farmers as a superior class. Why should not one house of the legislature be controlled by Negroes or Catholics or Jews or some other minority? Often such minorities are larger groups within a state than is the rural minority. The city and its suburbs cannot be classified as a monolithic whole but are actually the accumulation of many minorities whose interests are of far greater variance than urban-rural differences.

APPORTIONMENT PLANS

Both sides would agree that one rationale for a two-house legislature is the representation of different shadings of political sentiment. Few states utilize identical provisions for the apportionment of upper and lower chambers; and the state senate is always a smaller body than the assembly. It is rare that any apportionment plan is exclusively suited to only one house -- what is used for the lower house in one state is used for the senate in another. In the following description of apportionment plans, frequent use is made of one state's lower house system as an example of a possible senate plan or vice versa. Some of the plans in use may be overruled by the courts but they have been included here as they were in use at the time of the Baker v. Carr decision.

LOWER HOUSE PLANS

The lower house plans discussed here cover:

1. Apportionment on a strict population basis,
2. Apportionment to county districts on the basis of population,
3. Apportionment so that each county is guaranteed one representative while the remaining seats are apportioned according to population,
4. Apportionment by expansion of the assembly's membership to create many small districts,
5. Apportionment on the basis of fluctuating assembly size that is determined in part by population,
6. Apportionment primarily on the basis of political subdivision representation,
7. Apportionment according to complex, multi-criteria formulas.

1. Population

The following provision of the Model State Constitution seems generally applicable for that house of a state's legislature to be based solely on population factors:

> For the purpose of electing members of the assembly, the state shall be divided into as many districts as there shall be members of the assembly. Each district shall consist of compact and contiguous territory. All districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than [ ] per cent thereof. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane, or other institutions housing persons who are disqualified from voting by law shall not be counted.[12]

Some states with large military establishments or other nonvoting populations might desire the insertion of a statement omitting these groups in the determination of the population to be represented.

2. County Districts with Population Base

Gerrymandering -- the practice of drawing district lines for partisan electoral advantage -- is a constant problem, hence many advocate the use of counties as the basic territorial unit to which representation should be apportioned. This is the practice utilized by most states. In addition to the advantage of preventing flagrant gerrymandering, it promotes citizen understanding of government by avoiding the proliferation of election districts.

Population is used as the basis for determining the number of representatives for each county. A disadvantage is the automatic inequality of district size. Counties rarely have equal population. Even when two or more counties are combined to form a district or when a large county is subdivided or given several representatives, exact equality is impossible or unlikely. California presents a good example. The state constitution requires districts "as nearly equal in population as possible" but prohibits the inclusion of parts of more than one county in the same district. Writing in the Compendium on Legislative Apportionment, Eugene C. Lee, of the Bureau of Public Administration, University of California, states:

> The 1961 reapportionment permitted more than one-fourth of the Assembly districts to deviate by over 15 per cent from the state average. The least populated Assembly district was 63 per cent smaller than the state average and the most populated district 56 per cent larger. (The next smallest district was 27 per cent smaller than the state average.) However, the constitutional requirements preserving county lines were almost entirely responsible for these disparities. In multi-district counties, the districts were almost always within the 15 per cent margin.

Some states try to rectify this inevitable discrepancy by creating combination districts.[13]

3. Guaranteed County Representation

Protection of minority rights through a maximum reflection of the varied interests within a society are prime considerations in the representative process. Many proponents of a strict population distribution maintain this is best attained in the more numerous chamber. They reason that the representation of civil subdivisions in the less numerous house automatically creates such great inequities that it destroys

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12 Draft of 6th edition (New York, National Municipal League, 1962), p. 6 (Hereafter cited as Model State Constitution.)

13 See description of the Oregon system, infra, p. 16.

the validity of the argument concerning the protection of minority rights. While many students of the problem dislike the idea of representing civil subdivisions in either house, they realize that as a practical political consideration it might be necessary. Hence, in the lower house, the counties -- or groups of more sparsely populated counties -- would be guaranteed representation whether their population warranted it or not. This block of county representatives might be held to no more than one-third or one-fourth of the lower house's total membership. The remainder of the seats would then be apportioned according to population. The exact percentage of the total house seats to be selected on a county basis would be determined by the degree of violence it does to the principle of majority rule. If each county is assured a voice in the legislature, the argument continues, this recognition of civil subdivisions should not be so great as to make it possible for less than 40 per cent of the population to elect a majority of the representatives on the ground that limiting of a popular majority may be warranted but total frustration of majority will is inexcusable.

4. Small Districts

Others would achieve the maximum of representation by a slightly different method. They would create an assembly of larger membership, varying between 200 and 400. Thus, each district would be sufficiently small to assure the sparsely populated areas some representation. Not counties but districts of equal though small population would be the basis. A variation of this idea is to set a population quota for each representative -- 1,000 to 50,000 -- according to the size of the state. The lower house would then be expanded or contracted as the total population of the state changes.

Proponents of a more numerous lower house claim that an expanded membership need not be feared as an invitation to legislative chaos. They note that the United States House of Representatives, the British House of Commons and various other stable legislative bodies in the Anglo-Saxon world have memberships of 400 or more.

5. Fluctuating Membership

Ohio uses an unusual plan in which membership in the lower house varies with each session of the legislature. Each county is assured at least one representative and the remaining seats are distributed on the basis of population. Smaller counties are assigned an additional representative according to their fractional remainders over the basic population required for a seat. A county with a population of one and three-fifths ratios, for example, would have one permanent member plus an additional representative in three out of five terms. After the first two representatives, an entire ratio is required for each additional representative, thus weighting the legislature in favor of the smaller counties. Some argue that this system is even less rational than most since the ruling minority is a constantly shifting minority but still a group always composed of predominantly rural elements.

6. Political Subdivisions as Basis

Three New England states -- copying an old English principle since abandoned by the "mother country" -- adhere to the practice of granting representation to towns with only minor consideration given to population. Vermont simply assigns one representative to each town regardless of population so that a town with 38 people gets the same representation as the state's largest city, which has a population of 35,531. Connecticut grants each town under 5,000 population one representative while all those over 5,000 get two representatives, except that some very old towns which have fewer than 5,000 inhabitants also get two for "historic" reasons. Two towns, ranging in population from 383 (Union) to 162,178 (Hartford), elect two representatives each. Rhode Island gives each city or town one representative plus one additional member for every 25,000 population except no city can have more than 25 representatives thus curtailing Providence's representation.

Few would advocate this system -- which England herself has abandoned.

7. Multi-criteria Formulas

Some states have devised exceedingly complex formulas with New York's probably being the most complicated.[14] These formulas generally grant representation to each county, then use population ratios for distributing the remaining seats so that larger ratios are used for apportioning seats to the more populous counties while smaller ratios are used for apportioning to the less populous counties, and finally set the size of the Assembly so that there are relatively few seats to be apportioned to the metropolitan counties on the basis of population.[15]

THE SECOND CHAMBER

If legislative apportionment is based entirely on population distribution in both houses, it may be argued that the reasons for a second chamber are largely vitiated.[16] The major reason left for a bicameral legislature is to provide a second, more deliberative, chamber as an additional element in the system of checks and balances. The checks and balances, however, are supposed to be among the three major branches of government -- legislative, executive and judiciary -- not within one branch of this triumverate. Since the executive in most states is gaining in powers, the weakening of the legislature by dividing it into two chambers may further undermine the American system of separation of powers. Nebraska, with a larger land area than 35 of her sister states and with a population greater than sixteen of them, has had a successful unicameral legislature since 1935. A few of the original thirteen states initially operated on a unicameral basis but later adopted a bicameral system in imitation of the federal government. Often this was accompanied by higher property qualifications for senatorial than for assembly electors. Restricted suffrage acts disappeared but not the second chamber.

SENATE PLANS

The senate plans discussed are:

1. Apportionment on a population basis with fixed membership,
2. Apportionment by a fixed population ratio with expanding membership,
3. Apportionment utilizing multi-member districts and alternative electoral systems,
4. Apportionment of exactly equal representation to political subdivisions regardless of population,
5. Apportionment on the basis of a weighted vote for each senator,
6. Apportionment using combination districts to equalize representation,

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14 See Ruth C. Silva, "Part Two: Apportionment of the New York Senate" in "Apportionment in New York," Fordham Law Review, XXX (April 1962), pp. 603-638; and Silva, "Apportionment of the New York Assembly," to be published in the Fordham Law Review for October 1962.

15 Ibid. Miss Silva's two articles carefully analyze how the New York formulas were deliberately calculated to discriminate against metropolitan areas.

16 Paul T. David and Ralph Eisenberg, of the Bureau of Public Administration, University of Virginia, are conducting research on two-house state legislatures, concentrating on the states having a variety of political alignments, yet having both houses based on population.

7. Apportionment to regional subdivisions of the state,
8. Apportionment based both on population and land area,
9. Apportionment on the basis of functional representation.

1. Population

If the senate is to be a less numerous body for deliberative purposes and if its members are to be elected in larger districts (to reflect more broadly based interests), the following provision provides a simple solution:

> For the purpose of electing members of the senate the state shall be divided into as many districts as there shall be members of the senate. Each senate district shall consist of three assembly districts which together form a compact and contiguous territory.[17]

2. Population Ratios

A variation of this would be the use of population ratios for senate representation. The use of ratios is common to many states and the provision is generally worded:

> The ratio for apportioning senators shall always be [ ] hundred thousand inhabitants. Each senate district shall consist of [ ] assembly districts which together form a compact and contiguous territory.

While this system would also allow for expansion or contraction of the senate's total membership following each census, the variations would not be so great as the similar provision for the lower house because a much larger population ratio would be used for the senate. Since both of these provisions presuppose a lower house based on population, the senate districts are composed of a set number of assembly districts. If the lower house is constructed on another basis, normal state practice is to set a number of senate districts that amounts to one-half, one-third, or one-fourth of the number of the lower house districts.

3. Multi-member Districts

A single-member district is a constituency in which only one legislator is elected while a multi-member district is one in which several legislators are elected.

Critics of the single-member district claim that it may prevent adequate representation. Certainly it is not uncommon for one party to win a slender margin in a majority of districts while the other party carries the ramainder of the districts by large margins so that the party with the statewide popular plurality wins fewer seats than does the party without the popular plurality.

Multi-member districts were the most commonly used system during the colonial and early federal period. Such districts are still common in municipal elections (at large) and eighteen states now used them for the election of some of their state senators. Thirty-five states use multi-member districts for election of part of their assemblymen while Illinois, Maryland and Washington use them exclusively.

Some of the advantages claimed for the multi-member system are: broader representation of the interests within the state (in other words, avoidance of localism), abler candidates, greater emphasis upon issues and the reduction of gerrymandering.[18]

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17 Model State Constitution, loc. cit.

18 Ruth C. Silva, Staff Report on Legislative Apportionment (New York, State of New York Temporary Commission on the Revision and Simplification of the Constitution, 1960), II, S-1 to S-11.

Actually, analysis of the results of multi-member district elections does not provide proof of the advantages claimed as long as the straight plurality system of voting is used. There is nothing to keep one political party or particular interest group from winning all seats in the district when it takes only a simple plurality of the votes cast.[19] It was to correct this obvious shortcoming that the American Political Association's Committee on American Legislatures mentioned proportional representation as an alternative voting procedure in multi-member districts. Others have suggested the cumulative vote as used in Illinois or the limited vote system used in New York City, Philadelphia, Hartford and other cities.

Proportional representation -- commonly called P.R. -- has strong supporters and opponents. The criticisms of its complexity and alleged tendency to create splinter parties are generally eliminated if the multi-member district is kept to only three or four members. Conversely, the more members apportioned to a district, the greater the possibility for truly accurate representation. Of all electoral systems, P.R. most accurately reflects all shades of voter sentiment.[20]

In Illinois the cumulative vote is used. If there are three seats to be filled, each voter has three votes to cast. He can cast one for each of three candidates, one and one-half votes for each of two candidates, one for one candidate and two for another or vote all three for just one candidate. This system virtually assures the largest minority party of at least one seat unless it is so small that it does not receive one-third of the votes cast.[21]

The limited vote is a similar device. If there are four seats to be filled, each voter may vote for only three. The assumption is that the minor party, by marshalling its voters, can get at least the fourth seat.

The advantage claimed for having a senate elected from multi-member districts by one of these proportional electoral systems is that it creates a second house that represents shades of opinion within the state that could not be reflected accurately in a house elected from either single-member or multi-member districts by a single-ballot-plurality electoral system.

4. Governmental Unit Representation

Senate apportionment formulas that guarantee a minimum representation to the least populous counties or that limit the representation of the most populous counties are numerous. Constitutional provisions of this type might stipulate:

> There shall be /_ _/ senators apportioned among the counties according to population, except no county shall receive less than one member.[22]

Some twelve states place additional restrictions such as those in New York where no county shall have more than one-third of all the senators. California, Texas and nine other states allow no county more than one senator.

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19 Ibid., pp. S-11 to S-22.

20 Ibid., pp. S-43 to S-58. See also Clarence Gilbert Hoag and George Hervey Hallett, Jr., Proportional Representation (New York, The Macmillan Company, 1926). (Copies available from National Municipal League.)

21 See George S. Blair, Cumulative Voting (Urbana, University of Illinois Press, 1960).

22 For example, Maine, Maryland, Vermont and Wyoming use this type of system with certain modifications.

The arguments challenging representation by county, particularly in the smaller house, have already been presented. It should also be noted that the greatest population disparities between districts appear in states that guarantee separate representation to each county. In the seven states where each county has equal representation in the senate -- the so-called federal plan -- the percentages of the total population that can elect a majority of the senators are: 12.8 per cent in Arizona, 16.6 per cent in Idaho, 16.1 per cent in Montana, 8 per cent in Nevada, 19 per cent in New Jersey, 14 per cent in New Mexico and 23.6 per cent in South Carolina.[23] In every case, these are less equitable apportionments than the one involved in Baker v. Carr and result in a dilution of the value of votes cast in the more densely populated counties. A vote in the smallest senate district in California is worth 422 times a vote in Los Angeles County.

Constitutional provisions guaranteeing certain representation to static geographic units automatically become obsolete because they cannot accommodate the complex factors of modern society that are accelerating the movements of people.

> The difficulty of laying down rules with even a plausible ring of validity is increasingly accentuated by the phenomenon of urban sprawl which is rapidly changing the population ratio of old units of local government and long established electoral districts.[24]

This is one of the greatest difficulties of an apportionment plan that guarantees one representative to each county. It applies equally to constitutional provisions requiring legislative districts to respect county, township or ward boundaries, as previously noted in the case of California's Assembly districts. The boundaries of such subdivisions rarely represent true regional interests, let alone equitable population distribution, and adherence to them automatically renders equitable apportionment impossible.

5. Weighted Votes

One novel "have your cake and eat it too" approach that reconciles the county principle with the population basis has been advanced. It consists of weighting a senator's vote according to the vote he received in an election.

> This would be new in legislatures but it has long been done in business when corporation shareholders vote the number of shares they own or hold proxies for; in labor union federations, delegates vote the membership of their constituent union.[25]

Several ways to calculate the weight of the senator's vote are proposed.

1. Total population of the county;

2. An average of the total vote cast in the last two elections (which takes into consideration the larger voter turnout in presidential elections);

3. The average of the vote cast for the winning party's candidate in the last two elections (so the votes cast for the losing candidate are not used to increase the weight of the victor's vote in the legislature as would happen under No. 2);

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23 As of 1962. See Boyd, op. cit., pp. iii-iv.

24 Preface to Model State Constitution, op. cit., p. vi.

25 As quoted in Baker, op. cit., p. 34.

4. The election of two senators from each county -- no party being allowed to nominate more than one senator. Each would serve, casting a vote equivalent to the vote he received in the election.

The weighted vote system has the advantage of eliminating problems of apportionment and gerrymandering; it provides automatic reapportionment at each election if one of the last three variations is used.

It has the disadvantage of still being unrepresentative government inasmuch as the legislators would be representative of spectacularly different sized constituencies. The weighted vote would also give to a small number of men (the legislators from the large counties) great personal power within the legislature by automatically creating a select group of kingmakers with the accompanying invitation to logrolling on a prodigious scale.

6. Combination Districts

Oregon has a system that respects county lines without doing violence to the population basis of apportionment.

The Oregon system provides for special combination districts (or floterial representation) composed of two or more counties that have fractional remainders of less than a full ratio. For example, Lane County (population 162,890) elects five members to the Oregon House of Representatives while Benton County (population 39,165) elects just one. Since the average district should have approximately 30,000 votes, both districts have sizeable remainders. This is corrected by creating another district, encompassing both counties, for the election of one more representative. While Oregon's apportionment does not reflect the popular base with precision, it does come closer to achieving this ideal than do the apportionments found in most states. A majority of Oregon's lower house comes from districts where 48.1 per cent of its population resides while a majority of Oregon's senators come from districts which contain 47.8 per cent of the people.

7. Regional Subdivisions

Alaska, Hawaii, Illinois and Mississippi all use some form of regional subdivision of the state in the distribution of seats to one or the other of their legislative bodies. This type of apportionment plan is best exemplified by the proposal which James K. Pollock, professor of political science at the University of Michigan, as a delegate to Michigan's 1961-1962 Constitutional Convention, advanced as a solution to his state's apportionment problems. His plan would have divided the state and its 39-seat Senate into the following groupings:

1. Nine seats would represent area: two each for the Upper Peninsula and Northern Lower Michigan and five for outstate[26] southern Michigan.
2. Thirty seats would represent population. They would be allocated to the four zones (Upper Peninsula, Northern Lower Peninsula, Outstate Southern Michigan, and the three-county Detroit area) by the method of equal proportions, a mathematical procedure used in allocating congressional seats to the states, provided only that every zone should have at least one population seat.
3. Within each zone, the total number of area and population seats would be apportioned to districts that could vary no more than 10 per cent from the average population per seat within the zone.[27]

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[26] That area outside the three-county Detroit metropolitan area.

[27] A Solution to The Problem of Senatorial Reapportionment. (Paper submitted to the 1961-1962 Michigan State Constitutional Convention.)

A similar proposal has been made for New York State. Advocates of this plan maintain that a particular virtue is its applicability in those states possessing one or two very large cities (or metropolitan areas) plus a fairly large total land area in which there is a substantial rural population (e.g., California, Illinois, Michigan, New York, Pennsylvania and Texas). One difficulty, however, is the probability that the regions, particularly the metropolitan districts, will change in time to include new territory or lose former territory.

8. Land Area Formulas

Michigan's constitutional convention adopted an apportionment plan that contains the unique idea of using square miles as well as people as a basis for representation.

> In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned an apportionment factor equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one-hundredth of 1 per cent multiplied by four and its percentage of the state's land area computed to the nearest one-one-hundredth of 1 per cent.[28]

Jokes have been made about representing "people or pine trees" but the actual use of acreage as a determinant is virtually without precedent.[29]

The Michigan proposal is an example of how states may devise systems suited to their own needs. Perhaps the people of Michigan will not feel that the territorial considerations of this plan will have a particularly adverse effect on the principle of "one man, one vote." Were the same scheme applied to California, however, using exactly the same formula, the results would be surprising. For example, San Bernardino County, which has the largest area in the United States, would have an apportionment ratio of 26.28 while San Francisco County's ratio would be 18.94. The Michigan formula calls for each county with 19.5 or more apportionment factors to be entitled to two senate districts. Thus, San Bernardino would get two senators and San Francisco only one -- but San Francisco has 239,000 more people than does San Bernardino.

9. Groupings on Functional Bases

The representation of peoples on a functional basis -- by social, economic, occupational or even religious groupings -- has been proposed as an apportionment scheme. As yet no one has offered a formula which would take care of a change in functional status or a person's inability to classify his own major interest to the exclusion of all his other characteristics. If district boundaries are to be replaced by functional classifications of people, visions of the fascist corporate state appear -- and generally end all discussion of the proposal.

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28 Art. IV, sec. 2, of proposed Michigan constitution.

29 An abortive attempt made in Wisconsin in 1952 was declared invalid in State ex rel. Thompson v. Zimmerman, 264 Wis. 644, 60 N.W. 2d 416 (1953), and in Illinois recent legislative practice has been to interpret area considerations as meaning square miles.

GETTING THE JOB DONE

Finally, there is the problem of insuring that reapportionment will take place. This, actually, was the main point at issue in the Tennessee case, where there had been no reapportionment since 1901. It was inaction on apportionment which precipitated the Illinois, Minnesota and New Jersey suits that resulted in new apportionments.

State constitutions generally require the legislature to apportion at the first regular session (or within a stipulated period) after each decennial census. Usually there is no provision for enforcing this requirement. In recent years, however, the trend has been away from assigning the apportionment task to the legislatures. In keeping with the recommendations of the American Political Science Association and with the National Municipal League's Model State Constitution, apportionment is assigned to a special commission in Alaska, Arkansas, Hawaii, Missouri and Ohio. Arizona assigns the task to its secretary of state. In some states the commission is to act only if the legislature fails to apportion within the allotted time: this latter procedure is provided in California, Illinois, Michigan, North Dakota, Oregon, South Dakota and Texas.

Thus far the experience in those states which have assigned the task to commissions only if the legislature fails to act would suggest that a token reapportionment by the legislature can often avoid the true reapportionment which the census figures would seem to demand. Oregon and South Dakota have the additional safeguard of judicial review, however, which has forced compliance with the full apportionment provisions of the constitution.

ARGUMENTS FOR A COMMISSION

The reasoning behind assigning the job to a commission (generally worded so as to make the commission responsible to the governor with a resort to judicial review) is part of the traditional argument for checks and balances plus factors of practical politics and experience. Adherents of this plan hold that it relieves legislators of the burden of redistricting their colleagues (and themselves) out of the legislature. Proponents of a commission note a willingness of many legislators to relinquish this task to an impartial commission under the executive.

By assigning to legislators the task of creating or abolishing their own districts, a constitution would grant to the legislature the extraordinary power of determining its own constituencies.

An apportionment commission presumably could avoid the double evils of malapportionment and gerrymandering since it would not be exposed to the multitude of pressures existing in a legislature. Judicial review and the fact that the governor must accept responsibility for the final form in which the law is promulgated would tend to temper the tendency to tamper.

The strongest argument for an apportionment commission is the actual experience of the states which have used such a commission. With provision for judicial review and an elective official's responsibility for promulgation of the law, there has been a high degree of adherence not only to the letter but also to the spirit of the laws governing both apportionment and the compactness and contiguity of districts. Few legislatures -- if any -- can claim such a record.

ENFORCEMENT PROVISIONS

The Model State Constitution provision on enforcement of reapportionment reads:

> (b) Immediately following each decennial census, the governor shall appoint a board of / _ / qualified voters to make recommendations within 90 days of their appointment concerning the redistricting of the state. The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within 90 to 120 days after appointment of the board, whether or not it has made its recommendations. The governor shall accompany his plan with a message explaining his reasons for any changes from the recommendations of the board. The governor's redistricting plan shall be published in the manner provided for acts of the legislature and shall have the force of law upon such publication. Upon the application of any qualified voter, the supreme court, in the exercise of original exclusive and final jurisdiction, shall review the governor's redistricting plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this constitution.[30]

Variations of this provision would insert specific qualifications for the members of the commission to prevent a partisan governor from stacking the commission. For example, Paul T. David suggests: "In appointing members of the board, the governor shall, so far as possible, give equitable representation to the several areas of the state, to major political parties or factions, and to members of the legislature through their leaders."[31]

Arkansas' commission is composed of the governor, secretary of state and attorney general.

Some feel that each state should stipulate, in view of its own peculiar political traditions, even more precise qualifications for the commission in the state constitution. Generally there are excellent reasons for cautioning against this. Detailed constitutional provisions haunt future generations with outmoded specifics applicable only to bygone days.

If the constitutional requirements for districting include contiguity, compactness and regular shape plus specifying the percentage of population variations allowable between districts (where population is the criterion), the possibility of judicial review should be a sufficient check on the commission and governor. Removal of the issue from the legislative arena, with state court surveillance, can keep reapportionment from becoming a decennial federal-state tug-of-war.

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30 Model State Constitution, pp. 6-7.

31 As quoted in Baker, op.cit., p. 30.

League of Women Voters of the U.S.
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June 14, 1965

APPORTIONMENT KIT

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TESTIMONY OF SENATOR ROBERT F. KENNEDY (D., N.Y.)

ON REAPPORTIONMENT

BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

UNITED STATES SENATE

MAY 6, 1965 - 10:00 A.M.

I appreciate the opportunity of appearing before your subcommittee today to testify regarding the proposed constitutional amendments which would, in essence, overturn the decisions of the Supreme Court last June 15 in Reynolds v. Sims and related cases, and allow one House of a State Legislature to be apportioned according to factors other than population.

In my judgment, the pendency of these amendments is a constitutional crisis of the deepest significance.

Utilizing the historically unprecedented approach of taking away declared constitutional rights, the amendments would preserve a structure of malapportioned state government and would thereby have the most far-reaching effects on the future of our cities and the urban development process, and on the civil rights movement as well.

The movement to take away the rights declared in Reynolds is going on even though the case was decided less than a year ago and even though no one can possibly have sufficient historical perspective yet to criticize or condemn the decision's effects in practice.

The effort to overturn Reynolds is proceeding even though the Court made express provision for some variations on the equal-representation idea, and even though the practical content of these variations has not been worked out, as yet. The Court said it would permit "some deviations from the equal population principle" based on legitimate considerations incident to the effectuation of a rational state policy. The content of that exception deserves to be worked out on a case-by-case basis.

These considerations of historical perspective should, without more, give pause to those who would nullify the decision and thereby change the basic law of the land.

Nevertheless, the amendments have substantial support. Why?

Their operative principle seems innocuous enough. All of them provide that one house of a bicameral legislature can permissibly be apportioned on a basis other than population if the people of a State approve of the plan in a state-wide referendum. Some of them allow that for a unicameral legislature as well. At first glance, that seems reasonable enough, at least for a bicameral legislature. Let us just analyze why the amendments will be most unreasonable in their operative effect.

First, who would frame the question to be put to the people? No one other than the state legislature whose chronic malapportionment created the whole problem in the first place. The interest of the majority of that malapportioned legislature is in preserving its position of control. I think we can expect the majority to frame a plan which perpetuates its control and maybe even enlarges it, and I certainly think

that the majority would be ingenious enough to put the choice to the voters in a way which insures an appropriate result.

The first point, then, is that the cards are stacked against a fair result from the outset. The people would in all probability never have the chance to make a free choice between the principle of equal representation declared by the Court in the Reynolds case and a plan departing from it.

This subcommittee well knows that the Colorado reapportionment plan which was before the Supreme Court last year in the Lucas case had been approved in a referendum. The Court nevertheless struck down the plan, saying, "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate..." The point is that no other of our freedoms is framed in terms of being deniable by a vote of the majority. Any suggestion, for example, that the First Amendment guarantee of free speech and freedom of religion should be "except when the majority votes otherwise" would be dismissed out of hand as totally absurd.

The Colorado case also illustrates the fact that the people would never have the chance to make a free choice. The Colorado choice was between an equal-population plan and a so-called "little federal" plan. The former plan, however, provided for the election of Senators at large, which obviously detracted from its appeal to the voters.

I believe we cannot and must not let the majority of the voters dilute or deny the right to equal representation, particularly when we know that the majority may not appreciate the implications of what it is doing or, even worse, may not be given a realistic choice to make.

Further, as the Dirksen and Javits amendments are now drafted, they lack any mandatory provision for periodic resubmission to the voters, so majority acceptance of a particular plan would not only deny individual rights in the present, but could also bind generations of unborn citizens to a system which they had no say in choosing.

Second, what are the effects which the people's vote to depart from a population basis of representation will have in various parts of the United States?

What about the South? The Negro, of course, is still badly underregistered in many states. It will be entirely logical for the legislatures of those states to draft a plan which would protect their position against the day when Negroes obtain full voting rights. And, of course, the electorate as presently constituted is equally as interested in preserving the status quo. In much of the South, therefore, permitting a departure from reapportionment based on population will inevitably result in a serious stumbling block to the Negro's ever attaining equality in the political process.

What about other parts of the country? In heavily urbanized states the amendments could severely hinder the process of urban development. The legislative majorities in these states are for the most part nonurban in composition and, once again understandably from their viewpoint, do not want anything to happen which would cause them to lose their control. These majorities can be expected to do everything in their power to utilize for their own ends any opportunity to escape from apportionment based on population.

The perpetuation of minority, nonurban control, even though confined only to one house, could be catastrophic for the cities. The result at worst would be a continuation of the shortchanging of the cities, and at best a stalemate, a legislative paralysis caused by the differing apportionment bases in the two houses.

As time passes, the situation would only deteriorate, for as we become more and more urbanized, it becomes increasingly critical that every appropriate governmental resource be focused on meeting the problems of urban areas. We all know that the states have not done their share up to now, and that a major reason for the states' failure to face up to deepening urban problems has been the control of the legislatures by a rural minority having no urgent interest in the welfare of the cities.

The inadequate action by the States up to now has caused the cities and suburbs to look to the federal government, which has responded by making significant and important contributions to better housing and better transportation, to eliminating slums and urban sprawl, and now, at last, to improving the quality of education.

But more -- much more -- is needed, and I do not think the federal government has the resources to do the job alone. About 70 percent of our nation's population now lives in urban areas, and we have only begun to provide healthy, well-planned urban environments and to see to it that urban residents have the full range of governmental services and protections which they deserve.

In the last analysis this struggle must be fought mainly at the state and local level. The Supreme Court's decision in the Reynolds case offered new hope that state governments would at last be truly representative and therefore responsive to the needs of the cities. It would be tragic to destroy that hope now.

And, of course, if the amendments end up injuring the people of our cities, that will be a serious blow to the cause of minority rights. Negroes, Puerto Ricans and other deprived minorities are city dwellers. Perpetuating the anti-urban balance of power in the state legislatures, therefore, would jeopardize any hope that these minorities had of obtaining significant help at the state level in their struggle for equality of economic opportunity, better housing, and better schooling.

I believe these amendments will generally have an anti-urban effect. But I also want to emphasize strongly that no one can be sure that this will be the effect everywhere and for all time. The majority which acts to consolidate its position at the expense of the outvoted minority need not always be rurally oriented. The coalition which holds the balance of power in the state legislatures might well be composed of other interest groups.

Those who support the amendments point to the unfairness they will otherwise suffer at the hands of the urban-suburban majority. The fact is that if urban and suburban interests were to act collectively under these amendments, they could cause themselves to be over-represented and therefore multiply the potential for causing unfair results to the rural minority. If an urban-suburban coalition is going to be unfair to the rural minority, the pending amendments give them the opportunity to do it in spades.

The point is that whatever plan is adopted will be weighted somehow, and that however it is weighted, someone will be the loser. I wonder, frankly, how many of those who think they will benefit from the malapportionment which the proposed amendments would create have stopped to think that they could in fact end up on the short end.

It is argued that having both houses apportioned on the basis of population removes any reason for having two houses. This is not the case. The bigger house, particularly if elected more frequently, will represent more particularized groups of people within a state. Moreover, there will be many instances in which the tempering influence of one house can prevent hasty action by the other and thereby stop the enactment of unwise legislation.

It is argued also that the so-called federal analogy justifies these amendments. In my judgment, there really is no federal analogy. The federal government was a union of previously sovereign states, which had to enter into a compromise as the basis for coming together at all. There is nothing analogous to that at the state level. Counties and other political subdivisions have no independent significance whatever. In fact, 36 of the 50 states provided for equal population representation in both houses of their legislatures in their original constitutions. It is only as the process of urbanization has caused county lines to become the instruments of malapportionment that people have started to invoke the federal analogy to justify maintaining the malapportionment. Thus, reliance now on the federal analogy is an after-the-fact excuse to justify a pattern of malapportionment which is contrary to the original system in the majority of states.

In sum, to paraphrase Chief Justice Marshall, we must remember that this is, after all, a Constitution we are amending. What the proponents of the amendments are advocating is the introduction of an exception to the equal protection clause of the 14th Amendment, an exception which says, in effect, equality is the rule except where representation in the state legislatures is concerned. What they are supporting is the removal of a right previously enjoyed -- the taking away of a guarantee of equality -- the equality of representation -- which the 14th Amendment has previously been held to encompass. They are talking about changing the basic fabric from which our government is woven and they are talking about doing so in a way which would diminish the rights guaranteed by the 14th Amendment. To me this kind of venture is inconsistent with the ideal of equality for which we have always strived and which we have always held out to peoples of other lands as the principle which differentiates America from less democratic nations. And this whittling away at the 14th Amendment represents a most troublesome precedent for the future.

I have tried in these few moments to point out the dangers in the proposed modification of the rule laid down in Reynolds v. Sims -- dangers not just to particular interest groups or to particular segments of the population, but dangers whose ultimate effect cannot even be entirely gauged at the present time.

Reynolds v. Sims offered new hope to so many that State legislatures would finally bring forth results of tangible benefit.

We are confronted with a proposal which could destroy that hope and which would in any event change the structure of our government for a long time to come. This is important and significant to all of us, and I believe we should not allow it to proceed any further.

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STATEMENT BY SENATOR PEARSON (R., KANSAS)

BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

SENATE JUDICIARY COMMITTEE

IN SUPPORT OF SENATE CONCURRENT RESOLUTION NO. 2

MARCH 18, 1965

In the course of the long debate over fair and adequate representation in State legislative bodies, many of those involved have, I am afraid, lost sight of the basic issue. Unless this controversy is returned to its proper context the damage to our system of government will be great and far reaching.

I

Current attention to this problem is obviously the outgrowth of the decision of the U.S. Supreme Court in Baker v. Carr in which the Court said that the equal protection clause of the U.S. Constitution supplied a sufficient basis for Federal courts to review allegations of malapportionment.

This case and subsequent cases reviewed by both State and Federal courts have been dramatized on the basis of an urban-rural conflict at the State legislative level. The tyranny of a rural minority dominating a helpless urban majority has stimulated emotional debates, petitions, proposals for State and National constitutional amendments, and restructuring of State legislative machinery. Those dramatics of the conflict do not represent the basic issue.

To some who seek to champion the so-called urban interest, the currently popular concept of one-man, one-vote espoused by the Court is the sweet fruit of victory. What a sorry mistake and what a great disservice these champions of a cause have imposed upon our system of government and upon those whom they seek to protect.

II

Let me make it clear that I approach this problem with full appreciation that many legislative bodies have failed to adjust their composition to reflect a changing constituency. There is no doubt in my mind that in far too many instances there has been an absolute disregard for the structuring of representation to accommodate many legitimate criteria of a representative system of government.

To those who demand a return to the days before Baker v. Carr, I would remind them that our system of government was intended to be a representative system. It was not conceived to allow any minority to continuously frustrate the formulation of a consensus. On the other hand, it was purposely devised to avoid providing to any majority the capacity to use the machinery and power of government to exploit any minority.

To return to pre-Baker v. Carr would be to ignore these tenets. But I am compelled to point out the ridiculous situation in which we find ourselves now -- bound under a mandatory one-man, one-vote rule -- for it just as surely ignores these concepts.

Our system of government was also conceived to be a responsive system. It was designed to be intolerant of a governmental vacuum. Thus, with the consistent failure of other supposedly responsible authorities to act, the public's recourse to the courts should have been expected. The assumption of jurisdiction by the Federal courts should have come as no surprise.

III

The real issue in this entire debate revolves around one central question. How can we assure the existence of a governmental system in which there can be a full exercise of government when consensus demands, but which at the same time assures full consideration of the many diverse interests which make up this great Nation and that these interests, as minorities, will not be compromised. We seek a legislative composition which makes it possible to establish and implement a public policy when conditions warrant, but which assures caution and candor in the exercise of power.

I do not believe the application of the one-man, one-vote concept as the sole, the one and only, guide to legislative makeup in our representative system provides this assurance. I believe we must -- by amendment of the U.S. Constitution, if necessary, allow the people of the individual States to apply other criteria to at least one house of their State legislatures.

This then is not a rural-urban issue. Time will prove that to try to dramatize it as an urban-rural issue, as it has been to date, is intemperate and temporary.

This is clearly a majority-minority issue and in this context this means that our system of government must adequately serve the majority while it protects the minority whether these be urban, rural, economic, geographic, racial, ethnic or religious.

The concept of one-man, one-vote seems an irrefutable concept when measured by our basic principle of majority rule.

The mechanics of constructing a government as a pure democracy in which the one-man, one-vote rule prevails is not difficult. It has been done by many nations in the past. But the genius of our system is that while the majority does in fact govern, the protection of the minority has not been ignored. The concept of the bicameral legislature wherein one house is apportioned on the basis of population and the other generally on the basis of area has proven to be the heart of the ingeniously devised system.

It is in preserving a system that provides the minority protection that the present rule laid down by the court breaks down. It is in fostering the concept of absolute unrestrained majority control that the champions of one-man, one-vote in representative government have done a disservice to those they propose to represent.

IV

Those who contend that the majority of the populace is frustrated unless all legislative representation is based upon one-man, one-vote simply ignore the facts of our governmental structure, and the nature of our balances of both power and checks. The populace majority now elects statewide officers -- the Governor and, in many States, numerous members of the Governor's cabinet. Through them this majority selects much of the administrative personnel and controls much of the machinery of State, county and city government. Where initiative and referendum are available, the populace majority has a clear and direct means of expression.

Even in the courts the populace majority elect, or through their elected executive appoint, the members of the judiciary.

In those legislatures, such as Kansas, where one house has been traditionally elected on a population basis, the populace majority possesses the power to approve or reject any legislation. This power constitutes absolute control, especially when combined with the power of the majority as reflected in other aspects of the government as I have described.

Only in one house of the State legislature has representation of other interests been possible. To say that the desires of the populace majority are frustrated by this representation is naive. I predict the millennium will not be produced as expected under the present rule and at the same time the historic check which the system has provided will be aborted and a vital safeguard of minority interests will be destroyed.

V

There is, in my mind at least, a grave doubt that this great Union would have been as easily conceived if the method of representation continued through the years since its formation had been forbidden. The founders of this Union, in all probability, would never have conceded to the Federal Government, or the Federal courts, the right to dictate to a sovereign State the composition of its legislative body.

I suggest that a recollection of history of this Union and a study of the conditions of admission of the States thereto would reveal no basis for the form of rule now thrust upon us. Do you believe for a moment that this Union would have been formed when it was if, as a condition precedent to union, the Original Thirteen States had been required to remake their legislative bodies on the basis of the current concept of State legislative composition? What evidence is there of any request for admission of a State ever having been jeopardized by a challenge of the nature of the representativeness of its legislative body? Could, in fact, a State seeking admission, even under the current Court decision, be refused admission to the Union if its legislature was not apportioned on a one-man, one-vote basis?

Further, I wonder whether some States would have petitioned or accepted admission if legislative apportionment on the basis of the present rule had been a condition precedent.

The fact is that the State representative system of government which existed at the time our Union was formed and which has been accepted as suitable for the addition of States was based on a representative system conceived by the individual States as being best suited for their welfare. Their representative systems did not have to meet a Federal constitutional standard for admission to statehood.

VI

I contend that the individual character of the sovereign States is sufficiently different to justify the use of local discretion in formulating legislative composition.

In my own state of Kansas, for example, the State senate has been apportioned traditionally on a population basis. The house of representatives, by direction of the Kansas constitution, has been apportioned 1 seat to each of the 105 counties with 20 so-called "floating seats" assigned to the more populous counties. This system reflects the heavy reliance Kansas has placed upon county government for

administrative purposes. The legislature has utilized special legislation for individual counties to supply them with the tools of government. Their spokesman in the legislature has therefore filled an essential liaison position between individual county administrative units and the State government.

In 1959, the legislature recognized the special problems peculiar to growing urban centers. It adopted and submitted to the people in 1960 a home rule constitutional amendment for cities. This amendment provides our urban centers with extremely broad power and reduces their reliance upon the State legislature.

Thus, in Kansas, the relationship between people and their governments at local and State levels places the State legislature in a position of dealing with a different set of issues than would be the case in some States where cities have no home rule or where counties are less significant units of government.

I believe the people of my State should have the opportunity to consider these conditions in devising a system of legislative representation. I am positive that other States can point to other conditions which provide circumstances not to be ignored in assuring effective, representative government.

VII

Finally, I want to emphasize that I recognize that if this issue is left exclusively to the entrenched interests in some States to adjust legislative situations to more nearly reflect present-day needs, it will either experience traditional procrastination or, if action is taken, it will be no more than a sham.

For this reason, I believe the courts must retain jurisdiction. But authority to apportion one house of State legislatures on a basis other than population must be authorized. However, I would not support such a constitutional amendment unless any resulting apportionment plans are subject to statewide referendum. Senate Concurrent Resolution 2 does contain this provision and with it included I endorse the resolution and urge this subcommittee and the Congress to expedite its approval.

U. S. Sen. George D. Aiken On—

APPORTIONMENT
and
The Need
for
A CONSTITUTIONAL AMENDMENT

From an address delivered before the 46th annual meeting of the American Farm Bureau Federation, Philadelphia, Pa., December 9, 1964, by

The Hon. George D. Aiken
Republican Member
United States Senate
Vermont

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Guard Against Injustice

The Constitutional Convention in Philadelphia in 1787, after a long and torrid controversy, finally decided that the United States Congress should be comprised of two Houses —the representatives of one to be based on population alone—while the other, the Senate, would have two members from each state, regardless of population.

To guard against possible injustice by the smaller, more numerous states, however, it was provided that all bills relating to revenue should originate in the House.

It has also been accepted by tradition that all appropriation bills should also originate in the House.

The Senate was given the responsibility for approving all major appointments of the President.

Besides providing for a Congress, the Constitution also provides for an Executive Branch and a Judicial Branch of the government.

This provision for balancing the powers of government in three separate branches has served us well for over 175 years.

I have seen each of the three Branches undertake to infringe on the authority of another, though none of the previous forays has been quite as bold as the current efforts of the Judiciary to assume legislative powers and remake the structure of our government.

The American Law Section of the Library of Congress says that the power of the Supreme Court to interpret the Constitution and Acts of the Legislative Branch was first laid down by Chief Justice Marshall in 1803 (Marbury v. Madison).

However, Marshall's claim has never been supported by legislation.

The matter of conferring such power on the Court was discussed at the Philadelphia Convention and was never granted by the Constitution, thus implying that it was a subject for the Legislative Branch to deal with.

The opinion of the Supreme Court which holds that state legislatures, whether unicameral or bicameral, must have membership based on population alone is founded on the contention that the 14th amendment of 1866 justified such decision.

Yet, Justice Harlan in a vigorous and scholarly dissent from the majority opinion of the Court shows conclusively that the 14th Amendment was never intended to interfere

with the states' right to control legislative representation within their own borders.

Should this assumption of power by the Supreme Court be permitted to stand and that Body become permanently vested with authority to not only repeal Acts of the Legislative Branch of the government but to alter the structure of government itself, then the United States would be in the unique and unenviable position of being virtually the only nation where the desires of the people can be stifled by a politically appointed tribunal.

If the Supreme Court ruling in the case of Reynolds v. Sims is fully implemented, the result will be that except for a few small nations where unicameral legislatures are in effect, the United States will be about the only nation where representation in legislative bodies is based on population alone while area and other factors are disregarded.

Therefore, the decision of the Supreme Court can only be regarded as a judicial "coup d'etat" resulting in a weakening of the power of the states to regulate suffrage on the local basis and a further assumption of the power of government by the Judiciary.

First, let us recognize the fallacy of any belief that the battle in which we are now engaged is essentially a conflict between the people of the urban areas and the people who live in the smaller towns and cities and the far-flung rural areas of America.

We, who live on the farms, hold no monopoly on devotion to the democratic principles of government.

A goodly percentage of the protests against the Court's decision comes from urban areas.

To be specific, we are engaged in a struggle between the powerful political machines of the great cities and the people of the United States.

Make no mistake about it—this is battle for the political control of the Nation and with that control goes the power to tax, the power to spend and the power to enact programs which will affect the lives and welfare of every living person for generations to come.

Strength In Area And Population Traditional

There is no question that both area and population representation in the legislature of each new state was one of the cogent reasons for the rapid growth and development of the United States, just as the same formula for the United States Congress was also a mighty influence

to the same end.

Now this formula for progress has been declared unconstitutional.

Unless this backward turn toward the days of King George the Third can be corrected, what results can be expected?

When the requirement that membership in both Houses of a state legislature be based on population alone is fully implemented, not only the rural areas of the United States but the nation itself can anticipate adverse results.

Once both Houses of the state legislatures are apportioned in accordance with the rule, control of fully half the states will pass to an urban majority, leaving the rural areas of a state a minority, or possibly without representation at all.

Having achieved control of the legislature, the urban majority will then have the power to embark upon a legislative program designed to provide the greatest possible benefits to their urban constituents.

The adverse effect on the rural area will come in three stages.

During the first stage, some state legislatures will immediately move to alter or curtail many present state functions.

A prime example in some might be the farm-to-market road programs.

Obviously, an urban area is more interested in the construction of more freeways, expressways and improved city streets and sidewalks than it is in constructing farm-to-market roads that are used less frequently by urban dwellers.

Yet, these farm-to-market roads which require tax dollars to construct and maintain are frequently the sinews by which the strength of the whole community is maintained.

In the education fields, the need for additional funds in the cities and in the rapidly burgeoning suburbs is readily acknowledged.

Today, in well balanced state legislatures, educational funds are distributed on a fairly equitable basis.

An urban dominated legislature certainly could be expected to reorganize existing procedure so as to provide a greater share of the funds for urban use, and particularly to provide more state funds for the construction of suburban schools.

This alteration could take various forms.

It might well be to deny state funds to schools with less than a certain minimum daily attendance, one that could easily be met by urban schols but would force further consolidation of rural schools in order to qualify for state assistance.

This procedure could even be extended to deny recognition to schools with less than the minimum number of required students.

Certainly, a change in curriculum could be anticipated as a means of conserving funds for urban use.

This, for many states, would undoubtedly mean a greatly restricted vocational agriculture program.

The present home economics program operated under the vocational education system could also be in jeopardy.

One of the most devastating actions that could be taken by an urban dominated legislature would be in the field of taxation.

Certainly, the amount of taxes paid by farmers would be increased substantially, even though the revenues would be distributed in such a manner that the major portion would go to the urban areas.

This change could come in various ways.

Real estate, less improvements, could be taxed at a much higher rate than at present.

Sales taxes could be imposed upon farm sales.

These illustrations represent but a few of the immediate steps that an urban controlled legislature could take.

More devastating action will come later during the second stage of rural adversity.

In all probability, in most states where county government prevails, the farmer will feel the next effect of the Reynolds v. Sims decision when there is a forced reorganization of county government units either by Court action or by action of an urban dominated legislature.

Most counties today operate under a "Board of Trustees," elected one from each area, regardless of the population of the area.

This method of selecting members cannot possibly survive the Reynolds v. Sims decision.

Membership of the Board will be based on population, and it requires no oracle to determine where the majority resides.

It is not on the farm.

Having gained control of county governments, the urban power will operate in much the same fashion as the urban dominated legislature, except it will be on a local scale.

The result, so far as the farmer is concerned, will be the same.

The third and most disastrous stage of the application of the Reynolds v. Sims rule will probably come in 1972 when urban dominated legislatures, assuming complete reapportionment by then, undertake to create new Congressional Districts in accordance with the 1970 Census.

The Blow

Here will come the real blow to rural representation in the Congress of the United States.

Although not mentioned in the Supreme Court decision, the state legislature does create new Congressional Districts following each decennial census.

It requires little imagination to visualize the districts that will be created by an urban controlled legislature in many states.

Certainly, they will not be drawn in such a manner as to favor the rural people.

Undoubtedly, they will have equal population but their shape might be something else again.

Having lost representation in the Congress as a direct result of the Supreme Court decision, agriculture then would lose much of the protection and services it now receives under Federal law.

An urban controlled Congress would be interested in food and fiber of the highest quality at the cheapest price for the city constituents, regardless of how or where produced.

These are but a few of the possible consequences of the decision announced by the Supreme Court of the United States on June 15, 1964, when it handed down its decision in the case referred to as Reynolds v. Sims.

"Let's Fight"

Now, the question arises—Do we take this change in our Constitutional form of government lying down?

Do we roll over on our backs and whine and admit we are licked?

Or, do we rise up on our hind legs and fight this infringement of our democratic rights?

I say "let's fight"—for democratic principles are hanging in the balance.

But, I would like to make a few factual statements; call them concessions if you wish.

(1) There is no question that the legislatures of many states are malapportioned in one or both houses.

(2) There is no reason to believe that in most state legislatures reapportionment will not be fairly conducted.

(3) There never has been a prohibition in the U. S. Constitution against any state basing representation of its legislature on population only.

(4) There is absolutely no reason why any qualified person in this nation should be denied the right to vote.

(5) There is no reason why any person should be denied the right to representation in the legislative bodies of the state and the nation.

(6) There is no doubt that if the Supreme Court's ruling in the case of Reynolds v. Sims is carried out literally as ordered by the lower Federal Courts, it would be possible to deny a substantial percentage of the voters of the nation equal representation in their legislative bodies.

On the other hand, it is not reapportionment by itself that should give us most concern.

What we must be most concerned with is—

I. The assumption of legislative powers by the Judiciary, thus upsetting the balance of government; and

II. The denial—up to date—of the right of the people to decide for themselves the method of representation in their state legislatures, and eventually, in the United States Congress.

The reapportionment ruling affects every man, woman and child in this nation.

There may be some who say that the Court's decision applies only to the states and will not affect the Federal government.

This may be true for the present, but the advocates of city control over state legislatures already have made it plain that they believe the United States Congress to be improperly constituted.

During the course of debate they have bitterly lamented the fact that small states have equal representation in the United States Senate.

If the structure of state government can be so pre-emptorily shattered, as in the Reynolds v. Sims case, is there any reason to doubt that a move to reorganize the United States Senate on a population only basis not not far off?

The time to act to protect the rights of our communities is now.

There are two things which common justice demands that we do.

First, let a Constitutional Amendment be submitted and let us fight to a finish to see that all the people of the United States get a chance to pass on it.

Secondly, the Congress should settle once and for all the question of the powers and limitations of the U. S. Supreme Court.

If this is not done, if we supinely acquiesce in the Court assumption of powers not authorized by the Congress, we may expect further encroachments upon the Legislative branch of government.

And, mind you this and mind it well, members of Congress cannot win the battle alone.

We must have the backing of the people actively supporting us at all levels of government.

The task is tremendous—the conflict is inevitable—the reward will be a well-balanced government and a self-governing people.

fusing power and protecting minorities." For example, under a purely numerical system of redistricting, South Dakota's 30,000 Indians, who live in huge reservations covering entire counties, will lose two state senators who now watch out for their interests.

Rep. William M. McCulloch of Ohio says: "People have ever-changing problems that sometimes fail to yield to computer logic. Some may be lumbermen, miners, fishermen or farmers. Some may be of one religion or national origin peculiar in need or consideration. Some may direct their needs toward secondary roads or superhighways, while others are more concerned about the rapid-transit system. Certainly the majority must have effective rule, but the minority, too, is entitled to effective representation, lest important segments of our people be completely subject to the tyranny of a temporary majority."

Chief Justice Warren himself declared, in 1948, when he was governor of California: "Many California counties are far more important in the life of the state than their population bears to the entire population of the state. It is for this reason that I have never been in favor of restricting the representation in the (state) senate to a strictly population basis."

(4) *The Court's decree is a dangerous intrusion by the federal judiciary into the political affairs of the states.* Hardly was the "one-man-one-vote" decision announced before lower courts showed how fast and how far they were willing to muscle in on the deliberations of state governments. Just two days after the June 15 decision, a U.S. district court directed the Michigan Apportionment Commission to come up with a districting plan in 48 hours! In a Vermont case appealed to the Supreme Court, it was ruled in January that the legislature must decide upon a plan and then disband —even though this defies the state constitution.

In Oklahoma a three-man federal district court ignored the machinery set up by the state for reapportionment and autocratically undertook to rearrange the state's legislative districts itself. It set up a master plan that was a nightmare of free-floating voting zones and mistakes. Angrily, Oklahoma's Sen. Mike Monroney said: "Hasty and ill-advised redistricting formulas promulgated by the courts can result in confusion and inequities. Good local self-government cannot be imposed from above. It must be generated by the people themselves."

(5) *The Court's edict means that the citizens of a state can no longer decide upon their own form of representative government.* One of the six states involved in the Court's June 15 ruling was Colorado. Few states have so diligently attempted to work out a method of representation tailored to their own unique characteristics. Since it became a state in 1876, its legislature has been reapportioned five times. In the spring of 1962, citizens' groups gath-

ered to work out a reapportionment amendment that would keep pace with the state's increasing urban growth. They split into two camps. One wanted both houses of the general assembly based on population alone; the other supported a "Federal Plan," keeping geographic representation in the senate.

Each side took its case to the public. They fought up and down the state with countless speeches, debates, newspaper ads, billboard posters, radio and TV spots. This referendum overshadowed all other election issues in Colorado that year. And the outcome was stunningly clear. The "Federal Plan" won by 305,700 to 172,725. It carried every county in the state.

The amendment was challenged; it was upheld by a federal district court. And then, on June 15, the Supreme Court threw out Colorado's plan. In an amazing statement, Chief Justice Warren said that, because the plan adopted was contrary to the Court's new ruling, Colorado's referendum vote was "without federal constitutional significance."

There were stinging dissents. Said Justice Tom C. Clark: "Colorado, by an overwhelming vote, has written the organization of its legislative body into its constitution. In striking down Colorado's plan of apportionment, the Court is invading the valid functioning of the procedures of the states, and thereby commits a grievous error which will do irreparable damage to our federal-state relationship."

Today Colorado's senate has been redrawn to satisfy the Court. But the issue is still being debated. Meanwhile, the voters wonder what, if anything, their ballot is worth, or their state constitution.

Will of the People. Only one recourse is left to American citizens who wish to restore our representative system to its original integrity: an amendment to the United States Constitution. Today in Congress, and in the states, forces are gathering behind proposals that would:

1. Guarantee the citizens of every state the right to decide for themselves, by one-man-one-vote ballot, the apportionment of their own legislature.

2. Guarantee that this power will not be curtailed or reviewed by any federal court.

3. Guarantee that one house of each legislature can reflect factors other than population if such apportionment has been submitted to a vote of the people.

This in essence would be the 25th Amendment to the Constitution. Whether it is passed in Congress and ratified by the states will depend upon the support it receives from the American people. The stakes are high—as high as the preservation of our Republic.

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A Reader's Digest REPRINT

Reapportionment: Shall the Court or the People Decide?

By Holman Harvey
and Kenneth O. Gilmore

It is more than a power struggle between city-dwellers and country-dwellers. At issue in today's political battles over the makeup of state legislatures are fundamental principles of democratic representation

Lightning struck last June 15 when the Supreme Court handed down its "one-man-one-vote" reapportionment decision. This decree requires both branches of every state legislature to be strictly based on *population only*. It represents the most far-reaching change in American political structure since our Constitution was written 178 years ago.

Few issues in recent times have stirred more controversy or created more confusion. Nearly every state in the nation—from Montana to Maryland, from Alaska to Florida —is struggling to satisfy the federal judiciary's order. A dozen states have already remapped their legislative districts. Others are desperately trying to meet court-imposed deadlines or to devise delaying tactics. In the meantime, proposals for a constitutional amendment reversing the Court's action are being seriously debated in Congress and in the states.

Make no mistake, we are at a crossroads: our form of government is in a major crisis. What then are the stakes?

Represent the People. "The basic issue," says Robert G. Dixon, Jr., professor of law at George Washing-

ton University, "is not simply 'one-man-one-vote.' It is *fair representation*, a concept which philosophers and politicians have been arguing about for ages."

Since the beginnings of democracy in the Greek city-states, man has groped for the best ways to govern himself and to achieve a true representation of the people's will. As far back as the 11th century England began to move painfully toward more representative government; kings formed various councils consisting of lords, clerics and powerful landowners. Later, townships, boroughs and counties were called into councils—originally to be consulted on property taxes.

In America at the Constitutional Convention in Philadelphia in 1787, this was the essential question: How could a *balanced*, genuinely representative form of government be achieved, one that would reflect the majority will while protecting the minority and preventing mob rule? A solution was hammered out by our forefathers. So that the large states could not be controlled by the small or the small steamrollered by the large, a two-house plan was born, with a House of Representatives based on population and a Senate based on geography.

Thomas Jefferson is reputed to have asked George Washington why he favored the system. Washington asked Jefferson why he poured his coffee from cup to saucer. "To cool it" was the response.

"Even so," Washington said, "we pour legislation into the senatorial saucer to cool it."

As America matured into the world's first successful example of modern constitutional democracy, states adopted the federal two-house system. By 1961, all but 11 states had constitutions that took into account interests other than population—geographic factors, mainly—so as to achieve fair representation. Missouri's "Little Federal" system furnishes an example. One house is apportioned on the basis of districts of fairly equal population in both city and rural areas, with districts adjusted every ten years. In the other chamber each of the 114 counties has at least one member. Under these provisions, coöperation between city and rural areas is a valued tradition.

The Chicken Vote. But—and this is where the rub came—as America's cities grew, some states neglected to reapportion their lower houses. The result was, in many states, unjust rural domination of legislatures. Delaware's house districts had not changed since 1897. So unbalanced was Connecticut's house of representatives that one vote in a rural town was worth 429 votes in Hartford. In New Hampshire's lower house, one district had 1000 times more residents than another.

One remiss state was Tennessee, with no revisions since 1901. A group went to court to force reapportionment of the assembly, with Memphis resident Charles W. Baker suing the secretary of state, Joe C. Carr. "The pigs and chickens in our smaller counties have better representation in the Tennessee legislature than the people of Nashville!" declared that city's mayor.

The case reached the Supreme Court. Contrary to all previous decisions—and to Justice Felix Frankfurter's warning that the judiciary "ought not to enter this political thicket"—the Court ruled in 1962 that state legislative districts *are* subject to its judicial scrutiny.

The Baker v. Carr decision was a bombshell. It spawned similar reapportionment suits in 34 states. So varied were the court interpretations that cases from six states—Alabama, Colorado, Delaware, Maryland, New York and Virginia—were appealed to the High Tribunal.

Then on June 15, 1964, the nine black-robed men filed into the marbled chambers and handed down their shattering decision. In four cases the voting was eight to one; in the other two, six to three. In all cases, the long-established "Little Federal" system was knocked out. Chief Justice Earl Warren justified the decision on the provision of the 14th Amendment to the U.S. Constitution which requires that no state shall "deny to any person within its jurisdiction the equal protection of the laws." He wrote: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."

Question the Wisdom. There were vigorous dissents to the decision. Justice Potter Stewart noted: "The Court's draconian pronouncement, which makes unconstitutional the legislatures of most of the 50 states, finds no support in the words of the Constitution, or in any prior decision of this Court, or in the 175-year political history of our federal Union."

"It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the states," said Justice John M. Harlan. "People are not ciphers. Legislators can represent their electors only by speaking for their interests—economic, social, political—many of which *do* reflect where the electors live."

Aroused critics from both political parties questioned the wisdom of the Court's fiat. *The Wall Street Journal* summed up the feelings of many when it said, "The Court had a chance to bolster our traditions by requiring one house truly on population, and permitting the other on a geographical or other basis to reflect common interests. Instead of stopping with that, its fiat threw out institutions painfully wrought by experience and tried to substitute abstract theory."

The House of Representatives was so incensed that it rammed through a bill stripping all federal courts of the power to hear or review state legislative apportionment cases. The Senate passed a "sense of Congress" with the purpose of asking the courts to go slow in forcing state legislatures to fall into line until the whole matter could be reviewed.

Problems That Count. Today, as this momentous issue is debated across the land, every citizen should ponder these points:

(1) *The Court's decree threatens to spark a chain reaction that may go all the way down to the school-board level.* There are 3072 counties in the United States, and 91,185 local governments. How long will it be before the federal courts poke into each of these units of representative democracy to take head counts and draw boundary lines? A Michigan court recently told Kent County's board of supervisors that it must be reapportioned on a population-only basis. Other suits have been filed in New York and California. Where, exactly, will it end?

"Carry the Court's decision to its logical conclusion," says William S. White, Pulitzer Prize-winning biographer and journalist, "and even the historic and deliberate population imbalance in the U.S. Senate could not in any logic longer prevail." After all, Nevada's 285,000 citizens elect as many U.S. Senators as do New York's 17 million.

(2) *The decision will swing the pendulum from legislatures with outdated apportionment and too much rural weight, to legislatures under the raw control of metropolitan vote-getting machines.* In 25 states, more than half the population resides in metropolitan areas. In 14 states, three populous counties or fewer will elect more than 50 percent of the legislators.* America's sprawling urban areas will call the shots, up and down the land. Chicago will hold sway over Illinois, Detroit over Michigan, Philadelphia and Pittsburgh over Pennsylvania, Phoenix over Arizona, and Las Vegas over Nevada.

The specter of raids on state treasuries by metropolitan-dominated legislatures concerns many. They see pressures mounting for more state funds for urban renewal, relief cases and public housing—with many of the funds being matched by U.S. tax dollars. These spending programs in turn will garner more votes for the city machines. Mayors in some states may soon be far more influential than the governors.

New York is perhaps the most vivid case. Here 38 percent of the population has been able to elect a majority in the senate, thus protecting certain underpopulated counties of this large state with all its diverse interests. But, under the Court's rule, it is only a matter of time before the New York City metropolitan area, with 63 percent of the state's population, will be completely dominant.

(3) *Some groups of voters can be wiped out, under a "winner-take-all" numerical system.* The Court's decision, notes *The Christian Science Monitor*, "will tend to weaken the complex American system for dif-

*Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, Missouri, Nevada, New Hampshire, Rhode Island, Utah, Washington.

APPORTIONMENT IN MINNESOTA

League of Women Voters of Minnesota

1964

APPORTIONMENT IN MINNESOTA

I. DEFINITIONS

APPORTIONMENT: The distribution of representation. Another way of saying it: assigning one or more members of a legislature to geographic areas such as counties, cities, towns.

REAPPORTIONMENT: A change in apportionment. In most cases, a change in the previous reapportionment, since only the first assignment of legislators under a new constitution is an apportionment.

DISTRICTING AND REDISTRICTING: These terms are generally used interchangeably with apportionment and reapportionment. Strictly speaking, districting is the process of drawing lines within a political unit to which a number of representatives has been assigned.

CONSTITUTIONAL (RE) APPORTIONMENT: The ground rules laid down in a constitution for assigning and reassigning representation in a legislature.

STATUTORY REAPPORTIONMENT: The law which defines the boundaries of the legislative districts and apportions the legislators to the districts so defined. According to the Minnesota Constitution, as interpreted by the courts, statutory reapportionment should be done by the legislature after every federal census.

POPULATION REAPPORTIONMENT: Giving the same number of people the same number of legislators.

AREA REAPPORTIONMENT: Area does not mean acres or square miles, but refers to the assignment of legislators to political subdivisions, usually counties. In its simplest form each county would be assigned one representative. However many states have used modified area formulas, giving some weight to population.

AVERAGE OR IDEAL DISTRICT: The population of the state divided by the total number of representatives or senators. On the basis of the 1960 census the ideal Senatorial district in Minnesota is 3,413,864 divided by 67, or 50,953; the ideal House district is 3,413,864 divided by 135, or 25,288.

DEVIATION: The mathematical difference between supposedly equal districts. Political scientists have said that districts may vary from the ideal by 15% either way and still be fair.

PER CENT OF POPULATION THAT CAN CONTROL. The smallest number which could in theory elect a majority of the legislature. This criterion is frequently used to measure the representativeness of a legislature.

FROZEN DISTRICTS: Legislative districts whose boundaries and representation are set down in the constitution and cannot be changed except by a constitutional amendment.

FLOTERIAL DISTRICTS: Counties remain intact, but additional population over a certain amount is counted with other units for additional at-large representatives.

ENFORCEMENT PROVISIONS: Amending the constitution to insure that the legislature is reapportioned as stipulated by the constitution.

II. INTRODUCTION

As we look ahead to the 1965 session of the Minnesota State Legislature, it is apparent that one of the most challenging and controversial issues will be that of apportionment. On June 15, 1964 the United States Supreme Court in *Reynolds v. Sims* handed down a precedent-shattering decision requiring that both houses of state legislatures be apportioned on a population basis. Just before the Supreme Court decision, a suit (*Honsey v. Donnovan*) was filed in Federal District Court by a group of Twin City area officials asking for reapportionment for Minnesota.

Minnesota's Constitution already specifies that representation in both houses is to be based on population. Minnesota was last redistricted in 1959 on the basis of 1950 census figures. The suit contends that the apportionment of 1959 did not accurately reflect population even on the basis of 1950 figures, and that the 1960 census figures reveal further shifts. The suit therefore claims that Minnesota's apportionment is in violation of the equal protection clause of the Fourteenth Amendment.

The combination of the Supreme Court decision and the pending federal court case establishes a whole new climate for reapportionment in Minnesota. The Legislature must consider (1) a statutory plan for redistricting in compliance with the Sims decision and Minnesota's constitutional requirements, (2) possible changes in the Minnesota Constitution to facilitate reapportionment under the "one man, one vote" principle, and (3) the possibility of an amendment to the federal Constitution permitting an area factor in one house which would enable the legislature to submit an area amendment to the Minnesota Constitution if they desired to do so.

Although the Supreme Court established a basic principle for apportionment, it did not set up precise formulas or machinery, but rather left these problems for lower courts and state legislatures. As in the school desegregation decisions, it will probably be a number of years before standards and procedures are established in the various states. Undoubtedly the Supreme Court will have to give further clarification on different plans of apportionment as they are proposed by state legislatures. In the two months after the court handed down its decision there was considerable variance in the methods of implementation. In Colorado the Governor called a special session of the legislature to deal with the problem. Connecticut started a process to elect delegates to a constitutional convention to establish new standards. A federal court in Oklahoma invalidated a May primary and set up new districts for fall elections. Other states were planning to conduct elections under their old systems, expecting the newly elected legislatures to reapportion. Over one hundred different bills dealing with apportionment have been introduced into Congress.

The precise implications of the Supreme Court decisions for Minnesota may be clarified by the ruling of the Federal Court this fall. A citizens commission appointed by Governor Rolvaag is also expected to make recommendations.

Under the new conditions will it be necessary or desirable to establish constitutional rules for apportionment? Before trying to answer this question it is necessary to understand what the basic problems have been, the implications of the Supreme Court decision, and some of the early reactions to the decision.

III THE PROBLEM OF MALAPPORTIONMENT

Malapportionment—the undue discrepancy between the weight given the votes of citizens in different legislative districts—has long been a concern of civic groups such as the League of Women Voters, and of students of politics. According to a recent report on the subject:

> No single feature of State government has been so vulnerable to criticism by statesmen and scholars alike as the unrepresentative situation into which many State legislatures have permitted themselves to drift.[1]

Some factors accounting for widespread malapportionment are: 1) the mobility of population in general, and the fact that reapportionment does not take place continuously, necessarily means that the newest centers of population are underrepresented; 2) voters of one party may be discriminated against by gerrymandering—the drawing of districts to the advantage of one party—by the majority in the state legislature; 3) some state constitutions have contained provisions specifically basing representation on extreme area factors such as the equal representation of all counties regardless of population; 4) because reapportionment is such a difficult problem, many legislatures have simply refused to reapportion and redistrict their component districts despite constitutional provisions calling for regular reapportionment.

At least until 1962, the pattern of representation in most states was one of overrepresentation of rural areas and underrepresentation of cities and suburbs; metropolitan areas are the ones in which population gains have generally taken place. The pattern appears at least partially responsible for the generally unresponsive attitude of state legislatures to urban demands. Numerical underrepresentation of some areas, and the consequent inability of one party to elect the governor and majorities of both legislative houses, has led to divided government and stalemates in decision-making. Both of these factors, it is argued, contribute to the increasing involvement of the federal government in urban and state concerns.

Until quite recently, the malapportionment problem had two sides, neither of which seemed very susceptible to change. According to one writer:

> The problem is twofold—first, one of obtaining an equitable and acceptable pattern of representation for each of the houses; second, of assuring periodic reapportionment in accordance with the agreed pattern.[2]

Although the original constitutional provisions of thirty-six states based apportionment completely or substantially on population, thirty-five of the state legislatures were apportioned at least partially on the basis of area factors by November 1961. Such provisions were most extreme in Connecticut—where each town, including Hartford with some 177,397 population and Union with only 261, sent two representatives to the lower house—and Nevada, where 8% of the population could in theory control the Senate.

Obstacles to changing constitutional provisions to clauses stipulating population alone as the basis of representation, or to some more reasonable area factors, were numerous. A simple amendment in most states required, of course, the concurrence of the legislature which was the prime beneficiary of the status quo. Even if it were possible to get a constitutional convention, this was frequently composed of members elected on the basis of existing

legislative districts. Indeed, in spite of increasing advocacy of pure population factors by political scientists, the trend in a number of states was to add an area factor where the previous constitutional basis had been population only.

The second main impediment to securing equitable reapportionment was the reluctance of legislatures to act. (Reapportionment would have required depriving fellow legislators of re-election, and involved rural legislators handing over control to urban and suburban representatives.) Legislatures therefore frequently ignored constitutional provisions requiring reapportionment after each federal census and, having failed to reapportion for a number of years, the legislatures were faced with an even more aggravated situation, since the discrepancy between the existing distribution of power and the constitutionally required distribution became greater. If they did reapportion, they made only very minor changes.

Had appropriate sanctions been available, legislative balking might not have been crucial. Frequently, the governor was not empowered—at least not explicitly—to intervene. State courts were sometimes unwilling to intervene at all in what was a "legislative" function. The Minnesota Supreme Court in 1945 said in essence "Yes, the legislature does have a duty to reapportion, but because of the separation-of-powers doctrine, we can't force the legislature to do its duty; that is up to the voters." Until 1962 the federal courts had refused to rule on cases involving legislative apportionment.

These various factors meant that the urban voter, confronted by both constitutional obstacles and legislative intransigence, had really no means of achieving just representation except in the states (some 15) allowing constitutional change by initiative.

IV. SUPREME COURT DECISIONS

Baker v. Carr: the Tennessee case

In 1962 the Supreme Court opened Federal Courts to voter complaints about unfair representation in state legislatures. In an opinion overturning previous precedents, the Court justified intervention on the provision of the 14th Amendment to the U.S. Constitution that requires that no state "shall deny to any person within its jurisdiction the equal protection of the laws."

The *Baker v. Carr* decision represented a substantial victory for advocates of reapportionment, but it left unclear the precise criteria for representation which the Supeme Court would hold as not incompatible with the "equal protection" clause of the Fourteenth Amendment.

The decision immediately prompted the citizens of many states to bring suit in both state and federal courts challenging existing apportionment plans. Fearful of court action, or having their statutes branded unconstitutional, state legislatures began to reapportion themselves. Near the end of 1963 there were only eleven states in which suits had not been brought. All of these, except Minnesota, had been reapportioned in the previous two years. Twenty-eight of the other thirty-nine states were reapportioned in 1961 or later, and some of these were the first actions in many years. Mississippi had not previously reapportioned since 1890, Delaware since 1897, Alabama and Tennessee since 1901, Wyoming since 1931, Nebraska since 1935, Kentucky since 1942, and Maryland since 1943.

Only twelve states had not been reapportioned since the last federal census, and only four of these had not been reapportioned at all in the last decade.

> . . . At the time of the *Baker* decision, there were only twenty-seven legislative houses, in twenty-two states, where as high as 40 per cent or more of the voters was required to elect a bare majority of legislators. In the remaining seventy-two houses, a smaller percentage of voters could elect a majority of legislators. Eighteen months later, a vote of 40 per cent or more voters was required to elect majorities in forty-five houses in thirty-five states.[3]

Reynolds v. Sims

On June 15, 1964 Chief Justice Warren, in a majority opinion dealing with a number of cases from various states, ruled that under the "equal protection" clause of the Fourteenth Amendment of the Federal Constitution, neither house of a state legislature could deviate from a population basis:

> Legislatures represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a full and unimpaired fashion is a bedrock of our political system.

Continuing, the opinion stated the dilution of a citizen's vote by malapportionment meant counting the vote of one citizen more than another:

> It would appear extraordinary to suggest that a state could be constitutionally permitted to enact a law providing that certain of the state's voters could vote two, five, or ten times for their legislative representatives, while voters living elsewhere could vote only once . . . Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical.

If the Court was absolutely definite about requiring both houses to be based on population, however, it specifically granted latitude to the states in determining exact formulas of representation:

> By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts in both houses of its legislature as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents or citizens or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

The Court suggested the possibility of more latitude in using political subdivisions in legislative than in congressional districting "as long as the resulting apportionment was one based substantially on population and the equal-protection principle was not diluted in any significant way."

A state might it suggested:

> . . . legitimately desire to maintain the integrity of various political subdivisions insofar as possible and provide for compact districts of

> contiguous territory in designing a legislative apportionment scheme . . . Indiscriminate districting without any regard for political subdivisions or natural or historical boundary lines may be little more than an open invitation to partisan gerrymandering. Single-member districts may be the rule in one state while another state might desire to achieve some flexibility by creating multi-member or floterial districts.

The opinion also stated that continual reapportionment was not necessary and that decennial reapportionment would meet minimal criteria.

Dissenting from the Warren opinion were Justice Harlan, Stewart, and Clark. In a strong dissent, Justice Harlan attacked the theory that "every major social ill in the country can find its cure in some 'constitutional principle'" and stated that "the equal protection clause was never intended to inhibit the states in choosing any democratic method they pleased for the apportionment of their legislatures." Justices Stewart and Clark took a moderate position, saying that a state need only be "rational" in its districting. The problem with this approach, and its lack of definite standards, was shown by the inability of these two justices to agree on its application to the six cases before the court.

V. TRADITIONAL ARGUMENTS FOR AN AREA FACTOR

Before discussing the reactions to the Supreme Court decision, it may be well to consider briefly some of the traditional reasons advanced for including area or other non-population factors as a basis for legislative representation.

The "Federal" Analogy

One traditional reason for the incorporation of an area factor in one legislative house has been based on the example of the federal Congress. If it is logical, or acceptable, that the states—regardless of size—receive equal representation in the federal Senate, is it not equally acceptable that the counties within a state receive equal representation in one house?

The historical reason for equality in the federal Senate was the insistence on the part of the smaller sovereign states on this scheme if they were to agree to union. The Warren opinion stated:

> Political subdivision of states—counties, cities or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist in the carrying out of state governmental functions.

The use of the analogy by defenders of existing apportionments appeared, declared the Court, "often to be little more than an after-the-fact rationalization offered in defense of maladjusted state apportionment arrangements."

Another argument in favor of the "federal" analogy is the desirability of two houses, with differing bases, checking each other. The Supreme Court's answer to this is that differing size of constituencies and differing terms would provide variety between the houses, without necessitating the representation of areas.

Protection of Minority Rights

Another argument for departing from strict population figures as a basis

of apportionment is that concerning the necessity of protecting minority rights. Proponents of this view stress the fact that the United States, like Great Britain and unlike revolutionary France, has been a constitutional, limited, representative democracy as opposed to the sort of "Rousseauan" democracy characterized by mass rule. The system of checks and balances, the separation of powers and the inclusion of Bills of Rights in both the federal and state constitutions, as well as federalism itself, are all safeguards against hasty, ill-considered, drastic action by majorities.

There are several arguments against this view.

1) Only certain interests, or minorities, are in fact so overrepresented and assured of consideration. Urban groups of all sorts, immigrants and their immediate descendants, Northern Negroes, union members, and others are all among those numerically underrepresented by schemes which value area in favor of population factors. One could perhaps make a case for overrepresenting all minorities—although most majorities are formed of minorities—but it appears indefensible to overrepresent some supposedly vulnerable minorities but to underrepresent others.

2) The Supreme Court opinion stated:

> Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a state could elect a majority of that state's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result.

The Functional Argument

According to some theorists, the appropriate way to represent citizens in a political system is not as individuals but rather as members of groups or interests which perform different functions for society. One can also argue that functions served by some interests are far more important than numbers of citizens involved would indicate. Agriculture, for instance, is more essential to American well-being than a head count of farmers in relation to the total population would suggest.

Arguments against this theory are several. First, if existing malapportionment does represent the agricultural function "fairly," it is obviously "unfair" to such functional groups as manufacturers, retailers, distributive services, etc. Second, it would be all but impossible to get widespread agreement on what constituted fair "functional" representation if population were to be completely abandoned as the basis of representation.

The Danger of Fragmentation

This argument, a corollary to the above, stresses the dangers of doing away with such factors as community, tradition, group membership, etc., as buttresses between the citizen and government. Once cut adrift from stabilizing influences such as these, citizens would be powerless before an all-powerful government. Certainly, the priority which totalitarian governments have attached to abolishing interest groups suggest their insulating function.

It is perhaps unrealistic, though, to argue that merely counting each citizen equally will serve to break down real bonds which exist.

Rural Superiority

While rarely stating it as baldly as saying rural residents are good and city dwellers are bad, opponents of equal districting do imply that the political ethics, at least, of countryfolk are superior to those of city residents. There is also the fear expressed that accurate representation of cities would subject the entire state to the "bossism" of political machines. What these commentators overlook, however, is that "machines" may exist in rural areas on the county level. More genuine is the fear that with urban areas electing both houses and the governor and other state officers, rural voters will have no voice at all in state government.

The "Unfairness" of Voter Representation Even With Equal Population Districts

One aspect of this argument states that individuals differ in terms of wealth, prestige, and political influence, and that these inequalities will not be erased by merely giving each individual the same weight toward representation.

A second line of argument contends that the emphasis being placed on the "unfairness" of existing apportionment schemes is quite out of proportion to the relative lack of concern about other sorts of unfairness in the political system.

Cited as one of the least "fair" aspects of most United States politics is the one-member district system under which the majority gets its representative sent to Congress or the legislature, while the minority, even if it is very large, is completely unrepresented.

VI. REACTION TO THE SIMS DECISION

Area was more than a theoretical concept. It was embodied to a greater or lesser degree in the apportionment of more than forty of the state legislatures. It is not surprising therefore that the Sims decision was highly unpopular in many quarters. A number of different bills were introduced in Congress to delay or modify the court's decision. As of mid September 1964, two major bills were pending.

The Tuck Bill

As passed by the House, this bill would remove state legislative apportionment from the jurisdiction of Federal Courts. However there was considerable feeling that this bill would itself be unconstitutional. Only once before, in 1868 during the reconstruction period, had Congress restricted the power of the courts. To avoid this objection a group of senators in conjunction with officials of the Attorney General's office worked out the Dirksen Bill which is designed to regulate the enforcement of the Sims decision.

The Dirksen Bill

This bill would give states a period of grace before complying with the "one man, one vote" decision. Court action is to be stopped for as long as the courts feel the stay is in the "public interest." Congress would specifically define "the public interest" to permit the status quo to continue until January 1, 1966 and added "It would be in the 'public interest' to allow states 'a reasonable opportunity' to act through regular legislative sessions or amend-

ments to the state constitutions." The courts would have to follow the criteria established by Congress "in the absence of highly unusual circumstances."

The Mansfield Resolution

With liberal Senators blocking the passage of the Dirksen Bill and hence the adjournment of Congress, the Senate agreed on a compromise resolution, stating that it is the "sense of Congress" that the courts should give legislatures six months to comply with the Sims decision.

The McCulloch Amendment

The purpose of the bills was to give Congress and the states time to act on an amendment such as the one introduced by Representative McCulloch of Ohio and Senator Dirksen of Illinois. This amendment would provide that if a state legislature based one of its houses on population it might use some other criterion for the second. It also provides that any alternative scheme to strict population would require approval of the people in a referendum. This type of amendment is supported by a number of Midwest congressmen, and it would seem that if it is passed by Congress there would be little difficulty in finding 38 states that would ratify it.

The Disunion Amendments

One group, the Council of States, prompted by the Tennessee decision in 1962 put forth three proposed amendments to the United States Constitution: the first would establish a procedure for amending the Constitution by state legislative initiative without congressional action; the second would place control of state legislative apportionment beyond any federal court jurisdiction; the third would create a Court of the Union composed of the chief justices of the highest courts of the states to sit above the Supreme Court. These amendments called "Freedom Amendments" by their sponsors and the "Dis-Union Amendments" by their opponents have attracted increased support since the Sims decision. Their adherents are concerned not only with the reapportionment decisions but also feel that the Supreme Court in recent years in such decisions as those regarding school segregation has been making attack on states rights and has not been interpreting the Constitution but has in effect been rewriting it.

Favorable Reactions

In other quarters the Sims decision was hailed as a victory for democracy. It has been stated that, although on the surface it looks as if the trend of Supreme Court decisions has been to minimize states rights in actuality these decisions should help to strengthen state legislatures. Made more effective by being more representative, a general upgrading of legislatures should be the most effective way to reserve to the states those powers which otherwise will be taken away and performed on a federal level due to abdication of responsibilities by present less effective legislatures.

With both houses of a bicameral state legislature to be apportioned on a population basis, other observers have gone on to ask why two houses at all? Chief Justice Warren answered such arguments by stating that two houses would prevent precipitate action, and that even if both were apportioned substantially on a population basis, they would develop different collective attitudes because of the different size of constituencies and different length of terms. His argument was characterized by the *New York Times* as being

"more like a prescription for political featherbedding than a justification for bicameralism." There are a number of arguments for unicameralism in terms of increased efficiency and the saving of time and money. Although unicameralism is recommended by the Model Constitution of the National Municipal League, only Nebraska has one house. In Nebraska the unicameral legislature was adopted during the depression as an economy measure. Since adopting a unicameral system would put an entire house of incumbents out of office, there has understandably been relatively little interest in other state legislatures.

VII. QUESTIONS TO BE DECIDED IN MINNESOTA

Either an amendment to the federal constitution permitting an area factor or a unicameral legislature are possibilities for the future. More important for the next legislature will be a number of questions relating to the precise mechanics and formulas of apportionment. Precise rules for apportionment may be written into a state constitution, or details may be left to the discretion of the legislature. The recent Supreme Court decision has invalidated provisions in state constitutions which established an area factor for either or both houses of state legislatures; however, the Warren opinion also indicates that states should be permitted some flexibility in the methods they use in apportionment. Lower courts and state courts in reviewing legislative plans for reapportionment have given considerable weight to state constitutional provisions, assuming these provisions did not violate the basic premise of "population-only." Traditionally, explicit instructions on reapportionment have been regarded as a protection to the people against the possible malfeasance of their legislatures. However, with the likelihood of court review, legislatures themselves may wish to establish more definite constitutional standards.

According to the Minnesota constitution, the representation of both houses of the legislature shall be "apportioned equally throughout the different sections of the state, in proportion to the population thereof"; "the senators shall be chosen by single districts of convenient contiguous territory," and "no representative district shall be divided in the formation of a senate district"; reapportionment is to take place at the first session after each federal census. The constitution also states that half the senate is to be elected every two years, except that all senators shall stand for election at the election following each new apportionment; actually Minnesota has always elected the entire senate every four years. In considering whether the present constitutional provisions should be changed or made more specific, here are some of the factors that might be considered.

1) *How often should reapportionment take place?*

Traditionally, most states have specified that reapportionment should take place every ten years in keeping with the most recent federal census. In an era when the population is so mobile, such a relatively long time lag means that there will be considerable change. Possibly it would be easier for legislatures to make smaller adjustments after shorter periods of time.

However, the Warren decision indicated that reapportionment every ten years would meet the Court's minimal criteria. Certainly arithmetical exactness is not so vital that legislatures should be forced to reapportion annually.

The Report of the Minnesota Constitutional Commission of 1948 recom-

mended a provision that reapportionment should become effective with the expiration of senate terms .

If a decision is made that more frequent reapportionment is desirable, population data other than the federal census figures now utilized must be obtained. This will probably necessitate a different definition of "population."

2) *Precisely who should constitute "population"?*

If the federal census figures are not used, the most logical basis for representation would be either registered voters, or voters in an election—probably a presidential election where the turnout is largest. This would, of course, make possible reapportionment every four years.

The practical effects of basing representation on voters, or registered voters, instead of on total population, would probably be quite small—at least in a northern two-party state. (In the South, of course, where substantial groups in the population have been systematically denied enfranchisement, the effects might be quite different.) The argument against the use of registered voters as a basis is that such lists are frequently out of date or inaccurate. Minnesota does not require smaller communities to register voters. Those opposing the use of election figures argue that the presence or absence of local issues may distort the turnout. Those in favor cite the ready availability of such figures and believe their use for representation would encourage higher citizen participation in voting. Presently only one state uses election figures as a basis for apportionment. Several states specify "eligible voter" rather than population as a criterion.

3) *Permissable deviation from the ideal.*

The Supreme Court decision left in doubt precisely how equal "equal population" districts must be. The Court said, "Mathematical exactness or precision is hardly a workable constitutional requirement." Political scientists have recommended a constitutional provision specifying the maximum deviation any one district may have from the ideal. Figures range from the 10% recommended by the Commission on Intergovernmental Relations to 20%, with 15% most generally accepted. Based upon 1960 census figures, the ideal Senate district in Minnesota contains 50,953 people, while the ideal House district is 25,288. In actuality Senate districts vary from 24,494 to 100,520, and House from 8,343 to 52,015. Some of the largest discrepancies occur within the city of Minneapolis, and appear to have very little rational basis. Another check on too great legislative latitude in specifying district size would be a provision whereby not less than 40% or 45% of the population could elect a majority of each house.

4) *Counties as units of representation*

Certainly if rules are incorporated that counties may not be divided or that county lines must be followed whenever possible, the resulting districts may diverge substantially from the ideal. The 1959 statute in Minnesota does not cut across county lines. One advantage cited in using whole counties is that their use precludes extreme gerrymandering. More important is the fact that outside of metropolitan areas, business is conducted on a county basis. Counties serve as a geographical identification of districts and candidates, while artificial boundaries are generally unknown by the general populace. However, many critics of the numerous counties in Minnesota maintain that county lines are themselves artificial and should be redrawn to make more

economic and efficient units of government. It is interesting to contrast two different plans for redistricting established by the Supreme Courts of Wisconsin and Michigan. The Supreme Court in Michigan districted across county lines and produced a plan where senate districts varied less than 2% from the ideal and house districts less than 5%. In Wisconsin the Court followed a constitutional provision requiring the observance of county lines. Although an occasional district did deviate from the ideal, the end result was that 45.4% of the voters are required to elect a majority of the Assembly, and 48.4% to elect a majority of the Senate.

5) *Size of the legislature*

It is always tempting for a legislature, when struggling with the problem of which seats must be eliminated, to add a few representatives to make things come out even. Presently Minnesota's state senate is the largest in the nation and the house is the fifteenth largest. Political scientists tend to agree that state legislatures function better if they remain relatively small. In practice state legislatures are often short-handed. It is probably unrealistic to urge Minnesota's legislature to reduce its size, because this would mean asking legislators to vote themselves out of a job; but perhaps it would be desirable to have a constitutional amendment prohibiting further growth.

6) *Which agency should reapportion?*

Traditionally, in the majority of states including Minnesota, the function of reapportionment has been entrusted either wholly or initially to the legislature. Increasingly, however, because of legislative reluctance or failure in this area, the function has been delegated to other agencies as was done in Hawaii, where the governor has the responsibility, and Alaska, where there is an apportionment board. Such an agency may be a specifically listed group of officials of the state, as named in the constitution or in a statute. Another possibility is for the governor to name a committee to perform this function and to review its work. Conceivably, if a semi-automatic formula is available for reapportionment, it could be the responsibility of one official like the secretary of state.

The courts have also recently been named as reapportioners, although their function is generally one of inspecting new laws in the area and determining their constitutionality, rather than doing the original districting.

Political scientists widely favor the efficient expert commission as opposed to the more cumbersome and often protracted legislative process. A major problem with this approach is that, because of widespread party affiliation in this country, it is difficult to find experts so Olympian that they have no partisan leanings. If this problem is bypassed by equally dividing an independent agency between the two parties, the likelihood of stalemate appears. This actually happened in Illinois in 1964 when the commission, like the legislature before it, was unable to agree on any scheme; the result was an at-large election.

There is still a great deal to be said for a respected, relatively nonpartisan commission reapportioning or backstopping legislative reapportionment. If one cannot completely remove politics from the process, one can at least reduce it.

Because of the practical difficulty of gaining legislative approval of an independent agency initiating redistricting, the best use for an agency might

be the legislature first, and a commission second if the legislature failed to act in a given time period.

7) *Enforcement machinery*

Prior to the Supreme Court decisions, there was no remedy for the citizen if the legislature failed to act; now he has the opportunity of seeking relief from the courts. With the threat of court action it seems likely that legislatures will prefer to reapportion themselves rather than have it done for them by the courts. Court action, however, is not automatic. It requires someone to file a suit, it is expensive for the individual involved, and it can be a slow process.

For these reasons it may be desirable to set up definite enforcement machinery. The possibilities available are (1) a special session of the legislature, (2) a commission as dicussed above, or (3) the responsibility could be turned over to the State Supreme Court.

It is also possible to establish a procedure for the review of any redistricting legislation by a special agency or the courts.

8) *Multiple-member vs. single-member districts, and different alternatives*

The Minnesota Constitution specifies that senators be elected from single-member districts (only two candidates for one seat). It is silent on the election of representatives. Traditionally Minneapolis has elected two representatives at large from each senatorial district. Advocates of multimember districts say that within a city a single-member district may be so small that the average voter has no idea of its boundaries and consequently who his representatives are. The opposite extreme—electing all the representatives of an urban county at large—presents the voter with a long list of candidates with whom he may not be familiar, and sometimes enables one party to elect its entire slate. Opponents of multimember districts point to the added expense for a candidate of campaigning in a large area. Outstate, some senatorial districts elect two representatives at large; some are divided into three house districts, some two, and a few have only one. In striving for equality of population, it is possible to create large multiple-member districts outstate where two senators would be elected from three counties or even three senators from four. Removing the restriction that representative districts must not be divided in forming senate districts would give the legislature additional flexibility.

Another possibility would be a system of "floterial votes" where counties remain intact, but additional population over a certain figure is counted with other units for an additional at-large representative.

A different scheme allows a county which is entitled to one and a half representatives to elect one representative for each session and another for every alternate session.

Still another alternative is "weighted voting." Under this arrangement the legislators themselves would remain constant and shifts in population would be represented by giving or taking away the votes they could cast in the legislature. The major advantages of this system are: 1) areas with sparse population could retain a representative to handle special local problems, 2) counties that deviate from the average would not have to be divided, and 3) continuity of leadership in the legislature would be preserved. A disadvantage is that a small number of men with a large number of votes might be able to exert undue influence on legislation.

All these plans are rational and have been used in one or more states.

APPENDIX I

HISTORY OF REAPPORTIONMENT IN MINNESOTA

The problem in any reapportionment is the possible shift in control following transfer of legislative seats—a shift largely circumvented in the past by increasing the size of the legislature.

Constitutional Provision of 1857. Article IV, Legislative Department, Sec. 2 . . . "The representation in both houses shall be apportioned equally throughout the different sections of the State, in proportion to the population thereof. . . ."

Reapportionment of 1860. This was the only redistricting act in Minnesota history which did not increase the size of the legislature, and actually decreased the size of both houses. The Senate was reduced from 37 to 21, the House from 80 to 42.

Reapportionment of 1866. The Senate was increased by 1 to 22. The House was increased by 5 and brought to 47.

Reapportionment of 1871. The population of the state increased by 75% during the previous five years which made necessary either a tremendous shift in legislative power or another increase in size of the legislature. The legislature chose to increase the number of legislators. The Senate increased from 22 to 41 and the House from 47 to 103.

Reapportionment of 1881. This was the first large-scale redistribution of legislative seats. The population had increased 78% in the previous 10 years. The Senate was increased only 6 (from 41 to 47) and the House from 103 to only 106.

Reapportionment of 1888. Ramsey and Hennepin showed great growth in the intervening 7 years and for the first time discrimination against the two counties appeared. The Senate was increased from 47 to 54, and the House from 106 to 114.

Reapportionment of 1897. This act was considered to be fairly equitable throughout the state although Hennepin and Ramsey were somewhat underrepresented. Again the legislature was increased from 54 to 63 in the Senate and from 114 to 119 in the House.

Reapportionment of 1913. Southern Minnesota was shown to be overrepresented by the 1910 census. Instead of redistricting, a constitutional amendment was passed by the legislature and presented to the voters in 1912. This was known as the Seven Senators Bill since it permanently restricted Hennepin county to seven senators. It was defeated by the people.

The 1913 Legislature redistricted, increasing the Senate from 63 to 67 and the House from 119 to 130. Southern Minnesota had the greatest loss of representatives. The 131st member of the House was added in 1921.

The 1913 Legislature also passed the Seven Senators Bill again, but at the 1914 general election the voters again, by a larger majority, rejected the proposed amendment.

Reapportionment of 1959. Based on the 1950 census figures, this statute was really an area-population compromise in both houses. It gave the metropolitan center about half the increase to which its population entitled it. The

suburbanite had been the forgotten man in the previous 46 years of growth. Badly underrepresented suburban areas benefited the most, and Ramsey county lines were well drawn; but the City of Minneapolis retained some discrepancies (about 2 or 3 to 1). Outstate, the worst inequities of both under and over-representation were rectified. The statute increased the House from 131 to 135 but the Senate remained at 67. The statute became effecive in 1962 with the expiration of senate terms.

A constitutional amendment was also passed by the 1959 Legislature which would have changed the Constitution in two ways: (a) By making the basis of the Senate membership area instead of population; (b) by adding enforcement machinery that would make reapportionment more likely after each census. The amendment was to take effect after the 1970 census. This amendment provided that the five metropolitan counties surrounding the Twin Cities would have a permanent Senate representation of 35%, commonly referred to as a frozen district. The method of enforcement was a special session to be called immediately if the reapportionment were not accomplished within the regular session. The special session could only consider reapportionment, and was to remain in session until the job was accomplished. Legislators would receive no compensation during the special session.

Amendment No. 2 on Reapportionment was presented to the voters in 1960 and defeated.

APPENDIX II.

LEAGUE OF WOMEN VOTERS ACTION ON REAPPORTIONMENT

At its 1953 convention the League of Women Voters of Minnesota decided to consider reapportionment as one of three areas of emphasis in its study of constitutional revision. League principles state that every citizen should be fairly represented in his lawmaking bodies.

At the Council Meeting of 1954 delegates decided that the reapportionment situation in Minnesota justified legislative action in the 1955 Legislature.

During the fall of 1954 League units overwhelmingly decided in their first consensus on reapportionment to support a double approach:

(a) The League believes our constitutional provisions should be changed to give some consideration to an area factor. This is because we have an unusually large metropolitan center. Urban centers can be fairly represented by less than their full quota of legislators because of their cohesiveness, and ordinarily their closeness to the capitol.

(b) Until such time as our constitution is changed to provide this different basis for representation, its present provision should be carried out.

In the 1955 Legislature the League supported a statute (the Bergerud Bill) as carrying out item (b) above, and testified for an amendment to provide fair population-area compromise. We supported a Senate amendment providing for an area in that chamber. The League helped get the Bergerud Bill through the House. The newspapers and the chief author gave the League credit for its help in passing the bill. However, the bill failed in the Senate.

In the 1957 Legislature an aroused interest was apparent. Legislators sought League lobbyists out and the Bergerud Bill just passed the House by 2 votes.

The House also passed a constitutional amendment putting area into that body (LWV withheld support because of inflexibility and insufficient enforcement). The Senate distorted the Bergerud-Gillen bill (renamed for its new Senate author) by restoring the status quo; then added a constitutional amendment providing for a population-apportioned House and an area-apportioned Senate; the House rejected it upon final referral.

Between 1957-59 three important events took place, all of which exerted pressure on the Legislature:

(1) A suit was brought in Federal Court claiming that the citizens of Minnesota were being denied equal protection of the laws by the long failure of the legislature to reapportion. In 1958 the Federal Court ruled that it would not even rule on whether it had the power to intervene until after the 1959 session of the legislature—giving that body one more chance to fulfill its constitutional duty. If it did not reapportion, the plaintiffs were invited to readdress the court for relief.

(2) A committee on reapportionment, appointed by Governor Freeman in 1958, consisting of 9 Senators, 9 House members, and 9 laymen (including two LWV members), recommended a constitutional amendment that put the area factor in the House (County Representation Plan).

(3) The imminence of the 1960 census also exerted pressure upon the legislators. If action did not come in 1959, the basis of reapportionment would then be the new census figures, which by all indications would show an even greater discrepancy between under and overrepresented areas.

In 1959 the League, realizing that its membership had changed a great deal since its 1954 consensus, provided updated information, and asked for a new consensus. Results showed our members still in favor of two approaches to reapportionment:

(a) A temporary statutory solution such as the Bergerud Bill.

(b) A constitutional amendment recognizing area in one chamber in a fair, flexible, and specific manner; guaranteeing population in the other house; providing effective enforcement machinery and no increase in legislative size.

In the 1959 Legislature the House passed the County Representation Plan and the Bergerud Bill. The Senate passed a greatly amended Bergerud Bill and an amendment giving that chamber the area factor. The conference committee deadlocked and the session ended without action. After several weeks of heated meetings during the special session, the conference committee agreed on a statute adding four members to the House to become effective in 1962 without reference to the amendment.

The proposed amendment was studied by the League of Women Voters and found short of its standards of fairness and enforceability. The League decided it would rather continue the fight for a good amendment than settle for something inadequate. Consequently, in 1960 before the general election, the League worked actively to inform the public about Amendment No. 2 and explain its opposition to the amendment. Amendment No. 2 was defeated at the polls in the fall of 1960.

In the 1963 legislative session Amendment No. 2 was repassed by the House but laid over and finally killed by a Senate committee.

APPENDIX III.

POPULATION OF LEGISLATIVE DISTRICTS IN MINNESOTA ON THE BASIS OF 1960 CENSUS FIGURES

During the 1950-1960 decade the urban population of the state increased by 30.6 per cent while the rural population decreased by 4.9 per cent. Only 49 of Minnesota's 87 counties showed an increase, and in general these were counties having cities of 10,000 or more. The central cities showed a slight decrease while their suburban areas increased by a staggering 278.9 per cent. Presently about 1½ million people live in the Minneapolis and St. Paul area, ½ million in the Duluth-Superior area, and 100,000 in the Moorhead-Fargo area.

It is expected that further increases in population will occur in the metropolitan suburban areas. The Metropolitan Planning Commission has estimated that in the four years since the 1960 census, suburban Hennepin had grown by more than 25%, suburban Ramsey by 20% and Anoka County, the fastest-growing county in the state, by 44%.

PRESENT APPORTIONMENT OF LEGISLATIVE DISTRICTS IN MINNESOTA AND 1960 CENSUS FIGURES

No. of District	*Senate Population*	*House Population*	*Area of Districts*
1	40,356	16,588	Houston
		23,768	Fillmore
2	40,937	24,895	Winona (city)
		16,042	Winona exclusive of city
3	30,517	17,007	Wabasha
		13,517	Olmsted exclusive of Rochester
4	52,015	52,015	Rochester (city)
5	61,757	20,590	Mower exclusive of Austin
		13,259	Dodge
		27,908	Austin (city)
6	33,035	33,035	Goodhue
7	38,988	38,988	Rice
8	41,070	16,041	Waseca
		25,029	Steele
9	37,891	37,891	Freeborn
10	50,671	23,685	Faribault
		26,986	Martin
11	44,385	20,588	Blue Earth exclusive of Mankato
		23,797	Mankato (city)
12	41,815	19,906	Le Sueur
		21,909	Scott
13	78,303	42,457	Dakota (in part)
		35,846	Dakota (in part)
14	45,759	24,401	McLeod
		21,358	Carver
15	39,424	23,196	Nicollet

No. of District	*Senate Population*	*House Population*	*Area of Districts*
		16,228	Sibley
16	42,156	18,887	Meeker
		23,249	Renville
17	49,394	21,718	Redwood
		27,676	Brown
18	46,127	14,460	Watonwan
		16,166	Cottonwood
		15,501	Jackson
19	49,972	23,365	Nobles
		11,864	Rock
		14,743	Murray
20	45,911	9,651	Lincoln
		13,605	Pipestone
		22,655	Lyon
21	43,953	17,004	Pine
		26,949	Chisago and Isanti
22	45,173	13,330	Lac qui Parle
		16,320	Chippewa
		15,523	Yellow Medicine
23	44,923	14,936	Swift
		29,987	Kandiyohi
24	36,589	20,132	Stevens and Grant
		16,457	Traverse and Big Stone
25	33,227	21,313	Douglas
		11,914	Pope
26	46,542	12,367	Stearns (exclusive of St. Cloud)
		34,175	Stearns (in part)
27	54,256	33,803	St. Cloud (city)
		20,453	Benton and St. Cloud in Sherburne
28	33,262	16,631 *av*	Kanabec, Mille Lacs, Sherburne
		16,631 *av*	elect two at large
29	29,935	29,935	Wright
30	100,524	50,934	Hennepin (part)
		49,586	Hennepin
31	85,637	33,916	Hennepin
		41,721	Hennepin
32	93,919	50,498	Hennepin
		43,421	Hennepin
33	85,162	41,852	Hennepin
		43,310	Hennepin
34	59,475	23,738 *av*	Minneapolis
		23,738 *av*	two at large
35	70,915	35,438 *av*	Minneapolis
		35,438 *av*	two at large
36	53,233	26,617 *av*	Minneapolis
		26,617 *av*	two at large
37	65,120	32,560 *av*	Minneapolis
		32,560 *av*	two at large

No. of District	*Senate Population*	*House Population*	*Area of Districts*
38	24,428	12,214 *av*	Minneapolis
		12,214 *av*	two at large
39	67,808	38,904 *av*	Minneapolis
		38,904 *av*	two at large
40	37,143	18,572 *av*	Minneapolis
		18,572 *av*	two at large
41	65,162	32,581 *av*	Minneapolis
		32,581 *av*	two at large
42	44,323	22,162 *av*	Minneapolis
		22,162 *av*	two at large
43	83,348	56,076	Ramsey
		27,272	Ramsey
44	53,150	27,664	Ramsey
		25,486	Ramsey
45	51,639	28,020	Ramsey
		23,619	Ramsey
46	42,176	21,520	Ramsey
		20,656	Ramsey
47	62,551	30,429	Ramsey
		32,122	Ramsey
48	76,011	53,038	Ramsey
		22,973	Ramsey
49	53,650	25,644	Ramsey
		28,006	Ramsey
50	52,432	26,216 *av*	Washington
		26,216 *av*	elect two at large
51	85,916	42,958 *av*	Anoka
		42,958	elect two at large
52	40,094	12,162	Aitkin
		27,932	Carlton
53	58,775	32,134	Crow Wing
		26,641	Morrison
54	35,318	12,199	Wadena
		23,119	Todd
55	48,960	24,480 *av*	Ottertail
		24,480 *av*	elect two at large
56	49,730	39,080	Clay
		10,650	Wilkin
57	33,921	23,958	Becker
		9,962	Hubbard
58	54,726	38,006	Itasca
		16,720	Cass
59	56,554	28,277 *av*	St. Louis (part)
		28,277 *av*	elect two at large
60	46,012	23,006 *av*	St. Louis (part)
		23,006 *av*	elect two at large
61	50,738	30,362	St. Louis (part)
		20,376	Cook and Lake

No. of Districts	*Senate Population*	*House Population*	*Area of Districts*
62	50,135	25,068 *av*	St. Louis
		25,068 *av*	elect two at large
63	45,228	22,614 *av*	St. Louis
		22,614 *av*	elect two at large
64	45,919	27,729	Beltrami and Lake of the Woods
		18,190	Koochiching
65	26,458	11,253	Norman
		15,205	Mahnomen and Clearwater
66	54,480	18,298	Pennington and Red Lake
		36,182	Polk
67	34,759	8,343	Kittson
		12,154	Roseau
		14,262	Marshall

SELECTED BIBLIOGRAPHY ON APPORTIONMENT

Baker, Gordon E. *Malapportionment: The Judges, the Politicians and the People.* Address before the League of Women Voters of the United States' Conference on Apportionment and State Government, Chicago, March 19, 1963.

Baker, Gordon E. *State Constitutions: Reapportionment.* New York: National Municipal League, 1960.

Boyd, William J. D. *Patterns of Apportionment.* New York: National Municipal League, 1962.

Council of State Governments: *Legislative Reapportionment in the States.* Chicago, June, 1964.

Council of State Governments: *The Book of the States 1964-65* Volume XV. Chicago, 1962.

David & Eisenberg. *State Legislative Redistricting.* Chicago: Public Administration Service, 1962.

de Grazia, Alfred. *Essay on Apportionment and Representative Government.* Washington: American Enterprise Institute for Public Policy Research, 1963.

Jewell, Malcolm E. (ed.). *The Politics of Reapportionment.* New York: Atherton Press, 1962.

League of Women Voters of the United States. *Inventory of Work on Reapportionment by State Leagues of Women Voters.* Washington: Jan., 1963.

McKay, Robert B. *Reapportionment and the Federal Analogy.* New York: National Municipal League, 1962.

National Municipal League. *Model State Constitution,* 6th ed. New York: 1963. See also their periodical, *National Civic Review,* for current activity in the field of reapportionment.

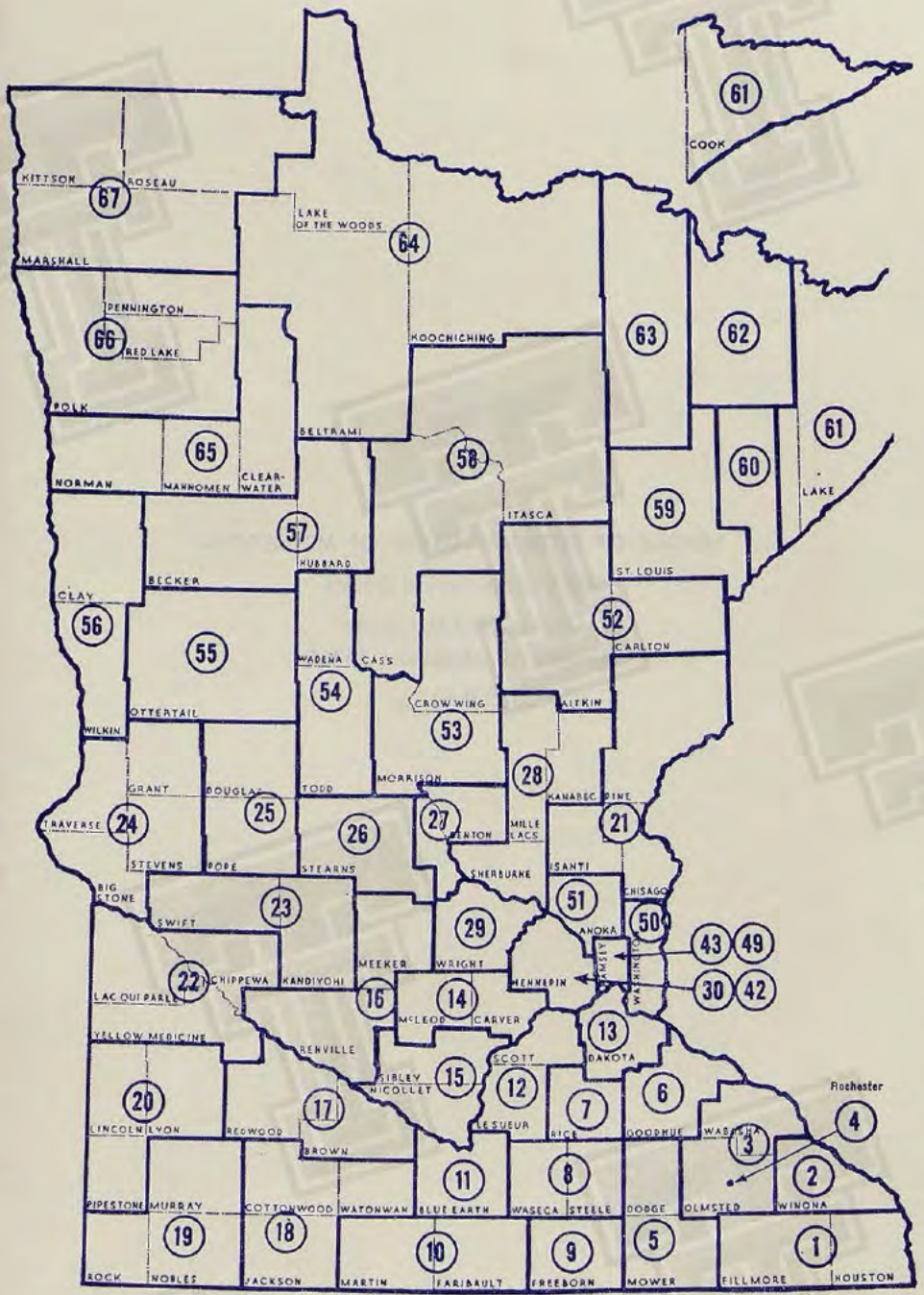
Silva, Ruth C. and Boyd, William J. D. *Selected Bibliography on Legislative Apportionment and Districting.* New York: National Municipal League, 1963.

Twentieth Century Fund. *One Man—One Vote.* New York: 1962.

United States Advisory Committee on Intergovernmental Relations. *Apportionment of State Legislatures.* Commission Report A-5. Washington: 1962.

NOTES

1. Advisory Commission on Intergovernmental Relations, A Commission Report, *Apportionment of State Legislatures,* Washington, D.C., December 1962, p. 77.
2. Herbert L. Wiltsee, in *The Book of the States,* 1962-63, Volume XIV, The Council of State Governments, Chicago, 1962, p. 34.
3. Herbert L. Wiltsee, in *The Book of the States,* 1964,65, Volume XV, The Council of State Governments, Chicago, 1964, p. 36.



LEGISLATIVE DISTRICT MAP

LEAGUE OF WOMEN VOTERS OF MINNESOTA

State Organization Service

University of Minnesota
Minneapolis, Minnesota 55455

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EQUAL REPRESENTATION

A Guide to Reapportionment in Washington State

THE LEAGUE OF WOMEN VOTERS OF WASHINGTON

Published by the
League of Women Voters
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Mrs. Allen L. Edwards, President
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Contents

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"The purpose of legislative representation in a democratic system of government is just that—to represent."

One Man—One Vote Twentieth Century Fund

Prefa

EQUAL REPRESENTATION

A Guide to Reapportionment in Washington State

Preface

During the past decade Americans have become increasingly aware of reapportionment and the need for equal representation as one of the great issues of the day. It is a problem that divides us politically, affects the way we are governed, and has its roots deep in the very foundations of our government. It may be the most crucial issue of our time.

A short backward glance at the origins of our government, and the philosophies that molded it and continue to affect its development, may throw some light on the present crisis.

THE DEVELOPMENT OF REPRESENTATIVE GOVERNMENT

"The principle of equality of representation lies at the very heart of responsible government. At the ballot box, in a representative democracy, each citizen is supposed to be and should be, the equal of every other citizen, and all are entitled to approximately equal voice in the enactment of laws through elected representatives."

Supreme Court of Oklahoma

Early history

Representative government had its origins in the councils established by European kings in order to raise armies and revenues. In England these councils grew into Parliament. Its powers in relation to the King grew until the parliamentary body became supreme by the end of the 17th century. Representative government began at a time when nearly all wealth was measured by land, and Parliament represented land owners. As Parliament became more powerful, the question of **who** or **what** should be represented was debated and finally, with the Reform Act of 1832, was resolved in favor of representation by population. Today in Great Britain there is general agreement that parliamentary districts should contain approximately equal populations. Redistricting is accomplished regularly on a non-partisan basis.

Government in Colonial America

Colonial America was being settled during the two centuries of struggle with this problem in England. It is not surprising that the same debate and conflict on representation are reflected in our federal and state constitutions, which were being written during this period. Representative government in the United States was also influenced by another factor—direct democracy, as practiced in the town meeting where every man spoke for himself. As American society grew larger and more complex, we developed the system of electing representatives to speak for us at all levels of government.

Writing the Constitution—a political compromise

Apportionment of Congress was an important issue in drawing up the United States Constitution. At the Constitutional Convention in 1787 the larger states wanted voting power proportioned to population, while the small states wanted equality of voting. At a critical point in the heated debate on this issue, delegates from Connecticut proposed

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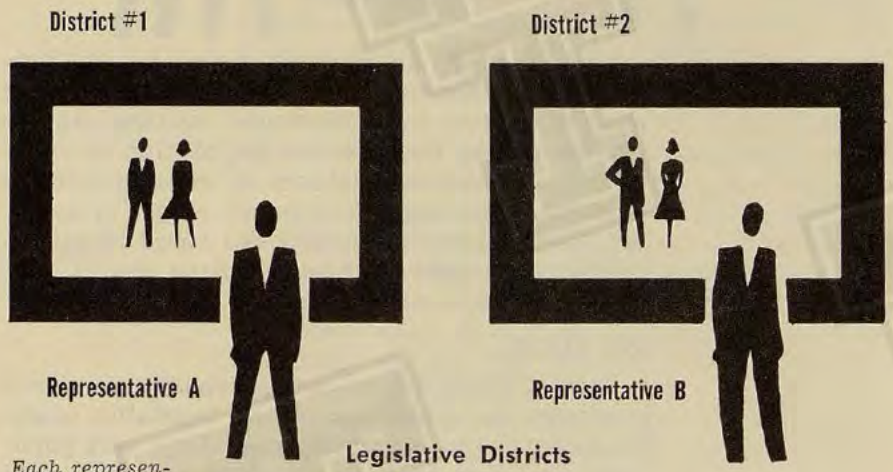
that the House of Representatives be based on population (with each state entitled to at least one representative), and that the Senate have two senators from each state regardless of population. This plan was written into the Constitution, but was considered a compromise by our founding fathers. It was not regarded as an ideal or a principle of representative government. It was a necessary expedient to bring opposing factions together so that the new Constitution, which bound together sovereign states into a federal union, could be written and ratified.✠

WHAT IS A LEGISLATIVE DISTRICT? WHAT IS APPORTIONMENT?



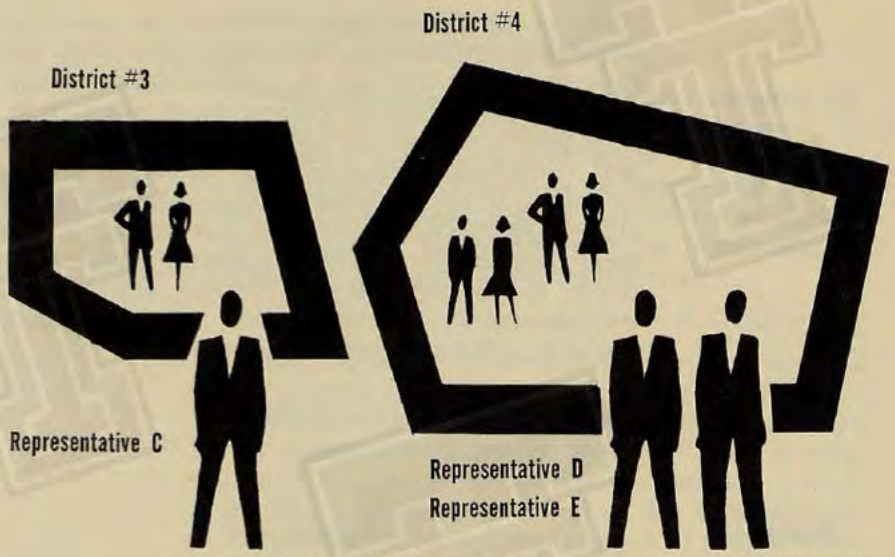
Legislative Districts

Each representative speaks and votes for the people in his district—his "constituents"

Districts are the fixed geographic areas or political units which elect representatives. Districting is the establishment of the geographical areas, or the "drawing of the lines." Apportionment✠• is the distribution of representatives among these units. In the illustration above, each district has the same number of people, and the apportionment is one representative per district. Here is another illustration:

✠ James Madison kept detailed notes about the proceedings. See his Notes, first published in 1840. A good edition is: G. G. Hunt, ed., *Writings of James Madison,* New York, 1900-10.

✠• The terms apportionment and districting as well as reapportionment and redistricting are used interchangeably by most authorities today.



These districts are unequal in size, but the proportion of representation is maintained by having more legislators from the larger districts. Apportionment may be based on population or some other factor, such as land area, or existing political units (counties, registered voters, etc.). For example, New Hampshire (until 1964) based its apportionment on taxes paid, and Indiana counts only male inhabitants over the age of 21.

THE STATES

Each of the 50 states has in its constitution some provision for apportionment of legislative seats. There are many variations used. Many have population as a base for both chambers. Our own state of Washington is one of these. Other states use geographic or political units for the base for at least one chamber. The following table summarizes the major classifications:

Constitutional Provisions For Representation in State Legislatures✻

Both houses population	*Both houses* slight modification in one house	*population* significant modification in one house	*One house population:* one house political subdivisions	*Both houses political subdivisions* (with modifications)
15 States	9 States	12 States	7 States	7 States

✻ As of November, 1961. Table from "Apportionment of State Legislatures," published by the Advisory Commission on Intergovernmental Relations.

Population grows and shifts

The pattern in America throughout the 19th century was one of equal representation in state legislatures. The original constitutions of 36 states contained apportionment provisions in which both houses of legislatures were based largely on population. In addition to specifying the basis for representation, most state constitutions provided for periodic apportionment to take care of population shifts.* In the 18th and 19th centuries these shifts were easily taken care of by adding more representatives to the legislatures. But the 20th century became a time of crisis. There was no longer an expanding westward movement, the frontier was filling up, population was increasing rapidly, and the great movement to the cities had developed. Constitutional and practical limits in the number of legislative seats that could be added were reached, and legislatures now faced the really difficult business of dividing the existing pie.

Ways to keep the status quo

Readjusting existing districts means changing the status quo, and in order to do this many devices have been used. The most common has been to change state constitutions to base one house of the state legislature on area, or a fixed political subdivision. The variations of this idea are sometimes called the "little federal plan" — on the assumption that the relationship between a state and some lesser division of government (such as a county) is like that between the federal government and the states. States, however, are sovereign bodies, while towns and counties were created by the state for the convenience of state administration. It is misleading to talk of area representation as a "federal plan." On the basis of land area, Alaska would be entitled to many more senators than Rhode Island.

The "little federal plan"

Another way of keeping the status quo was to ignore constitutional provisions to redistrict. Thus many legislatures simply refused to act. According to the 20th Century Fund in **One Man, One Vote,** as disparities in the size of districts grew . . .

. . . "factors other than population were often introduced by a constitutional amendment or by failure to reapportion. Those who held political power abandoned population representation in order to retain their control. . . Such philosophical

* Periodic apportionment is called redistricting and/or reapportionment.

justifications as the so-called "Federal Plan" were designed to obscure the real motivation, just as today, most of the elaborate arguments against representation on the basis of people are simply covers for a naked struggle for political power."

THE NEED FOR REDISTRICTING AND REAPPORTIONMENT

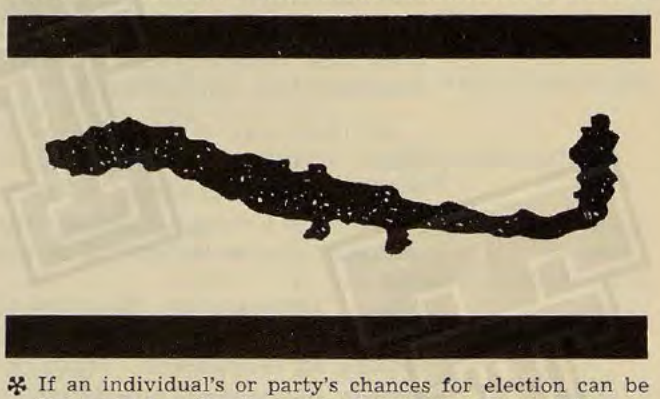
"The most general statement that can be made . . . is to the effect that as of 1960, the average value of the vote in the big city was less than half the average value of the vote in the open country so far as electing members of the state legislature is concerned."

Devaluation of the Urban and Suburban Vote
by Paul T. David and Ralph Eisenberg

In the past 75 years the United States has changed from a rural to an urban country. More and more people are living in concentrated areas in and around our cities. Perhaps the framers of the state constitutions did not foresee the extent to which our population would shift, or in what directions, but they did realize that changes in district lines or numbers of representatives would be necessary, and they provided for it.

The apportionment dilemma

What they did not foresee was the dilemma inherent in asking the representatives themselves to redistrict and reapportion. Legislators who have been elected are not anxious to change the boundaries of their districts or legislate some districts out of existence.✣ When state constitutions did not



✣ If an individual's or party's chances for election can be improved by changing district lines, they may not be so reluctant. A Massachusetts politician of the 1800's, Mr. Elbridge Gerry was so ingenious in drawing a district to suit himself and his party that the serpent-shaped result inspired the term "Gerrymander."

Plight of urban areas

specify a penalty for failure to redistrict and reapportion, it was easier to ignore the requirement than to carry it out. And so, in states all over the country, apportionment failed to keep up with population changes and resulted in **mal**apportionment, or over-representation of some citizens and under-representation of others. Generally speaking, it is the urban, and recently the suburban, resident who is under-represented. In many states today, as the central city has lost population to the suburbs, there is even some over-representation of city-dwellers.

The ills of malapportionment

A few states have found a solution to the problem of reapportionment by taking the responsibility away from the legislature entirely or by setting up some enforcement machinery that would ensure that reapportionment be done by someone else if the legislature failed. But in most states malapportionment was the rule in legislatures by the 1960's. One way of measuring malapportionment is to look at the number of voters it takes to elect a majority of state representatives. Ideally, slightly more than half would be necessary. A look at the following chart will show the two extremes of apportionment:

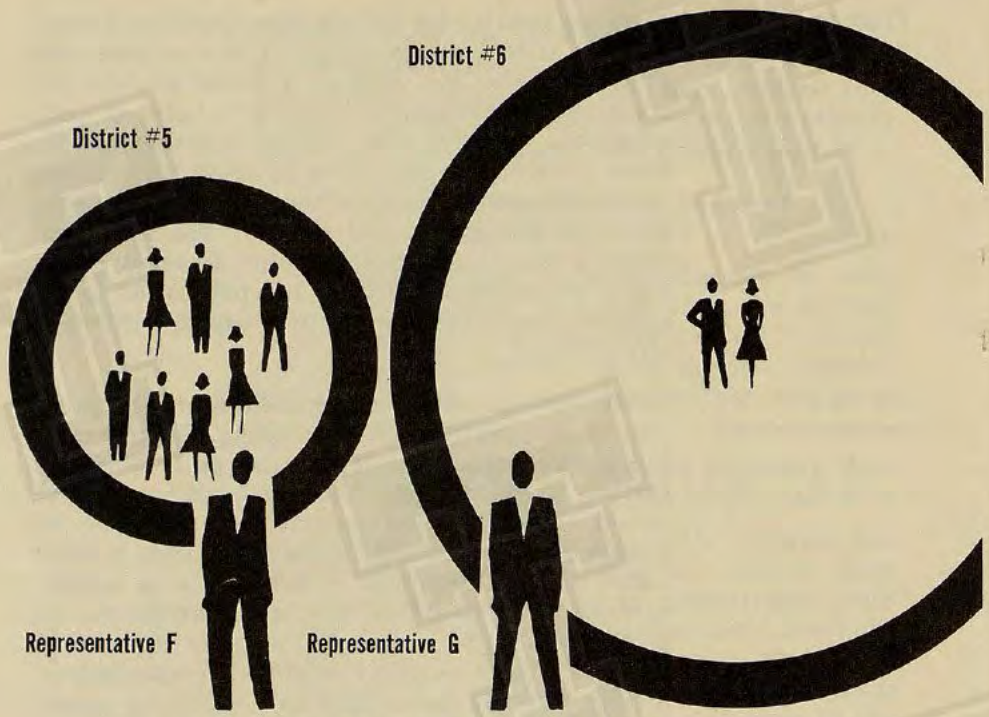
Comparison of State Legislative Districts During 1963 and/or 1964 Sessions✣

	% of population that can elect *majority of senators*
Most Representative	
Georgia (1964 reap.)	48.3
Missouri	47.8
Oregon	47.8
Vermont	47.0
Maine	46.9
Least Representative	
Nevada	8.0
California	10.7
Arizona	12.8
New Mexico	14.0
Florida	14.1

Effects of malapportionment

What are the effects of malapportionment? Many political scientists feel that lack of progress in solving city and metropolitan problems on the local level is due to the under-representation of

✣ Both the best and worst examples come from state senates. State houses of representatives fall in between the extremes.



urban and suburban residents. The big urban questions of the 1960's—regional planning, urban renewal, commuter transportation, juvenile delinquency, crowded schools—tend to get pushed off legislative agendas. As a result cities and counties have begun to go to the federal government for help, and this is changing the balance in federal-state-local relations. In addition to these problems, state legislative malapportionment is often reflected in Congressional districts, since these are drawn by state legislatures.

ENTER THE COURTS . . .

U. S. Supreme Court applies 14th amendment to apportionment

"These plaintiffs and others similarly situated are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes . . .".

United States Supreme Court
Majority Opinion in **Baker v. Carr**

Until its historic decision in May, 1962 in **Baker v. Carr,** the United States Supreme Court had declined to enter what Justice Frankfurter had called the "political thicket" of legislative apportionment. The guarantee, to citizens of all states,

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of equal protection of the laws in the 14th Amendment to the U. S. Constitution provided the grounds for a Tennessee taxpayer's suit in a federal court in that state. The plaintiff charged that he was being denied equal protection because of malapportionment of Tennessee's legislature. Dismissed by the lower court, the suit was carried to the United States Supreme Court, where, in a split decision, the highest court in the land ruled that malapportionment presented a "justiciable cause of action," and ordered the federal court in Tennessee to hear the case. By accepting jurisdiction, the Supreme Court, in effect, opened the doors of legal redress to citizens living in under-represented legislative districts, and a flood of cases from more than 30 states has followed.

In **Baker v. Carr,** the Court went no further than to acknowledge the constitutional issue. It did not rule on the merits of the Tennessee case at that time—this was the job of the lower court. In the fall of 1963 and winter of 1964 the Supreme Court heard arguments on apportionment cases from Alabama, Delaware, Maryland, New York, Colorado and Virginia—all of which had been appealed from lower courts.

In these cases the Court listened to arguments on issues of great interest to many other states with cases pending in state or federal courts. State legislatures, in many cases, were delaying action until more specific guidelines were provided. **Baker v. Carr** had left many questions unanswered. For example, what degree of malapportionment constitutes "invidious discrimination" against the under-represented voter? What role would the courts play in states where the people had the power, through initiative and referendum, to do something about malapportionment at the ballot box? And, most crucial to a number of states, would both houses of state legislatures have to be based on population to avoid "invidious discrimination"?

Both houses to be based on population

In June, 1964 the U. S. Supreme Court handed down decisions in six cases that answered many of these questions. It was the Alabama case, **Reynolds v. Sims,** that made history. In a split decision, again based on the equal protection clause of the 14th Amendment, the Court declared that both

houses of state legislatures must be based on population. In this case, the Court ruled out the so-called "federal plan" for state legislatures. Some students of government feel that this decision is a return to the ideals of the framers of the U. S. Constitution, which had been compromised in order to get the Constitution written and ratified. This decision will have far-reaching effects upon state government. As states begin to comply with the Court's decision many new patterns will be worked out—not only in apportionment, but in state-federal and legislative-judicial relations as well.

The majority and minority opinions of the Supreme Court in the reapportionment decisions of June, 1964 are reminiscent of the philosophical differences of the founding fathers. Chief Justice Warren, writing for the majority in **Reynolds v. Sims** said:

"Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system . . . . To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote."

In a notably strong dissent to all six cases, Justice Harlan wrote:

". . . people are not ciphers, and legislators can represent their electors only by speaking for their interests — economic, social, political — many of which do reflect the place where the electors live".

THE ROCKY ROAD TO REAPPORTIONMENT IN WASHINGTON STATE

Every two years we elect men and women to represent us in the state legislature. These men and women make the laws that influence many things, among them the education of our children, the location and construction of our highways, the

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kind and level of welfare services we provide, the quality of state institutions—and of course, they must determine where the money will come from to pay for these things.

Constitutional provisions for apportionment

The framers of Washington's Constitution knew the importance of equal representation in the legislative body that is entrusted with these weighty decisions. Our Constitution has the following provisions regarding apportionment:

". . . after each enumeration✣ made by the authority of the United States, the legislature shall apportion and district anew the members of the Senate and House of Representatives, according to the number of inhabitants. . . ."

Article II, Section 3
Washington State Constitution

". . . the Senators shall be elected from single districts of convenient and contiguous territory . . ."

Article II, Section 6
Washington State Constitution

These two provisions have been in the Constitution since it was ratified in 1889. Thus Washington's Constitution has always required both houses to be apportioned according to population. There is no provision in our Constitution, however, penalizing the Legislature if it fails to carry out this constitutional duty or providing for somebody else to do it. The history of redistricting in our state has been a record of failure to act. A look at the following chronology shows this record:

✣ Census

HISTORY OF REDISTRICTING AND REAPPORTIONMENT IN WASHINGTON STATE

1889—Constitution adopted. Art. II, Sec. 3— ". . . **and also after each enumeration by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants. . . .**"

1890—Legislature redistricts and reapportions.

1901—Legislature redistricts and reapportions.

1930—People redistrict by initiative (#57). State Supreme Court upholds the use of initiative process for redistricting.

1956—People redistrict by initiative (#199).

1957—Legislature amends people's Initiative #199. (Initiatives may be amended by ⅔ vote of both houses of the legislature.) State Supreme Court upholds amendment.

March

1962—U. S. Supreme Court rules in **Baker v. Carr** that the 14th Amendment to the U. S. Constitution provides basis for legal action on malapportionment.

July

1962—Initiative to the People #211, a redistricting measure, certified for the November ballot after required number of signatures filed with Secretary of State.

Aug.

1962—**Thigpen v. Meyers** filed in U. S. District Court for the Western District of Washington. Plaintiff seeks relief for malapportionment. Court postpones hearing until after November election when people vote on Initiative #211.

Nov.

1962—Initiative #211 defeated at polls—FOR 396,419; AGAINST 441,085.

Dec.

1962—U. S. District Court hears case of **Thigpen v. Meyers,** rules that "existing apportionment of the Washington Legislature is invidiously discriminatory." Court defers final action until after 1963 Legislature has met— "to afford it the opportunity of discharging its constitutional mandate."

April

1963—Legislature adjourns, after a 60-day regular

session and a 23-day extraordinary session, without passing a redistricting bill.

May
1963—U. S. District Court declares existing legislative districts null and void, enjoins Secretary of State (defendant) from conducting elections from existing districts.

July
1963—Secretary of State appeals to the U. S. Supreme Court and petitions for a stay of the District Court's judgment, pending appeal.

Feb.
1964—U. S. Supreme Court grants stay of proceedings in case of **Thigpen v. Meyers,** pending appeal—in effect, restoring existing districts.

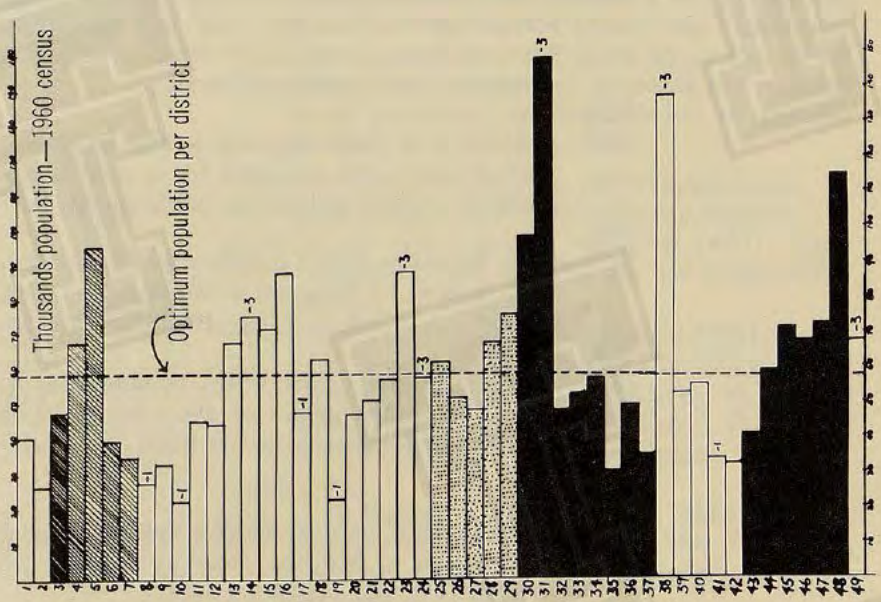
June 15
1964—U. S. Supreme Court rules in **Reynolds v. Sims** that both houses of state legislatures must be apportioned on the basis of population.

June 22
1964—U. S. Supreme Court rejects State's appeal in **Thigpen v. Meyers,** thus upholding the judgment of the District Court.

Oct.
1964—District Court orders legislature to enact a constitutional reapportionment as its first order of business in the 1965 regular session. Court retains jurisdiction in order to examine any apportionment enacted by the legislature.

It is easy to see that the history of redistricting and reapportionment in Washington State reflects the general pattern throughout the other states. This is true, too, in population shifts and growth. The following graph shows the legislative districts, as of the 1960 Census.

LEGISLATIVE DISTRICTS—WASHINGTON



All districts have 2 representatives unless otherwise indicated

King County Districts
Spokane County Districts
Pierce County Districts
Remaining County Districts

The population in legislative districts varies from 20,023 people to 145,180. To put it another way, inhabitants of the 31st district have one-seventh the voice in the state Senate that the inhabitants of the 19th district have. And people of the 2nd district have votes worth 4.6 times as much as people in the 48th district in the House of Representatives. Or to look at it still another way, 35.6% of the population can elect a majority of the state Senate.✣

Initiative 211

It was to remedy this situation in our state that two separate attempts to obtain redistricting and reapportionment were made in 1962. The first of these was made by the League of Women Voters

✣ A look at the chart on page 9 will show Washington's relative position among the other states.

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of Washington who drafted and sponsored Initiative 211, redistricting the state. The second attempt was made by a voter in one of the most under-represented districts of the state, James Thigpen of Midway. He brought a suit in the United States District Court charging denial of equal protection of the laws guaranteed by the U.S. Constitution. Mr. Thigpen asked that Victor A. Meyers, Secretary of State, be enjoined from conducting any primary or general elections for the legislature from these unequal districts.

Thigpen v. Meyers

This suit was one of the many filed in federal courts throughout the nation after the U.S. Supreme Court decision in **Baker v. Carr,** in May 1962. Soon after the Thigpen case was filed the League of Women Voters of Washington sought leave of the court to intervene in the action. This leave was granted. The League, as intervenor, then urged the District Court in Seattle to postpone the trial of the case until after the November, 1962 election because Initiative 211 was on the ballot and, if passed, would take care of the situation for which Mr. Thigpen sought a remedy. The court set the case for trial on a date following the general election in November, 1962. When Initiative 211 failed at the polls, the League of Women Voters was granted permission to remain in the case of **Thigpen v. Meyers,** this time on the side of the plaintiff (Mr. Thigpen). The District Court heard arguments in the case in November, 1962 and ruled in December of that year that the apportionment of the Washington State Legislature was invidiously discriminatory and unconstitutional. The Court further declared that the 1963 Legislature, about to convene, should be given the opportunity to correct the situation. Said the Court:

". . . we are deferring final action to afford it (the legislature) the opportunity of discharging its constitutional mandate."

1963 legislature fails to reapportion

The 1963 Legislature met in regular session for 60 days and in special sesion for 23 days, but failed to reach agreement on a reapportionment measure. The Court met again in April, 1963 and in May declared the existing legislative districts null and void, and prohibited any further elections from those districts. This decision was appealed

by the State of Washington to the United States Supreme Court. While the appeal was pending, a stay of the District Court's order was granted by the U.S. Supreme Court. The effect of the stay was to allow the old legislative districts to remain in effect. A year later, in June 1964, came the U.S. Supreme Court decision in **Reynolds v. Sims.** This decision declared that both houses of state legislatures must be based on population. As mentioned above, Washington is among those states whose constitutions have always required districts in both houses to be based on population, but where there is over-representation of rural areas because of legislative inaction. The Supreme Court directed each state to make . . . "**an honest and good faith effort to construct districts in both houses of its legislatures as nearly of equal population as is practicable.**"

1964 elections

One week after **Reynolds v. Sims** was decided, the Supreme Court rejected the State of Washington's appeal of **Thigpen v. Meyers,** thus affirming the judgment of the lower court. The District Court granted a temporary stay to permit filings for seats in the legislature to take place. The Court then met again to hear arguments and consider remedies. Several solutions, among them "weighted voting"❋, were considered. In its opinion, however, the Court made it clear that a special session of the legislature, if immediately convened for the purpose of redistricting, would be the most desirable solution. Only the Governor can call a special session, and when he declined to do so, the Court could not order the session since the Governor was not involved in the case. The primary election, therefore, was held September 15 and candidates for the legislature were nominated from the existing districts.

In October, 1964 the District Court held another hearing and shortly thereafter issued a decree which required the enactment of a constitutional reapportionment before the 1965 Legislature could enact any other legislation, except for internal housekeeping measures. The Court retained jurisdiction in the case so that it could examine any reapportionment passed by the Legislature.

❋ A plan, which has never been used, whereby districts remain the same, but each legislator has a number of votes in proportion to the number of people he represents.

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THE FUTURE OF THE REAPPORTIONMENT REVOLUTION

Reapportionment has become one of the liveliest issues of the day in legislative halls, editorial columns, public forums and the United States Congress. Like any major social or political change the reapportionment revolution has spawned its counter-revolution. Those who favor area representation and critics of the U.S. Supreme Court have united in an effort to stem the tide of compliance with the 14th Amendment.

Resistance to Supreme Court decision

The 1964 session of Congress saw several attempts to override or delay the effects of the Supreme Court decision, either by removing apportionment from the jurisdiction of the Supreme Court, or by amending the U.S. Constitution to specifically allow state legislatures to use some basis other than population for apportionment. Although these attempts were unsuccessful in 1964, their defeat was not decisive and further action in Congress was expected.

At the state level reaction to the Supreme Court decision has resulted in efforts to amend the U. S. Constitution by a seldom-used method—the passage in legislatures of identical resolutions (memorials) asking Congress to call a convention for the purpose of amending the Constitution in some specific respect. This method has never yet been carried to a successful conclusion. However, memorials will be introduced in 1965 sessions of state legislatures calling for an amendment to permit a "federal plan" or to remove state legislative apportionment from the jurisdiction of the federal courts.

Expectations were that 1965 would also see many acts of reapportionment carried out. Once state legislatures become more representative, they would be less likely to vote for the changes in our constitutional structure called for by these proposals. Thus many new precedents would be set in 1965 both in compliance and in evasion.

* * *

A challenge to state government

Apportionment and its role in representative government are a definite challenge to all of us. Now the courts have issued a new challenge which, if accepted by the states, may well revitalize state

government. As state legislatures become more representative of the people, they will become more responsive to the people's needs. . . . And the way will be opened for state governments to take a leading role in solving the pressing problems of the 20th century.

SELECTED READINGS FOR FURTHER STUDY

Advisory Commission on Intergovernmental Relations, **Apportionment of State Legislatures.** December, 1962. Report No. A-15, 108 pp. (Single copies of this report may be obtained from the Advisory Commission on Intergovernmental Relations, Washington 25, D.C.)

Gordon Baker, **Politics of Reapportionment in Washington State,** 1960, 22 pp; Case Studies in Practical Politics; Holt, Reinhart and Winston.

William J. D. Boyd, **Apportionment Facts.** National Municipal League, 1964, 8 pp. (Single copies may be obtained for 10c from the National Municipal League, 47 East 68th Street, New York, N.Y. 10021.) This is one of many publications on apportionment published by The National Municipal League.

Twentieth Century Fund, **One Man, One Vote.** 1962, 19 pp. (Single copies may be obtained without charge from the Twentieth Century Fund, 41 E. 70th St., New York, N. Y. 10021.)

National Municipal League, **Compendium on Legislative Apportionment,** 1962 113 p., New York, N. Y.

Alfred De Grazia, **Apportionment and Representative Government,** 1963, 180 pp. Prager, N. Y. (A proponent of area representation.)

The League of Women Voters is a non-partisan organization whose purpose is to promote political responsibility through informed and active participation of citizens in government.

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PATTERNS OF APPORTIONMENT

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National Municipal League
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by William J. D. Boyd, September 1962. 24 pages, 50 cents

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Foreword

The apportionment of state legislatures is an old problem but the United States Supreme Court, by its March 1962 decision in the Tennessee case, *Baker* v. *Carr,* has endowed it with an unprecedented newness and aura of urgency.

One result during the ensuing months has been a steady stream of inquiries from lawyers, public officials and others to the National Municipal League, which serves as a clearing house of information on reapportionment as on other basic public problems.

This pamphlet, prepared as a partial answer to these inquiries, describes the major apportionment plans used or responsibly proposed. It is part of the League's augmented service which includes an exchange of legal briefs and court decisions among members of the legal profession and the compiling of bibliographies, monographs and other research material.

For current information on reapportionment activity in the various states, see the "Representation" section of the League's official periodical, the NATIONAL CIVIC REVIEW, published monthly except August.

ALFRED WILLOUGHBY
Executive Director

September 1962

Patterns of Apportionment

The U. S. Supreme Court decision in the Tennessee case of *Baker* v. *Carr*[1] has suddenly focused public attention on the apportionment of state legislatures.

Apportionment—the manner in which representatives are assigned to the various electoral districts or other regions of a state or nation—is a key element of political power in a republican form of government. The high court's ruling has raised the possibility of a dramatic shift of this political power from rural to metropolitan areas. That the shift may be dramatic results not from the decision but simply from the immobile formulas for legislative apportionment that have failed to accommodate a highly mobile population.[2] After a half century of being widely ignored, the problem has become so acute that a means of gaining relief has been ordered. The question facing legislators and citizens is "What constitutes a just remedy?" The Supreme Court deliberately refrained from spelling out that answer and left it to the lower courts to "fashion relief."

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[1] 369 U.S. 186 (1962).

[2] See for example, Paul T. David and Ralph Eisenberg, *Devaluation of the Urban & Suburban Vote* (Charlottesville, Bureau of Public Administration, University of Virginia, 1961).

THE COURTS AND APPORTIONMENT

The courts have consistently upheld the principle that the basis of democracy is majority rule with just protection of minority rights. They have not always been so willing, however, to apply this principle to the problem of apportionment.[3] The two great milestones in the judicial treatment of the subject are the U. S. Supreme Court decisions in *Colegrove* v. *Green*[4] and *Baker* v. *Carr*. The *Colegrove* case, a four-three decision, was widely interpreted to mean that the courts would not enter this "political thicket." The more recent *Baker* decision refuted that interpretation by a six-two margin and thus lent new weight to Justice Black's dissent in *Colegrove* in which he said: "No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote."

In the *Baker* case, Justice Douglas, writing a concurring opinion to the majority decision, stated "there is room for weighting" of votes but emphasized that "invidious discrimination" violated the Fourteenth Amendment. Just how much "room for weighting" is there? The Supreme Court specifically mentions geographical considerations as permissible factors, but just how far the court would go in such allowance was not stipulated. Opinions from lower courts have yet to provide any clear guidelines.

A BASIS FOR APPORTIONMENT

Americans long ago rejected differential representation by class or race, and no one has discovered a way to insure the representation of different levels of wit and wisdom. While it is difficult to find any moral or legal justification for giving more representation to a mountain than to a skyscraper, it may be possible to present a case for guaranteeing representation to groups of people who inhabit broad general regions and who share the common characteristic of being geographically separate from the rest of the state. Undoubtedly the justification for the weighting of votes on the basis of place of residence should be arranged specifically for a particular state, with some body of men assuming the delicate prerogative of establishing general principles for the differential treatment of voters in different sections. Whether the Supreme Court will sanction a pronounced differential treatment of voters as within the

[3] See James E. Larson, *Reapportionment and the Courts* (University, Bureau of Public Administration, University of Alabama, 1962).

[4] 328 U.S. 548 (1946).

scope of equal protection has been seriously questioned by many leading constitutional scholars.

Sanders v. *Gray*,[5] a Federal District Court decision on the Georgia county unit system, established a rule that would allow an approximately 15 per cent deviation from the average in the assignment of units to individual counties. Prior to 1929, federal law required that congressional districts within a state could not vary from the average by more than 15 per cent. The same figure has been proposed in various model laws. It should be emphasized, however, that no court has as yet established this as a basis of differential treatment in state legislative districts.

THE CONFUSED PATTERN

It is hard to find any universal pattern of apportionment in the United States. The closest thing to general acceptance is that 49 states[6] require the apportionment of at least one house of the legislature to be based wholly or partially on population. Even then, there are limitations and infinite variations concerning what peoples should be counted in determining a basis for distribution according to population. Some states exempt "Indians not taxed," others specify civilian population only (e.g., in Alaska where the existence of a large military establishment would appear to make this a reasonable provision), and still more exempt those persons in institutions who are disqualified by law from voting. Some states limit the term population to mean those of voting age, others make the number of registered voters the standard, and some political scientists have advocated the use of a number determined by averaging the vote cast in each district at two successive elections.

Every state has a two-house (bicameral) legislature except Nebraska, which has used a single-house (unicameral) system since 1935. The basis for apportionment of seats in the 99 separate legislative chambers of American state governments is as follows: 32 use population, 8 use population but with weighted ratios, 45 combine both population and area considerations, 8 grant equal representation to each unit, 5 have a fixed constitutional apportionment and 1 (New Hampshire Senate) is based on state tax payments.[7]

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[5] United States District Court, Northern District of Georgia, Atlanta Division (1962).

[6] Delaware has fixed geographic districts for both chambers established by the constitution of 1897.

[7] Gordon E. Baker, *State Constitutions: Reapportionment* (New York, National Municipal League, 1960), p. 5.

SETTING THE RULES

The rules governing apportionment are established by state constitutional or statutory law. In most states the legislature is charged with the execution of these laws. Both the existing laws and the practice of legislative control of their administration have been under criticism for many years. A report by the American Political Science Association's Committee on American Legislatures recommended:

1. The state should be divided into districts for the election of members of the legislature. For bicameral bodies, districts serving as the basis for election to the upper chamber should be larger than for the lower chamber. The controlling factors in drawing district lines should be: equal numbers of population in each district, no gerrymandering, district lines drawn to permit a wide representation of interests.

2. Provision for reapportionment of seats in both houses following each decennial federal census by a special administrative agency outside the legislature, which reapportionment shall go into effect either automatically or in case the legislature fails to act promptly.

3. Disregard of counties and other areas of local government in laying off representative districts in so far as is consistent with efficient election administration.

4. If bicameralism is to be retained, the use of different bases of representation for each house not inconsistent with the principle of equal population constituencies might be proposed to produce a more vital bicameralism. It is suggested that if single-member districts are retained for the lower house, the senate might be elected from multi-member districts laid off with regard to important economic regions with or without proportional representation for each district. Or such a plan might be used for the lower rather than the upper house, for both houses, or for a unicameral legislature.[8]

THE FEDERAL PLAN DISPUTE

The committee's recommendations have not met with universal approval. Two of the largest factions in the apportionment debate are:

1. Those who argue for a "federal" system in which one house is based on population and the other on geographic factors, and

2. Those who urge legislative apportionment solely on the basis of population.

The federal adherents claim a parallel in the United States Congress, with the House of Representatives reflecting population and the Senate granting equality to states. This system or modification of it exists in several states. Arizona, Idaho, Montana, Nevada, New Jersey, New

[8] Belle Zeller (ed.), *American State Legislatures* (New York, Thomas Y. Crowell Company, 1954), p. 46.

Mexico and South Carolina provide exactly equal representation by county in their state senates. Vermont reverses the process and grants exact equality in the lower house to all towns.[9]

This federal analogy is disputed on the grounds that the states are unitary forms of government—not federations—and that there is no parallel between the states within the federal system and the counties within the states. While the federal union was created by the states, which remained semisovereign units of government, no state was created by its counties. The counties, on the other hand, are mere administrative subdivisions created with little or no consideration of regional or population factors.

Adherents of distributing seats strictly according to population are criticized, however, for ignoring the rights of minorities that sometimes are geographically isolated from the rest of the state. Also there is ample historic precedent for making governmental subdivisions of a state the units to which apportionment is granted even though the number of seats assigned might be determined by population.

THE COURTS AND THE FEDERAL PLAN

The application of the federal system to a state was upheld by Judge O. Bowie Duckett of the Circuit Court for Anne Arundel County, Maryland, in his opinion in *Maryland Committee for Fair Representation* v. *Tawes* (May 24, 1962):

> Such an arrangement protects the minorities. It prevents hasty, although popular, legislation at the time. It is based upon history and reason and helps to protect the republican form of government guaranteed to the states by Article IV, Section 4, of the United States Constitution. It preserves the checks and balances in the state government which has worked so well under the federal. Moreover, there would be little advantage in having a bicameral legislature if the composition and qualifications of the members were similar.[10]

Michigan State Supreme Court Justice Eugene F. Black took the completely opposite stand in his concurring opinion in *Scholle* v. *Secretary of State* (June 6, 1960):

> Every schoolboy knows the historic reason for the "built-in" right of each state to two senators. The Federalists reluctantly consented to such feature

[9] William J. D. Boyd (ed.), *Compendium on Legislative Apportionment* (2d ed., New York, National Municipal League, 1962).

[10] For a thorough analytical critique of Judge Duckett's statement, see Robert B. McKay, *Reapportionment and the Federal Analogy* (New York, National Municipal League, 1962).

of the national legislative structure for recorded reasons of fully debated compromise. The Constitution has ordained accordingly since ratification was concluded in 1790. But this provision became a part—and an exclusive part—of the national edifice only. The Fourteenth Amendment, on the other hand, did not become a part of the Constitution until 78 years later. Section 1 of that amendment, far from complementing or inferentially approving for each state the national plan of senatorial representation, was and now is a "built-in" *order directed to each state;* an order that no state shall deny "to any person" within that state the equal protection of the laws. So the Constitution by Article 1 "built into" its permanent national framework that which the Fourteenth Amendment has prohibited each state—relevantly and reasonably—from doing within its borders. Article 1 (supported later by amendatory Article 17) guarantees *inequality* of the representative value of a man's vote so far as concerns the national Senate; whereas the Fourteenth Amendment guarantees a *substantial approximation of the very opposite* within the framework of the government of each state. This is the way—factually—the great instrument stands at present.[11]

THE BASIS OF THE BATTLE

While much energy is expended debating the virtues or vices of county representation as a theory of government, the protagonists' real complaints are:

1. Rural dominance, instituted through county representation, places men in control of the legislature who neither represent nor understand the problems of the majority of the people, or conversely
2. Domination of the state legislature by urban majorities is a threat to rural, generally agricultural, interests.

The rural champions argue that agriculture requires a separate economic approach and, since a rural economy employs fewer people but encompasses greater area, geographical weighting in apportionment formulas is essential. Block voting under the dictation of an urban political boss is greatly feared, and the performance of some large urban legislative delegations has not dissipated this fear.

Urbanites, on the other hand, claim that a minority's right to control one branch of the legislature sets up farmers as a superior class. Why should not one house of the legislature be controlled by Negroes or Catholics or Jews or some other minority? Often such minorities are

[11] Several other courts have subsequently rendered opinions in agreement with Justice Black's statement. See U. S. District Court opinion in the Alabama case of *Sims* v. *Frink* (July 21, 1962), Michigan State Supreme Court opinion in *Scholle* v. *Hare* (July 18, 1962) and Rhode Island Supreme Court in *Sweeney* v. *Notte* (July 24, 1962).

larger groups within a state than is the rural minority. The city and its suburbs cannot be classified as a monolithic whole but are actually the accumulation of many minorities whose interests are of far greater variance than urban-rural differences.

APPORTIONMENT PLANS

Both sides would agree that one rationale for a two-house legislature is the representation of different shadings of political sentiment. Few states utilize identical provisions for the apportionment of upper and lower chambers; and the state senate is always a smaller body than the assembly. It is rare that any apportionment plan is exclusively suited to only one house—what is used for the lower house in one state is used for the senate in another. In the following description of apportionment plans, frequent use is made of one state's lower house system as an example of a possible senate plan or vice versa. Some of the plans in use may be overruled by the courts but they have been included here as they were in use at the time of the *Baker* v. *Carr* decision.

LOWER HOUSE PLANS

The lower house plans discussed here cover:

1. Apportionment on a strict population basis,
2. Apportionment to county districts on the basis of population,
3. Apportionment so that each county is guaranteed one representative while the remaining seats are apportioned according to population,
4. Apportionment by expansion of the assembly's membership to create many small districts,
5. Apportionment on the basis of fluctuating assembly size that is determined in part by population,
6. Apportionment primarily on the basis of political subdivision representation,
7. Apportionment according to complex, multi-criteria formulas.

1. *Population*

The following provision of the *Model State Constitution* seems generally applicable for that house of a state's legislature to be based solely on population factors:

> For the purpose of electing members of the assembly, the state shall be divided into as many districts as there shall be members of the assembly. Each district shall consist of compact and contiguous territory. All dis-

tricts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than [ ] per cent thereof. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane, or other institutions housing persons who are disqualified from voting by law shall not be counted.[12]

Some states with large military establishments or other nonvoting populations might desire the insertion of a statement omitting these groups in the determination of the population to be represented.

2. *County Districts with Population Base*

Gerrymandering—the practice of drawing district lines for partisan electoral advantage—is a constant problem, hence many advocate the use of counties as the basic territorial unit to which representation should be apportioned. This is the practice utilized by most states. In addition to the advantage of preventing flagrant gerrymandering, it promotes citizen understanding of government by avoiding the proliferation of election districts.

Population is used as the basis for determining the number of representatives for each county. A disadvantage is the automatic inequality of district size. Counties rarely have equal population. Even when two or more counties are combined to form a district or when a large county is subdivided or given several representatives, exact equality is impossible or unlikely. California presents a good example. The state constitution requires districts "as nearly equal in population as possible" but prohibits the inclusion of parts of more than one county in the same district. Writing in the *Compendium on Legislative Apportionment,* Eugene C. Lee, of the Bureau of Public Administration, University of California, states:

> The 1961 reapportionment permitted more than one-fourth of the Assembly districts to deviate by over 15 per cent from the state average. The least populated Assembly district was 63 per cent smaller than the state average and the most populated district 56 per cent larger. (The next smallest district was 27 per cent smaller than the state average.) However, the constitutional requirements preserving county lines were almost entirely responsible for these disparities. In multi-district counties, the districts were almost always within the 15 per cent margin.

Some states try to rectify this inevitable discrepancy by creating combination districts.[13]

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[12] Draft of 6th edition (New York, National Municipal League, 1962), p. 6. (Hereafter cited as *Model State Constitution.*)

[13] See description of the Oregon system, *infra,* p. 16.

3. *Guaranteed County Representation*

Protection of minority rights through a maximum reflection of the varied interests within a society are prime considerations in the representative process. Many proponents of a strict population distribution maintain this is best attained in the more numerous chamber. They reason that the representation of civil subdivisions in the less numerous house automatically creates such great inequities that it destroys the validity of the argument concerning the protection of minority rights. While many students of the problem dislike the idea of representing civil subdivisions in either house, they realize that as a practical political consideration it might be necessary. Hence, in the lower house, the counties—or groups of more sparsely populated counties—would be guaranteed representation whether their population warranted it or not. This block of county representatives might be held to no more than one-third or one-fourth of the lower house's total membership. The remainder of the seats would then be apportioned according to population. The exact percentage of the total house seats to be selected on a county basis would be determined by the degree of violence it does to the principle of majority rule. If each county is assured a voice in the legislature, the argument continues, this recognition of civil subdivisions should not be so great as to make it possible for less than 40 per cent of the population to elect a majority of the representatives on the ground that limiting of a popular majority may be warranted but total frustration of majority will is inexcusable.

4. *Small Districts*

Others would achieve the maximum of representation by a slightly different method. They would create an assembly of larger membership, varying between 200 and 400. Thus, each district would be sufficiently small to assure the sparsely populated areas some representation. Not counties but districts of equal though small population would be the basis. A variation of this idea is to set a population quota for each representative—1,000 to 50,000—according to the size of the state. The lower house would then be expanded or contracted as the total population of the state changes.

Proponents of a more numerous lower house claim that an expanded membership need not be feared as an invitation to legislative chaos. They note that the United States House of Representatives, the British House of Commons and various other stable legislative bodies in the Anglo-Saxon world have memberships of 400 or more.

5. *Fluctuating Membership*

Ohio uses an unusual plan in which membership in the lower house varies with each session of the legislature. Each county is assured at least one representative and the remaining seats are distributed on the basis of population. Smaller counties are assigned an additional representative according to their fractional remainders over the basic population required for a seat. A county with a population of one and three-fifths ratios, for example, would have one permanent member plus an additional representative in three out of five terms. After the first two representatives, an entire ratio is required for each additional representative, thus weighting the legislature in favor of the smaller counties. Some argue that this system is even less rational than most since the ruling minority is a constantly shifting minority but still a group always composed of predominantly rural elements.

6. *Political Subdivisions as Basis*

Three New England states—copying an old English principle since abandoned by the "mother country"—adhere to the practice of granting representation to towns with only minor consideration given to population. Vermont simply assigns one representative to each town regardless of population so that a town with 38 people gets the same representation as the state's largest city, which has a population of 35,531. Connecticut grants each town under 5,000 population one representative while all those over 5,000 get two representatives, except that some very old towns which have fewer than 5,000 inhabitants also get two for "historic" reasons. Two towns, ranging in population from 383 (Union) to 162,178 (Hartford), elect two representatives each. Rhode Island gives each city or town one representative plus one additional member for every 25,000 population *except no city can have more than 25 representatives* thus curtailing Providence's representation.

Few would advocate this system—which England herself has abandoned.

7. *Multi-criteria Formulas*

Some states have devised exceedingly complex formulas with New York's probably being the most complicated.[14] These formulas generally grant representation to each county, then use population ratios for dis-

[14] See Ruth C. Silva, "Part Two: Apportionment of the New York Senate" in "Apportionment in New York," *Fordham Law Review*, XXX (April 1962), pp. 603-638; and Silva, "Apportionment of the New York Assembly," to be published in the *Fordham Law Review* for October 1962.

tributing the remaining seats so that larger ratios are used for apportioning seats to the more populous counties while smaller ratios are used for apportioning to the less populous counties, and finally set the size of the Assembly so that there are relatively few seats to be apportioned to the metropolitan counties on the basis of population.[15]

THE SECOND CHAMBER

If legislative apportionment is based entirely on population distribution in both houses, it may be argued that the reasons for a second chamber are largely vitiated.[16] The major reason left for a bicameral legislature is to provide a second, more deliberative, chamber as an additional element in the system of checks and balances. The checks and balances, however, are supposed to be among the three major branches of government—legislative, executive and judiciary—not *within* one branch of this triumverate. Since the executive in most states is gaining in powers, the weakening of the legislature by dividing it into two chambers may further undermine the American system of separation of powers. Nebraska, with a larger land area than 35 of her sister states and with a population greater than sixteen of them, has had a successful unicameral legislature since 1935. A few of the original thirteen states initially operated on a unicameral basis but later adopted a bicameral system in imitation of the federal government. Often this was accompanied by higher property qualifications for senatorial than for assembly electors. Restricted suffrage acts disappeared but not the second chamber.

SENATE PLANS

The senate plans discussed are:

1. Apportionment on a population basis with fixed membership,
2. Apportionment by a fixed population ratio with expanding membership,
3. Apportionment utilizing multi-member districts and alternative electoral systems,
4. Apportionment of exactly equal representation to political subdivisions regardless of population,
5. Apportionment on the basis of a weighted vote for each senator,

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[15] *Ibid.* Miss Silva's two articles carefully analyze how the New York formulas were deliberately calculated to discriminate against metropolitan areas.

[16] Paul T. David and Ralph Eisenberg, of the Bureau of Public Administration, University of Virginia, are conducting research on two-house state legislatures, concentrating on the states having a variety of political alignments, yet having both houses based on population.

6. Apportionment using combination districts to equalize representation,
7. Apportionment to regional subdivisions of the state,
8. Apportionment based both on population and land area,
9. Apportionment on the basis of functional representation.

1. *Population*

If the senate is to be a less numerous body for deliberative purposes and if its members are to be elected in larger districts (to reflect more broadly based interests), the following provision provides a simple solution:

> For the purpose of electing members of the senate the state shall be divided into as many districts as there shall be members of the senate. Each senate district shall consist of three assembly districts which together form a compact and contiguous territory.[17]

2. *Population Ratios*

A variation of this would be the use of population ratios for senate representation. The use of ratios is common to many states and the provision is generally worded:

> The ratio for apportioning senators shall always be [ ] hundred thousand inhabitants. Each senate district shall consist of [ ] assembly districts which together form a compact and contiguous territory.

While this system would also allow for expansion or contraction of the senate's total membership following each census, the variations would not be so great as the similar provision for the lower house because a much larger population ratio would be used for the senate. Since both of these provisions presuppose a lower house based on population, the senate districts are composed of a set number of assembly districts. If the lower house is constructed on another basis, normal state practice is to set a number of senate districts that amounts to one-half, one-third, or one-fourth of the number of the lower house districts.

3. *Multi-member Districts*

A single-member district is a constituency in which only one legislator is elected while a multi-member district is one in which several legislators are elected.

Critics of the single-member district claim that it may prevent adequate representation. Certainly it is not uncommon for one party to win a slender margin in a majority of districts while the other party

[17] *Model State Constitution, loc. cit.*

carries the remainder of the districts by large margins so that the party with the statewide popular plurality wins fewer seats than does the party without the popular plurality.

Multi-member districts were the most commonly used system during the colonial and early federal period. Such districts are still common in municipal elections (at large) and eighteen states now used them for the election of some of their state senators. Thirty-five states use multi-member districts for election of part of their assemblymen while Illinois, Maryland and Washington use them exclusively.

Some of the advantages claimed for the multi-member system are: broader representation of the interests within the state (in other words, avoidance of localism), abler candidates, greater emphasis upon issues and the reduction of gerrymandering.[18]

Actually, analysis of the results of multi-member district elections does not provide proof of the advantages claimed as long as the straight plurality system of voting is used. There is nothing to keep one political party or particular interest group from winning all seats in the district when it takes only a simple plurality of the votes cast.[19] It was to correct this obvious shortcoming that the American Political Science Association's Committee on American Legislatures mentioned proportional representation as an alternative voting procedure in multi-member districts. Others have suggested the cumulative vote as used in Illinois or the limited vote system used in New York City, Philadelphia, Hartford and other cities.

Proportional representation—commonly called P.R.—has strong supporters and opponents. The criticisms of its complexity and alleged tendency to create splinter parties are generally eliminated if the multi-member district is kept to only three or four members. Conversely, the more members apportioned to a district, the greater the possibility for truly accurate representation. Of all electoral systems, P.R. most accurately reflects all shades of voter sentiment.[20]

In Illinois the cumulative vote is used. If there are three seats to be filled, each voter has three votes to cast. He can cast one for each of three candidates, one and one-half votes for each of two candidates, one for

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[18] Ruth C. Silva, *Staff Report on Legislative Apportionment* (New York, State of New York Temporary Commission on the Revision and Simplification of the Constitution, 1960), II, S-1 to S-11.

[19] *Ibid.*, pp. S-11 to S-22.

[20] *Ibid.*, pp. S-43 to S-58. See also Clarence Gilbert Hoag and George Hervey Hallett, Jr., *Proportional Representation* (New York, The Macmillan Company, 1926). (Copies available from National Municipal League.)

one candidate and two for another or vote all three for just one candidate. This system virtually assures the largest minority party of at least one seat unless it is so small that it does not receive one-third of the votes cast.[21]

The limited vote is a similar device. If there are four seats to be filled, each voter may vote for only three. The assumption is that the minor party, by marshalling its voters, can get at least the fourth seat.

The advantage claimed for having a senate elected from multi-member districts by one of these proportional electoral systems is that it creates a second house that represents shades of opinion within the state that could not be reflected accurately in a house elected from either single-member or multi-member districts by a single-ballot-plurality electoral system.

4. *Governmental Unit Representation*

Senate apportionment formulas that guarantee a minimum representation to the least populous counties or that limit the representation of the most populous counties are numerous. Constitutional provisions of this type might stipulate:

> There shall be [ ] senators apportioned among the counties according to population, except no county shall receive less than one member.[22]

Some twelve states place additional restrictions such as those in New York where no county shall have more than one-third of all the senators. California, Texas and nine other states allow no county more than one senator.

The arguments challenging representation by county, particularly in the smaller house, have already been presented. It should also be noted that the greatest population disparities between districts appear in states that guarantee separate representation to each county. In the seven states where each county has equal representation in the senate—the so-called federal plan—the percentages of the total population that can elect a majority of the senators are: 12.8 per cent in Arizona, 16.6 per cent in Idaho, 16.1 per cent in Montana, 8 per cent in Nevada, 19 per cent in New Jersey, 14 per cent in New Mexico and 23.6 per cent in South Carolina.[23] In every case, these are less equitable apportionments than the one involved in *Baker* v. *Carr* and result in a dilution of the value

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[21] See George S. Blair, *Cumulative Voting* (Urbana, University of Illinois Press, 1960).

[22] For example, Maine, Maryland, Vermont and Wyoming use this type of system with certain modifications.

[23] As of 1962. See Boyd, *op. cit.*, pp. iii-iv.

of votes cast in the more densely populated counties. A vote in the smallest senate district in California is worth 422 times a vote in Los Angeles County.

Constitutional provisions guaranteeing certain representation to static geographic units automatically become obsolete because they cannot accommodate the complex factors of modern society that are accelerating the movements of people.

> The difficulty of laying down rules with even a plausible ring of validity is increasingly accentuated by the phenomenon of urban sprawl which is rapidly changing the population ratio of old units of local government and long established electoral districts.[24]

This is one of the greatest difficulties of an apportionment plan that guarantees one representative to each county. It applies equally to constitutional provisions requiring legislative districts to respect county, township or ward boundaries, as previously noted in the case of California's Assembly districts. The boundaries of such subdivisions rarely represent true regional interests, let alone equitable population distribution, and adherence to them automatically renders equitable apportionment impossible.

5. *Weighted Votes*

One novel "have your cake and eat it too" approach that reconciles the county principle with the population basis has been advanced. It consists of weighting a senator's vote according to the vote he received in an election.

> This would be new in legislatures but it has long been done in business when corporation shareholders vote the number of shares they own or hold proxies for; in labor union federations, delegates vote the membership of their constituent union.[25]

Several ways to calculate the weight of the senator's vote are proposed.

1. Total population of the county;

2. An average of the total vote cast in the last two elections (which takes into consideration the larger voter turnout in presidential elections);

3. The average of the vote cast for the winning party's candidate in the last two elections (so the votes cast for the losing candidate are not used to increase the weight of the victor's vote in the legislature as would happen under No. 2);

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[24] Preface to *Model State Constitution, op. cit.*, p. vi.
[25] As quoted in Baker, *op. cit.*, p. 34.

4. The election of *two* senators from each county—no party being allowed to nominate more than one senator. Each would serve, casting a vote equivalent to the vote he received in the election.

The weighted vote system has the advantage of eliminating problems of apportionment and gerrymandering; it provides automatic reapportionment at each election if one of the last three variations is used.

It has the disadvantage of still being unrepresentative government inasmuch as the legislators would be representative of spectacularly different sized constituencies. The weighted vote would also give to a small number of men (the legislators from the large counties) great *personal* power within the legislature by automatically creating a select group of kingmakers with the accompanying invitation to logrolling on a prodigious scale.

6. *Combination Districts*

Oregon has a system that respects county lines without doing violence to the population basis of apportionment.

The Oregon system provides for special combination districts (or floterial representation) composed of two or more counties that have fractional remainders of less than a full ratio. For example, Lane County (population 162,890) elects five members to the Oregon House of Representatives while Benton County (population 39,165) elects just one. Since the average district should have approximately 30,000 votes, both districts have sizeable remainders. This is corrected by creating another district, encompassing both counties, for the election of one more representative. While Oregon's apportionment does not reflect the popular base with precision, it does come closer to achieving this ideal than do the apportionments found in most states. A majority of Oregon's lower house comes from districts where 48.1 per cent of its population resides while a majority of Oregon's senators come from districts which contain 47.8 per cent of the people.

7. *Regional Subdivisions*

Alaska, Hawaii, Illinois and Mississippi all use some form of regional subdivision of the state in the distribution of seats to one or the other of their legislative bodies. This type of apportionment plan is best exemplified by the proposal which James K. Pollock, professor of political science at the University of Michigan, as a delegate to Michigan's 1961-1962 Constitutional Convention, advanced as a solution to his state's apportionment problems. His plan would have divided the state and its 39-seat Senate into the following groupings:

1. Nine seats would represent area: two each for the Upper Peninsula and Northern Lower Michigan and five for outstate[26] southern Michigan.
2. Thirty seats would represent population. They would be allocated to the four zones (Upper Peninsula, Northern Lower Peninsula, Outstate Southern Michigan, and the three-county Detroit area) by the method of equal proportions, a mathematical procedure used in allocating congressional seats to the states, provided only that every zone should have at least one population seat.
3. Within each zone, the total number of area and population seats would be apportioned to districts that could vary no more than 10 per cent from the average population per seat within the zone.[27]

A similar proposal has been made for New York State. Advocates of this plan maintain that a particular virtue is its applicability in those states possessing one or two very large cities (or metropolitan areas) plus a fairly large total land area in which there is a substantial rural population (e.g., California, Illinois, Michigan, New York, Pennsylvania and Texas). One difficulty, however, is the probability that the regions, particularly the metropolitan districts, will change in time to include new territory or lose former territory.

8. *Land Area Formulas*

Michigan's constitutional convention adopted an apportionment plan that contains the unique idea of using square miles as well as people as a basis for representation.

> In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned an apportionment factor equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one-hundredth of 1 per cent multiplied by four and its percentage of the state's land area computed to the nearest one-one-hundredth of 1 per cent.[28]

Jokes have been made about representing "people or pine trees" but the actual use of acreage as a determinant is virtually without precedent.[29]

The Michigan proposal is an example of how states may devise systems suited to their own needs. Perhaps the people of Michigan will not feel

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[26] That area outside the three-county Detroit metropolitan area.

[27] *A Solution to The Problem of Senatorial Reapportionment.* (Paper submitted to the 1961-1962 Michigan State Constitutional Convention.)

[28] Art. IV, sec. 2, of proposed Michigan constitution.

[29] An abortive attempt made in Wisconsin in 1952 was declared invalid in *State ex rel. Thompson* v. *Zimmerman*, 264 Wis. 644, 60 N.W. 2d 416 (1953), and in Illinois recent legislative practice has been to interpret area considerations as meaning square miles.

that the territorial considerations of this plan will have a particularly adverse effect on the principle of "one man, one vote." Were the same scheme applied to California, however, using exactly the same formula, the results would be surprising. For example, San Bernardino County, which has the largest area in the United States, would have an apportionment ratio of 26.28 while San Francisco County's ratio would be 18.94. The Michigan formula calls for each county with 19.5 or more apportionment factors to be entitled to two senate districts. Thus, San Bernardino would get two senators and San Francisco only one—but San Francisco has 239,000 more people than does San Bernardino.

9. *Groupings on Functional Bases*

The representation of peoples on a functional basis—by social, economic, occupational or even religious groupings—has been proposed as an apportionment scheme. As yet no one has offered a formula which would take care of a change in functional status or a person's inability to classify his own major interest to the exclusion of all his other characteristics. If district boundaries are to be replaced by functional classifications of people, visions of the fascist corporate state appear—and generally end all discussion of the proposal.

GETTING THE JOB DONE

Finally, there is the problem of insuring that reapportionment will take place. This, actually, was the main point at issue in the Tennessee case, where there had been no reapportionment since 1901. It was inaction on apportionment which precipitated the Illinois, Minnesota and New Jersey suits that resulted in new apportionments.

State constitutions generally require the legislature to apportion at the first regular session (or within a stipulated period) after each decennial census. Usually there is no provision for enforcing this requirement. In recent years, however, the trend has been away from assigning the apportionment task to the legislatures. In keeping with the recommendations of the American Political Science Association and with the National Municipal League's *Model State Constitution,* apportionment is assigned to a special commission in Alaska, Arkansas, Hawaii, Missouri and Ohio. Arizona assigns the task to its secretary of state. In some states the commission is to act only if the legislature fails to apportion within the allotted time: this latter procedure is provided in California, Illinois, Michigan, North Dakota, Oregon, South Dakota and Texas.

Thus far the experience in those states which have assigned the task to commissions only if the legislature fails to act would suggest that a token reapportionment by the legislature can often avoid the true reapportionment which the census figures would seem to demand. Oregon and South Dakota have the additional safeguard of judicial review, however, which has forced compliance with the full apportionment provisions of the constitution.

ARGUMENTS FOR A COMMISSION

The reasoning behind assigning the job to a commission (generally worded so as to make the commission responsible to the governor with a resort to judicial review) is part of the traditional argument for checks and balances plus factors of practical politics and experience. Adherents of this plan hold that it relieves legislators of the burden of redistricting their colleagues *(and themselves)* out of the legislature. Proponents of a commission note a willingness of many legislators to relinquish this task to an impartial commission under the executive.

By assigning to legislators the task of creating or abolishing their own districts, a constitution would grant to the legislature the extraordinary power of determining its own constituencies.

An apportionment commission presumably could avoid the double evils of malapportionment and gerrymandering since it would not be exposed to the multitude of pressures existing in a legislature. Judicial review and the fact that the governor must accept responsibility for the final form in which the law is promulgated would tend to temper the tendency to tamper.

The strongest argument for an apportionment commission is the actual experience of the states which have used such a commission. With provision for judicial review and an elective official's responsibility for promulgation of the law, there has been a high degree of adherence not only to the letter but also to the spirit of the laws governing both apportionment and the compactness and contiguity of districts. Few legislatures—if any—can claim such a record.

ENFORCEMENT PROVISIONS

The *Model State Constitution* provision on enforcement of reapportionment reads:

> (b) Immediately following each decennial census, the governor shall appoint a board of [ ] qualified voters to make recommendations within 90 days of their appointment concerning the redistricting of the state.

> The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within 90 to 120 days after appointment of the board, whether or not it has made its recommendations. The governor shall accompany his plan with a message explaining his reasons for any changes from the recommendations of the board. The governor's redistricting plan shall be published in the manner provided for acts of the legislature and shall have the force of law upon such publication. Upon the application of any qualified voter, the supreme court, in the exercise of original exclusive and final jurisdiction, shall review the governor's redistricting plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this constitution.[30]

Variations of this provision would insert specific qualifications for the members of the commission to prevent a partisan governor from stacking the commission. For example, Paul T. David suggests: "In appointing members of the board, the governor shall, so far as possible, give equitable representation to the several areas of the state, to major political parties or factions, and to members of the legislature through their leaders."[31]

Arkansas' commission is composed of the governor, secretary of state and attorney general.

Some feel that each state should stipulate, in view of its own peculiar political traditions, even more precise qualifications for the commission in the state constitution. Generally there are excellent reasons for cautioning against this. Detailed constitutional provisions haunt future generations with outmoded specifics applicable only to bygone days.

If the constitutional requirements for districting include contiguity, compactness and regular shape plus specifying the percentage of population variations allowable between districts (where population is the criterion), the possibility of judicial review should be a sufficient check on the commission and governor. Removal of the issue from the legislative arena, with state court surveillance, can keep reapportionment from becoming a decennial federal-state tug-of-war.

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[30] *Model State Constitution*, pp. 6-7.
[31] As quoted in Baker, *op. cit.*, p. 30.

to Congress calling for a Constitutional Convention to consider this issue."

As this policy implies, Farm Bureau is carrying on a program of information and action stimulating favorable consideration by state legislatures of petitions to Congress for a Constitutional Convention to consider the issue. Action in the state legislatures calling for a *Constitutional Convention* is the most effective initial step that can be taken to achieve Congressional approval of a *Constitutional amendment!*

Prepared by American Farm Bureau Federation
January 6, 1965.

Questions and Answers on Reapportionment

One of the important matters that will be considered by the various state legislatures and the United States Congress in the coming year is legislative reapportionment. Everyone has a stake in the outcome. The following questions and answers have been prepared in order to provide some background information.

Farm Bureau Leaflet 011565

1. Q. What precipitated the current reapportionment situation?

A. The decisions of the U. S. Supreme Court on June 15, 1964, that the state legislatures of Alabama, New York, Colorado, Maryland, Virginia, and Delaware were not apportioned in accordance with the Constitution.

2. Q. What Constitutional provision served as the basis for the Supreme Court's decision?

A. The Court based its decision on the equal protection clause of the fourteenth amendment. The Court said "the equal protection clause requires that the seats in *both* houses of a bicameral state legislature *must* be apportioned on a *population* basis."

3. Q. What does the equal protection clause provide?

A. That "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court said this means that each person's vote must have equal weight in the election of members of state legislatures.

4. Q. Was the equal protection clause designed to deal with the apportionment of state legislatures, or had it been used previously for this purpose?

A. Not until the Supreme Court's decisions of June 15, 1964. There is nothing in the legislative history of the fourteenth amendment to indicate it would ever be construed as the Court has now construed it.

5. Q. Did the Court recognize that there might be factors other than population which should be considered in determining apportionment of state legislatures?

A. No. The Court said "the overriding objective must be substantial equality of population among the various districts."

6. Q. Can the Supreme Court's ruling with respect to state legislatures be construed as indicating application of a similar principle to representation in the Congress where the Senate is now apportioned on an area basis?

A. This is an issue that may arise in the future. For the present, however, the Supreme Court carefully pointed out that the federal apportionment system was embodied in the Constitution as a result of a compromise between the populous and less populous states and concluded that this "federal analogy (is) inapposite and irrelevant to state legislative districting schemes."

7. Q. Can the Supreme Court's ruling with respect to apportionment of state legislatures be construed as requiring application of a similar principle to local governing boards of counties, municipalities, school districts, and other political instrumentalities of state governments?

A. The decisions do not touch on this, since the issue was not before the Court. However, since the U. S. Supreme Court decision of June 15, 1964, a Michigan State Court has held that the equal protection clause of the fourteenth amendment, as interpreted by the U. S. Supreme Court, is equally applicable to local units of government. This State Court held that the election districts for the members of the Board of Supervisors of Kent County were unequal with respect to population and therefore in violation of the fourteenth amendment.

8. Q. Can the Courts lawfully interpret the Constitution as they choose, irrespective of prior interpretation?

A. In general, yes. If the Court's interpretation is not satisfactory to the people and their representatives, the Constitution provides a remedy, a Constitutional amendment.

9. Q. Has the Constitution ever been amended to authorize action prohibited as "unconstitutional" by the Courts?

A. Yes. The sixteenth amendment was adopted in 1913 to authorize a federal income tax after the Supreme Court had held such a tax unconstitutional.

10. Q. How is the Constitution amended?

A. Two methods are provided. First, an amendment may be proposed to the states by a two-thirds vote in the House and Senate. Second, if two-thirds of the states petition the Congress to call a Constitutional Convention to consider a particular issue, the Congress "shall" do so. Any amendment proposed by Congress or a Constitutional Convention would require approval of the legislatures (or conventions) in three-fourths of the states before it became law.

11. Q. Does Congress have any other means to restrict the jurisdiction of the Courts?

A. Article III Section 2 of the Constitution provides that the Supreme Court shall have appellate jurisdiction over certain types of cases "with such Exceptions and under such Regulations as the Congress shall make." A bill to limit the jurisdiction of the Courts with respect to reapportionment of state legislatures was approved by the House of Representatives in 1964, but was rejected by the Senate. Some people believe this would be the simplest way to resolve the problem. Others assert that the Courts would knock down any such legislation. This view apparently prevails in the U. S. Senate.

12. Q. It appears, therefore, that the only available certain remedy is a Constitutional amendment?

A. Yes.

13. Q. What are the arguments for an apportionment system in which at least one of the houses of a state legislature is elected by districts established with consideration to factors other than population?

A. The reasons for this are essentially the same as the reasons why one branch of U. S. Congress—the Senate—is, and should continue to be, elected on an area basis. Whether in the federal government or in a state government, the historical pattern of apportionment adds a desirable "check and balance" to the political system. It insures that consideration of public issues will give appropriate recognition to area problems and minority interests and that local views and concerns will not be buried and lost before the power of majorities. For this reason it is important to preserve local political units and their influence in legislative halls. If the governor and one house are elected on a strictly population basis, consideration should be given to other factors in the other house.

14. Q. Should states that wish to apportion both houses of their legislature on a population basis be prohibited from doing so?

A. No one has proposed any such action. The proposal is that the states should *have the right* to consider factors other than population in apportioning one house. Each state would be free to decide how this right would be used.

15. Q. What is the Farm Bureau doing on the issue?

A. The 1965 Farm Bureau policies contain the following paragraphs:

"We recommend a Constitutional amendment guaranteeing to the states the right to apportion one house of bicameral state legislatures on the basis of factors other than population.

"We strongly urge State Farm Bureaus to seek enactment by their state legislatures of petitions

One Man, One Vote —Yes or No?

By ANDREW HACKER

THE closing days of the 88th Congress, contrary to all plans and expectations, were consumed by a prolonged debate that was never on the official agenda and which put an effective end to normal legislative business for the session. Its subject was the abstract principle of "one man, one vote."

Since the earliest days of the Republic, the districts of most state legislatures have been so constructed as to give disproportionate representation to rural voters. While this practice was struck down by the Supreme Court in its 1962 Baker *v.* Carr decision, at that time the Justices gave no precise indication of the reform they would require.

Because Baker *v.* Carr was silent on the subject of second chambers, the hope was held out that the upper houses in each state might still be permitted to remain attuned to the interests of the countryside. Then, last June, came Reynolds *v.* Sims. In that case the Court held that both legislative chambers had to be based on population alone, that there could be no exceptions to the rule that all districts had to be substantially equal.

This time the reactions were profound and came from several directions. The Republicans, meeting in San Francisco, added to their platform a plank calling for a constitutional amendment that would allow one legislative house to be formed on criteria other than population. The House of Representatives rushed through a bill stripping the Federal courts of all jurisdiction over state apportionment cases. The Senate was less precipitous, but there was strong sentiment for at least delaying the impact of the Court's decision.

THE argument for "one man, one vote" is simply an application of the principal of political equality. All votes should carry the same weight, it is said, because no justification can be found for singling out certain citizens for preferred treatment. If minorities are worried about the possibility of majority oppression, the remedy lies not in giving them added electoral weight but rather in settled constitutional procedures.

Moreover, the Fourteenth Amendment stricture that all citizens are entitled to "equal protection of the laws" would seem to require that everyone be permitted to participate in the process whereby those laws are made. Experience has shown that those who are excluded from the polls or who are underrepresented in legislative councils will find themselves having to obey laws that are highly discriminatory. Urban voters, to use the customary example, are taxed to support rural services while city problems are all but ignored. If the majority is not allowed to rule, then power reverts to some accidental or consciously designated minority.

"ONE man, one vote" may appear to be unexceptionable as a matter of logic. But logic alone is not the only guide in political life. When a national party and a national legislative chamber both propound the argument that some votes ought to be more equal than others, it is time to examine this position with consideration and care:

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This article has been reprinted by the American Civil Liberties Union to further public discussion of an important civil liberties principle. The following statement, adopted by its Board of Directors on March 12, 1961, presents the civil liberties interest in the question of malapportionment of state legislatures:

The equal protection clause of the 14th Amendment is infringed by the dilution, as well as the denial, of the right to vote and malapportionment by the states raises a civil liberties issue. The ACLU does not believe a valid analogy can be drawn between the federal system, which justifies representation by states in the U.S. Senate, and apportionment within states based on area representation. Because the equal protection clause of the 14th Amendment would appear to require that there be no classification between voters, the establishment of state electoral districts should be based only upon population. It is conceivable that there might be situations where apportionment on a strict population basis would cause inequalities, and for this reason certain variations may be necessary. But since the 14th Amendment requires that any variation must result in a reasonable classification, the burden of proof for making such a variation must rest on those making the claim.

(1) What is good for the Congress in Washington, it has been suggested, ought also to apply at the state level. The Senate has given equal representation to each state regardless of size, and by the same token one legislative chamber in each state should be allowed to represent established political units within its own boundaries. As a minimum, the state house might give each county at least a single representative, thus insuring that its interests will have a spokesman.

A Legislature must insure, by one means or another, that small units have an effective voice in its proceedings. This is especially necessary when metropolitan areas elect large blocks of legislators who might easily ignore or drown out rural opinion. The founders agreed that Delaware and Rhode Island should always be able to defend themselves in the Senate. Ought not similar guarantees to be given to Schuyler County in New York (population: 15,044) and to Sierra County in California (2,247)?

(2) Rural areas, which benefit most from arrangements as they now stand, actually need additional representation for their well-being—if not their survival. Ours is an urban age, with wealth increasingly concentrated in the cities and surburbs. Small towns and agricultural areas are losing population, which is one reason why they are overrepresented, and industry is by no means reinvigorating rural America to the extent that is necessary. If the logic of equal votes is applied, then back-country legislative seats would in most cases be transferred to the growing suburbs. Yet this would take from the have-nots and give to those who are already doing quite well.

In Illinois, for example, the median family income in Gallatin County (population: 7,638) is $2,711 per year, whereas the Chicago suburbs of Du Page County, which have doubled in numbers in the last decade, have a median annual income of $8,570 per family. Gallatin may be overrepresented in Springfield but it is underequipped with schools, roads, hospitals and other amenities. Were the prosperous and populous to be given their arithmetical due, the odds are great that the flow of public funds to rural sections would come to a halt.

NO one will deny that cities and suburbs have problems of their own; but metropolitan areas have the resources to help themselves if only they would set their minds to it. In contrast, the last remaining hope for the countryside lies in its political power at the state capitals

(3) "Those who labor in the earth are the chosen people of God . . ." Thomas Jefferson once wrote, adding, "the mobs of great cities add just so much strength to the support of pure government as sores do to the strength of the human body." Under this theory—which still prevails in many sections of the country—the America of the provinces is composed of superior stock: independent, self-reliant, and embodying the values which impart integrity to society. The rural and small-town citizen is an individual, uncorrupted by the mass mentality of the city. While such a characterization can verge on caricature, it explains why we hear so much about "bloc voting" in the cities but not about such behavior out where the pavements end. At all events, if rural areas need added representation because of their economic plight they also deserve such a magnified voice due to their enhanced moral character.

(4) There is no technical difficulty in dividing a state into a series of geometric quadrilaterals, each one having almost precisely the same population as its neighbor. Michigan, in reapportioning its Senate last year, created 38 districts no one of which had less than 205,000 people nor more than 207,000. But to do this is to break up the natural communities of interest and outlook within a state, imposing an artificial political mold on what are really areas having historic identities and social complexions of their own.

THUS, in the cause of arithmetical consistency, a dairying region may be forced into a shotgun marriage with an industrial suburb, resulting in a district that is difficult for one man to represent and lacking a personality of its own. By the same token there is much to be gained in psychic satisfactions, if nothing else, in having "Polish" and "Czech" and "Jewish" districts where voters can be represented by someone of their own ethnic background who understands their particular interests and needs.

(5) There are indications that the voters—and not simply rural voters—are content with arrangements as they now stand; that they see nothing particularly malapropos in malapportionment. In Colorado, for example, a statewide referendum rejected by a 2-1 vote a proposal calling for districting reforms in the direction of greater equality. Moreover, every county in the state, urban as well as rural, registered a majority for retaining the status quo. Thus it would appear, at least in the states that have had such referendums, that the majority is sensitive to minority needs and is willing to dilute its own votes so as to augment those of their fellow citizens who need them more.

SOME of these arguments are clearly more persuasive than others. It is hard to prove that while 1,000 city dwellers automatically make up a "mob," 1,000 farmers are all independent yeomen. Even if the innate superiority of rural Americans were demonstrated, it would not necessarily follow that a weightier ballot should be given to those blessed with greater virtue. Among other difficulties there would be the problem of finding virtuous souls, admittedly few and far between, who happen to reside in the cities and suburbs, in order to give them additional votes at election time. For uprightness of character is a condition of spirit and not dependent on where one stakes one's tent.

More to the point is the fact that rural America is indeed

poorer, that it needs political leverage more than its metropolitan cousin. The reply here, quite simply, is that if one disadvantaged minority is to have preferential treatment in the chambers where laws are made, then other such minorities should be given similar consideration. Surely Negroes, Mexican-Americans, the indigent aged, mothers supporting fatherless children, and the blind also stand in need of greater-than-average governmental help and protection. If a Downstate Illinois farmer with an annual income of $2,711 deserves to be heard so does a Negro laundress in Chicago who also ends the year with $2,711. The rural areas hardly have a monopoly on those suffering from majority indifference.

THE creation of districts of equal population would undoubtedly destroy what are now homogenous enclaves. Yet one of the troubles with state legislatures is that too many of their members do in fact represent special-interest constituencies, preoccupied with a particular crop or industry or natural resource. Experience has usually shown that the best lawmakers emerge from districts that are diverse in their social characteristics and competitive in their party politics. Such legislators must be able to talk the language of more than a single electoral group and have the skills to win an open fight against more-than-token opposition. Underpopulated districts, whether rural or urban, tend to be one-party domains, with the same seat going to an organization regular. Enlarging these fiefdoms would breathe some fresh air into more than a few musty political corners.

Should each state have a "miniature" Federal system, with one house based on population and the other on some other criterion? There may be good reason for arguing that a bicameral legislature serves some useful purpose (although unicameral Nebraska has not been notable for rushing through hasty or ill-advised statutes). However, the two chambers, as Chief Justice Warren pointed out last June, can both be population-based and still display quite different characteristics.

"ONE body could be composed of single-member districts while the other could have at least some multi-member districts," he wrote in *Reynolds v. Sims*. "The length of term of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other House."

WHAT does stand out is the fact that the role of counties, townships and other subdivisions within the states, simply is not constitutionally analagous to the status of the states themselves *vis-à-vis* the Union. Alaska and Utah are "sovereign" entities and hence entitled to as much representation in the Senate as are New York and California. Counties, far from being "sovereign," are convenient governmental agencies which can be created, consolidated, or abolished by the states. The states came together to create a more perfect union; that is why they have "sovereign" status and that is why the Senate exists. Counties and cities are creatures of the states; it is too late to endow them with an immortality they never had.

Most compelling, perhaps, is that the people of a state have on occasion agreed to permitting one of their legislative chambers to give an amplified voice to underpopulated areas. Here the Supreme Court has chosen to stand on slippery political ground, for it has had to justify a judicial veto of arrangements approved by popular referendum. Even if majorities in Colorado and Michigan and California acted mistakenly, it may be argued that it is part of democracy that the people should be allowed to commit their own errors—and then learn by experience and mend their ways in their own time.

The Court's reply, or at least the reply of six of the nine Justices last June, was that "an individual's constitutionally protected right to cast an equally weighted ballot cannot be denied even by a vote of a majority of a state's electorate."

THE issue is the old one of majority rule versus individual rights, but with a new twist. The Court seems to be saying that even if a majority of the citizens are willing to dilute the value of their legislative vote they must be prevented from doing so. For citizens may not trade, barter, or give away their basic political freedoms. These rights are the end-products of an historical evolution, too often imperfectly understood by those who now possess them. And the continuance of democratic government itself, requires that such rights be protected and guaranteed. Jean-Jacques Rousseau once said that there are times when citizens must be "forced to be free." Equal votes for equal citizens seems to be just that sort of occasion.

Logic, theory and history can be brought to bear in defense of "one man, one vote." Such a position, moreover, is difficult to compromise. For if a minority can rule in one House of a bicameral legislature, then it could veto the acts of its sister chamber and exact concessions on behalf of the special interests it represents.

The problem, not surprisingly, is one of political power. Those who feel that current arrangements safeguard their interests are understandably disinclined to see changes brought about. While the general public has not become involved in the reapportionment issue, it is plain that many elected officials are deeply concerned. There are more than 7,000 state legislators, more of whom have something

to lose than to gain by redistricting, and these local politicians can expect to find fellow feeling among members of Congress and party leaders at all levels.

But it would be idle to mask the fact that state legislatures are not simply rural but conservative citadels. Those who are calling for reapportionment might well ask just how disinterested their own position is. If it were proposed that the U.S. Senate be abolished—after all, it is a far cry from "one man, one vote"—and that all national legislation be left to the House of Representatives the suspicion arises that such a move would arouse little enthusiasm in liberal circles. Much of the rhetoric on both sides tends simply to rationalize a struggle for that oldest of all political commodities: the power of some to make policy for all.

IF apportionment dominated the closing days of the 88th Congress, notice has been given that the debate will resume when our lawmakers convene in January. Leaders in both chambers have promised to introduce resolutions for amending the Constitution that would permit one House in each state to be based on nonpopulation factors.

Whether such a resolution will be able to muster the required two-thirds vote, especially in the Senate, remains to be seen. Yet if this is accomplished and an amendment is sent to the states, for ratification in 1965, then there will be the curious spectacle of malapportioned state legislatures voting for their own continuation. In the words of Senator Abraham Ribicoff of Connecticut, this will allow "the rotten boroughs to decide whether they should continue to be rotten."

The goal of equal votes for equal citizens, far from being a radical departure in our political tradition, is consistent with this nation's efforts to extend a full franchise to all citizens. Reapportionment, insuring ballots of the same weight for all voters, is not only long overdue but will also lay the groundwork for an updating of our 50 state legislatures.

AS matters now stand, those bodies have lost effective contact with all too many of the voters they supposedly represent, and they are unwilling or unable to deal with the most pressing problems within their jurisdictions. One consequence of malapportionment has been public cynicism about state government; the reverse side of the coin is mounting popular approval for the extension of Federal authority to provide services the states have neglected. Representative legislatures, representing people rather than cows or acres or trees, will actually serve to strengthen the states and give new life to the practice as well as the theory of federalism.

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The Reapportionment Decisions:

A Constitutional Amendment Is Needed

After analyzing the Supreme Court's decisions last year in the reapportionment cases, Mr. Kennedy urges a constitutional amendment giving the people of the states the right to determine the composition of their own legislatures, providing that one house is based on population. The issue at stake, he asserts, is not "one man, one vote", but the principle of a government representative of the people governed by it.

by Cornelius B. Kennedy • ***Counsel to Minority Members of the Senate Judiciary Committee***

ON JUNE 15, 1964, the Supreme Court of the United States handed down decisions dealing with the reapportionment of the legislatures of six states—Alabama,[1] New York,[2] Maryland,[3] Delaware,[4] Colorado[5] and Virginia.[6] But the effect of the decisions was much greater, because they promulgated a broad rule for the apportionment of all state legislatures: ". . . we necessarily hold that the equal protection clause requires both houses of a state legislature to be apportioned on a population basis".[7]

With these words the Supreme Court brushed aside as an "after-the-fact rationalization" the federal analogy under which one house of a state legislature is apportioned on population and the other house is apportioned on area or other factors. It also rejected the present reality that, regardless of whether the states adopted the federal analogy in their original constitutions, it has become the common form of legislative organization in the states today. The Court brushed aside, as well, the argument that it could have righted the wrong in each of the cases without reaching the question of the federal analogy.

But more important, in promulgating this broad rule, the Court rejected the principle that all segments of the population should be represented in the body which governs them. Significant geographic or economic interests should not be unrepresented because they are small in population. That principle was the underlying basis for the federal analogy and for the Great Compromise of 1787 upon which the analogy was based. Without the application of that principle in the Great Compromise, the citizens of the small states would have had little voice in the Congress of the new Federal Union, merely because they happened to live in small states. Now, because the Court has rejected that principle in these decisions, many citizens will be denied representation in the legislature of their state.

That this should be done in the name of the equal protection clause is ironic because, certainly, all of the people of a state are entitled to equal protection under that clause. In a representative government this must mean that people should not be denied or granted representation merely on a population basis. It has been the genius of our form of government that it has combined the concepts of majority rule and a government representative of all citizens in a workable fashion by having one house of a legislature based only on population and the other house based on area or other factors. And history has shown that governments are not likely to survive if segments of the population are denied representation in the government.

The extent to which the Supreme Court has carried the "population only" test is indicated by the Colorado case. There the apportionment plan, according to Justice Stewart, had been "adopted overwhelmingly by the people in a 1962 popular referendum", was

1. *Reynolds* v. *Sims*, 377 U. S. 533 (1964).
2. *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633 (1964).
3. *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656 (1964).
4. *Roman* v. *Sincock*, 377 U. S. 695 (1964).
5. *Lucas* v. *Forty-fourth General Assembly of Colorado*, 377 U. S. 713 (1964).
6. *Davis* v. *Mann*, 377 U. S. 678 (1964).
7. *Reynolds* v. *Sims*, *supra* at 576. There are four principal opinions in this group of six decisions: (1) the majority opinion of Chief Justice Warren in the *Reynolds* case; (2) the dissenting opinion of Justice Harlan at 377 U. S. 589; (3) the dissenting opinion of Justice Stewart at 377 U. S. 744, in which Justice Clark concurred; and (4) the dissenting opinion of Justice Clark at 377 U. S. 741. The quotations in this article attributed to the Court are from the majority opinion by Chief Justice Warren in the *Reynolds* case. The quotations attributed to Justice Harlan are from his dissenting opinion. The quotations attributed to Justice Stewart and Justice Clark are from their dissenting opinions in the *Lucas* case.

● ***The Supreme Court's decisions requiring the apportionment of state legislatures on the basis of population have aroused intense public and professional interest. As the 89th Congress and most state legislatures convene, the* Journal *is pleased to present diverging viewpoints. Mr. Kennedy urges a constitutional amendment to overcome the decisions, while Professor McKay, whose article begins on page 128, views the decisions as sound and examines the prospects for their fulfillment.***

"entirely rational", provided by its terms for keeping the apportionment current, and "while clearly ensuring that in its legislative councils the will of the majority of the electorate shall rule, has sought to provide that no identifiable minority shall be completely silenced or engulfed". Nevertheless, the Supreme Court held the apportionment plan unconstitutional and substituted for the expressed will of the majority of the people of that state its own test that "population is, of necessity, the starting point for consideration and the *controlling* criterion for judgment in legislative apportionment controversies".

Indeed, after discussing other factors which had been used in apportionment plans, the Court turned to political subdivisions, which it described as a consideration of more substance in justifying deviation from the population test, and then firmly said: "But if, *even as a result of a clearly rational state policy* of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment . . . [italics supplied]", the apportionment would be unconstitutional.[8]

Thus, not only does the Court's insistence on the population test *not* contain the flexibility which some have tried to find in it, but the Court's concept of equality is based on sheer numbers rather than on a plan of rational representation of the interests in a state.

Not all members of the Court agreed with these decisions, however. Justice Harlan stated that since it can "be shown beyond doubt that state legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the republican form of government clause", the action of the Court in bringing them within the purview of the Fourteenth Amendment "amounts to nothing less than an exercise of the amending power [of the Constitution] by this Court".

Justice Stewart, in a separate dissenting opinion, stated:

> To put the matter plainly, there is nothing in all the history of this Court's decisions which supports this constitutional rule. The Court's draconian pronouncement, which makes unconstitutional the legislatures of most of the fifty states, finds no support in the words of the Constitution, in any prior decision of this Court, or in the 175-year political history of our Federal Union.[9]

Justice Clark joined Justice Stewart in this comment and went on to add in another dissenting opinion: "Finally, I cannot agree to the arbitrary application of the 'one-man, one-vote' principle for both houses of a state legislature."[10]

Why the Decisions Have Stirred a Storm

Why this sharp language by Justices Harlan, Clark and Stewart? What provoked them not only to dissent but to make such pointed comments about the majority opinions written by Chief Justice Warren? Why did the opinions stir the United States Senate to weeks of debate and cause the House of Representatives to pass a bill withdrawing jurisdiction over such matters from the federal courts?

The answers to these questions may be found, first in the fact that a cherished idea derived from the Constitution itself was held to be unconstitutional; and second in the fact that established institutions of government were suddenly held to be unconstitutionally constituted; and third, in the content of the opinions themselves.

The idea held to be unconstitutional was that the Great Compromise could be applied to the apportionment of state legislatures. One by one over the years, the states had adopted a plan for legislative apportionment similar to that embodied in the Great Compromise because it provided the means of resolving conflicting interests within each state by assuring the representation of such interests in the state legislature. This plan became known as the federal analogy. Nebraska even adopted the idea for its unicameral legislature by weighting the apportionment 80 per cent on population and 20 per cent on area.[11]

But because this method of apportioning state legislatures was not protected by specific language in the Constitution, the Court found that it was forbidden by the equal protection clause of the Fourteenth Amendment, which was adopted after the Civil War. The effect of the opinions is to require every state to fashion its legislative branch, not on the basis of reflecting the various interests in the state, but solely on the basis of population. Until that is done, the Supreme Court has now held, a state's legislature is unconstitutionally constituted.

Analysis of the Warren Opinion

While the sudden and sweeping effect of the decisions of course has had a great impact, much attention has also been directed to the principal Warren opinion itself. The legal analysis of that opinion divides it into five parts.

The first part begins with the statement that the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. This is followed by the citation of cases dealing with the right to vote, the right to have one's vote counted and not destroyed by alteration of ballots or diluted by ballot-box stuffing or refused for racial considerations, and finally by

8. Quotation from *Reynolds* v. *Sims*, *supra* at 581.
9. *Lucas* v. *Forty-Fourth General Assembly of Colorado*, *supra* at 746.
10. *Lucas* v. *Forty-Fourth General Assembly of Colorado*, *supra* at 742.
11. Council of State Governments, Book of the States 1964-1965, 64 (1964).

the conclusion that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise".

In the second part the Chief Justice discusses *Baker* v. *Carr*, 369 U.S. 186 (1962),[12] *Gray* v. *Sanders*, 372 U. S. 368 (1963),[13] and *Wesberry* v. *Sanders*, 376 U. S. 1 (1964).[14] However, he comments that "*Gray* and *Wesberry* are of course not dispositive of or directly controlling on our decision in these cases involving state legislative apportionment controversies. Admittedly, those decisions . . . were based on different constitutional considerations and were addressed to rather distinct problems." And he describes *Baker* v. *Carr* as holding that a claim challenging the constitutionality of the apportionment of seats in a state legislature "presented a justiciable controversy subject to adjudication by federal courts".

The third part of the legal analysis in the Warren opinion consists of the citation of cases supporting the propositions that " 'the right to vote is personal . . .' ", that the impairment of the right to vote "touches a sensitive and important area of human rights", that " 'the political franchise of voting' " is " 'a fundamental political right' ", that "the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination' ", and that "invidious discrimination based on factors such as race . . . or economic status . . ." impairs basic constitutional rights. The Chief Justice then follows this part of the analysis by holding that the equal protection clause of the Fourteenth Amendment requires both houses of a state legislature to be apportioned on a population basis.

The text of the fourth part of the Warren opinion cites a case in support of the proposition that political subdivisions are "created as convenient agencies for exercising such of the governmental powers of the states as may be entrusted to them".

Finally, in the fifth part the Chief Justice returns to the citation of *Baker* v. *Carr* and *Wesberry* v. *Sanders*, in spite of his earlier statements distinguishing them.

What the Warren Opinion Fails To Do

The Warren opinion does not contain any analysis of the Fourteenth Amendment or the equal protection clause itself, or any reference to the legislative history of the Fourteenth Amendment or to any contemporaneous statement of its meaning. Justice Harlan commented on this omission in the introduction to his dissent:

> Had the Court paused to probe more deeply into the matter, it would have found that the equal protection clause was never intended to inhibit the states in choosing any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the Fourteenth Amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the states at the time the amendment was adopted. It is confirmed by numerous state and Congressional actions since the adoption of the Fourteenth Amendment, and by the common understanding of the amendment as evidenced by subsequent constitutional amendments and the decisions of this Court before *Baker* v. *Carr, supra*, made an abrupt break with the past in 1962.[15]

Justice Harlan followed this with seventeen pages of opinion, accompanied by seven pages of appendix, containing an analysis of the Fourteenth Amendment and statements made by the authors and supporters of the amendment during the Congressional debates concerning the purpose and meaning of the amendment.

Justice Stewart, in his dissenting opinion in the Colorado and New York cases in which Justice Clark joined, referred to "the excellent analysis of the relevant historical materials contained in Mr. Justice Harlan's dissenting opinion" and said:

> After searching carefully through the Court's opinions in these and their companion cases, I have been able to find but two reasons offered in support of this rule. First, says the Court, it is "established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people. . .". With all respect, I think this is not correct, simply as a matter of fact. It has been unanswerably demonstrated before now that this "was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominately practiced by the states at the time of the adoption of the Fourteenth Amendment, it is not predominately practiced by the states today". Secondly, says the Court, unless legislative districts are equal in population, voters in the more populous districts will suffer a "debasement" amounting to a constitutional injury. . . . We are not told how or why. . . . I find it impossible to understand. . . .[16]

A member of the Illinois Bar, Cornelius B. Kennedy was graduated from Yale University (B.A. 1943) and the Harvard Law School (LL.B. 1948). He is on the staff of Senator Everett McKinley Dirksen of Illinois, minority leader of the Senate.

12. Justice Stewart comments: "It has been the broad consensus of the state and federal courts which, since *Baker* v. *Carr*, have been faced with the basic question involved in these cases, that the rule which the Court announces today has no basis in the Constitution and no root in reason." 377 U. S. 746 n. 9.

Justice Harlan comments: "Before proceeding to my argument it should be observed that nothing done in *Baker* v. *Carr* or in the two cases that followed in its wake, *Gray* v. *Sanders* and *Wesberry* v. *Sanders*, from which the Court quotes at some length, forecloses the conclusion which I reach. . . . [I]t is evident from the Court's opinion [in *Baker* v. *Carr*] that it was concerned all but exclusively with *justiciability* and gave no serious attention to the question whether the equal protection clause touches state legislative apportionments." 377 U. S. at 592, with emphasis added.

13. Justice Stewart comments: "The rule of *Gray* v. *Sanders*, 372 U. S. 368, is, therefore, completely without relevance here." 377 U. S. at 744.

14. Justice Stewart comments: "Consequently, the Court's decision in *Wesberry* v. *Sanders*, 376 U. S. 1, throws no light at all on the basic issue now before us." 377 U. S. at 744-745.

15. *Reynolds* v. *Sims*, *supra* at 590-591.

16. *Lucas* v. *Forty-Fourth General Assembly of Colorado*, *supra* at 745-746.

Thus, Justices Harlan, Clark and Stewart are critical of the Warren opinion for not answering or even considering the legal argument that the equal protection clause of the Fourteenth Amendment is not and was not intended to deal with the problem of the apportionment of state legislatures.

The Chief Justice and Political Philosophy

When the Chief Justice turned his attention to the proper composition of a state legislature as a philosophical question, he reached three conclusions. First, if population is submerged as the controlling factor in the apportionment of a state's legislature, the right of all the state's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired. Second, this would be true even though a clearly rational state policy of according some legislative representation to the various interests in the state might be appropriate. And third, this right of all citizens would be frustrated unless the "population only" test were applied to both of the houses of a state legislature to prevent the majority will, expressed by the representatives of the majority in one house, from being thwarted by the action of the representatives of a minority in the other house.

In commenting on the exclusion by the Chief Justice of any factor other than population as controlling, Justice Harlan said:

> I know of no principle of logic or practical or theoretical politics, still less any constitutional principle, which establishes all or any of these exclusions. Certain it is that the Court's opinion does not establish them.[17]

Reason Requires a Representative Legislature

After stating that "What the Court has done is to convert a particular political philosophy into a constitutional rule . . .", Justice Stewart defines representative government as "a process of accommodating group interests through democratic institutional arrangements. . . . Appropriate legislative apportionment, therefore, should ideally be designed to insure effective representation in the state's legislature . . . *of the various groups and interests making up the electorate.*" [Italics supplied.]

Using Colorado as an example, he pointed out that the state is not an economically or geographically homogeneous unit. Instead, he said, the state contained four distinct regions, and he noted that the district court had found that the people living in each of these four regions had interests unifying them and differentiating them from those in the other regions. "Given these underlying facts", he said, "certainly it was not irrational to conclude that effective representation of the interest of the residents of each of these regions was unlikely to be achieved if the rule of equal population districts were mechanically imposed. . . ."

With respect to New York, he pointed to the statement of Elihu Root at the New York Constitutional Convention of 1894 that in a state with a dominant urban population centralized at one point it would be appropriate to provide for a reasonable balancing of the political power among all the areas of the state.

Justice Clark, in his opinion in the Colorado case, commented that what the Warren opinion "overlooks is that Colorado, by an overwhelming vote, has likewise [as in the case of the Federal Constitution] written the organization of its legislative body into its Constitution, and our dual federalism requires that we give it recognition". Finding that Colorado's arrangement was not arbitrary, but rested on reasonable grounds, he concluded:

> In striking down Colorado's plan of apportionment, the Court, I believe, is exceeding its powers under the equal protection clause; it is invading the valid functioning of the procedures of the states, and thereby commits a grievous error which will do irreparable damage to our federal-state relationship. I dissent.

Thus, Justices Harlan, Clark and Stewart emphasized the practical consideration that the rationale of the Great Compromise has been as useful and effective in constructing workable governments for the states as it has been in constructing the Federal Union. At one point Justice Clark commented: "Now in its 176th year the federal plan has worked well. . . . [M]ost legislation is the product of compromise."

Court's Rule Raises a Major Issue

The rejection by the Warren opinion of state legislatures based on such a compromise has raised a major issue, in addition to the narrow issue in the reapportionment cases. The narrow issue was whether the equal protection clause of the Fourteenth Amendment expressly or implicitly forbids the states to model their legislatures after the Congress, with one house based on population and the other house on area or other considerations.

The major issue is whether or not, under our form of representative government, the composition of the governing body of a state should reflect the diversities which exist within a state. That issue can be determined only by the people. They cannot overrule the Supreme Court, but they can change the language on which the Supreme Court based its decision by amending the Constitution and thus permitting the federal analogy to be used by the states.

Constitutional amendments to achieve this result were introduced in both houses of the 88th Congress[18] and there was considerable discussion of their provisions during the various debates on legislation pertaining to the apportionment question.[19] At the beginning of the 89th Congress, proposed amendments were introduced again in both houses.

Within four days after it was introduced, Senate Joint Resolution 2, sponsored by Senator Everett M. Dirksen of Illinois, had attracted thirty-eight cosponsors. It provides that the right and power to determine the composition of the legislature of a state and the apportionment of its membership shall remain in the people of the state.

17. *Reynolds* v. *Sims*, *supra* at 623.

18. For example, Senate Joint Resolution 185 introduced by Senator Dirksen for himself and twenty-three other Senators, House Joint Resolution 1055 introduced by Representative McCulloch, similar resolutions introduced by thirty-five Representatives and the many other joint resolutions introduced in the House and Senate after June 15, 1964, the date of the decision in *Reynolds* v. *Sims*.

19. See, for example, the Senate debate on the Dirksen-Mansfield amendment to the Foreign Aid Bill, H.R. 11380, August 13, 1964, to September 24, 1964, and the House debate on the Tuck bill, August 19, 1964.

It then expressly recognizes the principle of the Great Compromise by providing that nothing in the Constitution shall prohibit the people of a state from apportioning one house of a bicameral legislature on the basis of factors other than population, or from giving reasonable weight to factors other than population in apportioning a unicameral legislature, if, in either case, the apportionment has been submitted to a vote of the people "in accordance with law and the provisions of this Constitution and has been approved by a majority of those voting on that issue".

Under such an amendment the citizens of each state would be free to choose whether or not to adopt the federal analogy. If the people in three fourths of the states feel that the citizens of each state should have this choice, they will agree with Justice Stewart, with whom Justice Clark joined, when he said:

> It is important to make clear at the outset what these [reapportionment] cases are not about. They have nothing to do with the denial or impairment of any person's right to vote. Nobody's right to vote has been denied. Nobody's right to vote has been restricted. Nobody has been deprived of the right to have his vote counted. . . . Secondly, these cases have nothing to do with the "weighting" or "diluting" of votes cast within any electoral unit. . . .
>
> The question involved in these cases is quite a different one. Simply stated, the question is to what degree, if at all, the equal protection clause of the Fourteenth Amendment limits each sovereign state's freedom to establish appropriate electoral constituencies from which representatives to the state's bicameral legislative assembly are to be chosen. The Court's answer is an abrupt one, and, I think, woefully wrong.[20]

There is a substantial indication that the people do feel this way. By the end of 1964 nearly half of the required number of states had already petitioned the Congress to call a national constitutional convention for the purpose of proposing this constitutional amendment if the Congress did not propose an amendment itself. In December, 1964, the 17th Biennial General Assembly of the States adopted a resolution calling for such a constitutional convention. Men who have devoted their lives to urban affairs have warned of the need for this amendment,[21] and Congressional support for an amendment has come not only from members representing rural areas but also from those representing the largest urban centers of population. For example, the cosponsors of Senate Joint Resolution 2, introduced this January, come from all parts of the country.

The issue at stake, as Justice Stewart clearly pointed out, is not "one man, one vote", but the principle of government representative of the people governed by it. It is the need to preserve that essential basic ingredient of our form of government that has caused the broad-based support throughout the country of a move to preserve the federal analogy for use by the individual states.

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20. *Lucas* v. *Forty-Fourth General Assembly of Colorado, supra* at 744-745.

21. Moses, *Robert Moses Warns Against Mob Rule*, NATION'S BUSINESS, December, 1964, pages 100, 102. Senator Frank Lausche, former Governor of Ohio: "I was Mayor of Cleveland. If the city bosses were to get control of the legislature, I would fear it greatly." *Id.* at 96.

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EQUAL PROTECTION AND THE URBAN MAJORITY*

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This year marks the tenth anniversary of the Supreme Court's decision in *Brown* v. *Board of Education*. On May 17, 1954, nine judges, sworn to defend a Constitution which guarantees equal protection of the laws, speaking for a country which declared its independence on the proposition that all men are created equal and which is fighting for moral leadership in a world predominantly populated by people whose skin color is other than white—these nine men unanimously concluded that segregated educational facilities are "inherently unequal."

Most of the members of this audience can probably still recall their feelings when they heard what the Supreme Court had done. Even those who were in full sympathy with the holding must nevertheless have been awed by the responsibility the Supreme Court had undertaken and shaken by some doubts whether the judicial institution could engage in a controversy so charged with emotion and bitterness without running the risk of political defeat and possible permanent impairment of judicial power.

Ten years later, we know that they made the right decision. The decision was right because it got the United States on the right side of history at a crucial time in world affairs. By its action the Court raised a standard around which men of good will might rally. Under the Court's leadership the issue of racial segregation was forced on the American conscience. Segregation could persist only if it could be ignored; once the case for segregation had to be examined, it was lost. Without either the purse or the sword, the weakest of the three branches of government proved to be the only one with the conscience, the capacity, and the will to challenge the scandal, the immorality, the social and economic waste, and the positive international dangers of racial discrimination. Eventually the Executive, through Presidents Kennedy and Johnson, and the Congress began to assume their responsibilities for achieving the broad purposes of racial equality. But if the Court had not taken that first giant step in 1954, does anyone think there would now be a Civil Rights Act of 1964?

Today, the Supreme Court stands with respect to the issue of legislative districting and apportionment where it stood in 1954 on the issue of racial segregation. Though the differences are substantial, I suggest that the similarities are even greater. Now, as then, the Court has taken sides in the crisis of our times. Where the Court in 1954 was demanding a social revolution, today it is presiding over a political revolution. Once again the Court has unlocked the explosive potentialities of the equal protection clause, staking its prestige and its reputation on its ability to remake the nation in the image of its constitutional concepts.

I

The Supreme Court has never been detached from the major political issues of the times. As Edward S. Corwin once said: "Constitutional law has always a central interest to guard."[1] Under John Marshall the central interest was in the heroic task of legitimizing a strong national government. Under Roger Taney the Court's attachment was to narrower, more fragmented goals, principally the economic interests of the South and West. In the latter part of the nineteenth century the Court's role was to encourage the economic freedom which

* Presidential address, American Political Science Association, Chicago, September 9, 1964.

[1] *The Constitution and What It Means Today* (Princeton, Princeton University Press, 1946), p. viii.

a rapidly expanding economy demanded. In the New Deal period the Court was striving toward a balance of governmental power, strong enough to prevent depressions yet restrained enough not to threaten individual freedom.

When we come to the recent past, we stand in our own light and may not see what will be obvious from a longer perspective. But certainly a central focus of constitutional law since World War II has been on problems of what may be called "the urban majority." The census of 1920 revealed that rural America, which from the beginning of the nation had dominated American politics and social values, had become a minority. Since that time white, Protestant, rural America has been on the defensive, seeking to maintain in race, religion and politics its former superiority. Urban America, the new majority, has offered to the Negro the opportunity to escape from the bondage of rural peonage, as it had earlier permitted European immigrants to rise in economic and social status. Urban America has had to develop a tolerance which did not exist in rural America, so that various races and religions could live together in peace. Urban America has needed the political power which would make possible governmental recognition of its staggering problems of housing, transportation, recreation, juvenile delinquency, disease, and social disintegration.

Faced with this challenge, the rural minority could preserve its political power and its social system only by a denial of that equality which had been a major tenet of the American *credo*, though often 'honored in the breach' rather than the observance. Conversely, the drive of the urban majority required the assertion and the practice of equality in race, equality in religion, equality in political power. As Alan Grimes says in his thoughtful book on *Equality in America*, the urban majority has proved to be "a liberating force in American politics, redistributing freedom by equalizing the claims of the contestants." He continues:

> American politics has always made a pragmatic adjustment to its immediate needs, tempering its idealism with expediency. Today, ironically, the imperatives of urban life are making expedient the fulfillment of the historic ideal of equality.[2]

II

The idea of equality indeed has roots deep in Western political thought. It reaches back to the Greek and Roman Stoics and the Christian fathers, and was carried forward by seventeenth and eighteenth century political philosophers such as Hobbes and Locke. The Declaration of Independence announced the "self-evident" truth that "all men are created equal," but no language specifically reflecting egalitarian concern found a place in the Constitution. In fact, that document in several provisions accepted and guaranteed the institution of human slavery.

The idea of equality finally appeared in the Constitution when the Fourteenth Amendment was adopted in 1868, forbidding the states to deny to any person within their jurisdiction "the equal protection of the laws." This formulation was conceived primarily as a protection for the newly freed slaves. Justice Miller in *The Slaughter-House Cases*[3] said that this was "the one pervading purpose" of the Civil War amendments. Speaking specifically of the equal protection clause, he doubted very much "whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview" of the clause.

This expectation was doubly confounded. The Court proved very reluctant to use the equal protection clause as an instrument for the protection of the civil rights of the "newly made freemen," and at the same time eager to invent uses for it as a bar to business regulation. Robert J. Harris, in his fine study of the equal protection clause,[4] located some 554 decisions of the Supreme Court up to 1960 in which this provision was invoked and passed upon by the Court. Of these, 426 (77 per cent) dealt with legislation affecting economic interests, while only 78 (14 per cent) concerned state laws allegedly imposing racial discrimination or acts of Congress designed to eliminate it.

The generally low regard in which the equal protection clause was held as late as 1927 is indicated by Justice Holmes's deprecatory characterization of equal protection in *Buck* v. *Bell* as "the usual last resort of constitutional arguments."[5] It was not until the early 1930s that the Supreme Court "returned to the Constitution," as Harris puts it, and began the rehabilitation of the equal protection clause in a series of cases dealing with racial discrimination which finally led in 1954 to the epoch-making decision in *Brown* v. *Board of Education*.[6]

[2] *Equality in America: Religion, Race and the Urban Majority* (New York, Oxford University Press, 1964), p. x.

[3] 16 Wall. 36 (1873).

[4] *The Quest for Equality* (Baton Rouge, Louisiana State University Press, 1960), p. 59.

[5] 274 U. S. 200 (1927).

[6] 347 U. S. 483 (1954).

In the meantime there had been a tentative exploration on the Court of the possible application of the equal protection clause to legislative districting and apportionment. Serious complaints had accumulated in most of the states as to inequality of population in congressional and state legislative districts. Inequality resulted both from failure to redraw district lines as population changes occurred, and from provisions in many states basing legislative districts on factors other than population. The problem of unequal congressional districts was raised in the 1946 case of *Colegrove* v. *Green*,[7] and three members of the Court asserted there for the first time that equal protection required the election of congressmen from districts generally equal in population. But there was no follow-up on this suggestion. Over the next fifteen years efforts to get the Court to intervene in other kinds of legislative election problems were met, in Harris' words, with "bland unconcern for equitable representation." Consequently it came as a considerable surprise in 1962 when the Court in *Baker* v. *Carr*[8] by a 6 to 2 vote reversed the result of the *Colegrove* case and directed a federal court to hear a challenge to the constitutionality of Tennessee's legislative arrangements, where no reapportionment of seats in the state legislature had taken place since 1901.

While this decision did not indicate what standards the judiciary should apply in passing on complaints about legislative apportionment, that was soon to come. In 1963 the Court in *Gray* v. *Sanders*[9] by a vote of 8 to 1 invalidated the Georgia county unit system of primary elections for statewide offices, a system deliberately designed to give control of the electoral process to rural minorities. The Court held:

> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment.

This was the Court's first approach to the rule of one-man-one-vote. *Gray* v. *Sanders* was not, of course, a legislative apportionment case. But in 1964 the Court held that the same principle covered election of representatives in Congress and the apportionment of seats in the state legislatures. In *Wesberry* v. *Sanders*[10] the Court by a vote of 6 to 3 applied the one-man-one-vote principle to the congressional districts of Georgia, holding that the Constitution had the "plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." Four months later the rule of one-man-one-vote was responsible for holding unconstitutional the legislatures in no less than fifteen states, as the Court decided *Reynolds* v. *Sims*[11] and fourteen other cases by varying majorities of from six to eight justices. Probably more than forty state legislatures in all are vulnerable to challenge under the principle of *Reynolds* v. *Sims*.

III

The apportionment decisions have been bitterly criticized on many grounds, but there are two basic objections to the constitutional position asserted by the Court. First, it is argued that the equal protection clause has no relevance to and does not control matters of political representation, and consequently that there are no constitutional limits on legislative arrangements. Second, even if there are some limits, it is alleged that they are not judicially enforceable. So this is partly an argument about constitutional standards for apportionment systems, and partly an argument about the proper role of the courts.

Let us examine first the question of constitutional standards. Only Justices Frankfurter and Harlan on the recent Court contend that there are no constitutional limitations on legislative discretion in setting up apportionment arrangements. With Frankfurter's retirement, the Court's position is eight to one against Harlan on this score.

Six members of the Court majority say that the proper standard is one-man-one-vote. In *Wesberry* v. *Sanders* Justice Black derived the principle of equal congressional districts from certain of Madison's statements at the Constitutional Convention and in *The Federalist*, and from the provisions in Article I for the choosing of representatives "by the people of the several States." In *Reynolds* v. *Sims* Chief Justice Warren relied on general principles of representative government and majority rule to support the Court's conclusion that "the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators." "Legislators represent people, not trees or acres," he said,

[7] 328 U. S. 549 (1946).
[8] 369 U. S. 186 (1962).
[9] 372 U. S. 368 (1963).
[10] 376 U. S. 1 (1964).
[11] 377 U. S. 533 (1964).

adding: "To the extent that a citizen's right to vote is debased, he is that much less a citizen."

Obviously the Court is here creating new law, just as it did in the *Brown* decision. The Court never likes to admit that it is creating new law. In *Brown* the Court had hoped that it could find some support for overruling its precedents in the "intention of the framers," some definite indication of concern with segregated education when the Fourteenth Amendment was adopted, and so it had asked counsel to undertake research on the historical background of the amendment. But no clear voice spoke from the past, and consequently the Court had to ground its interpretation of equal protection on the "present place" of public education in American life and present psychological knowledge and present standards of morality. In the same way the Court in *Reynolds* v. *Sims* relates equal protection to present concepts of representative government.

It is charged, however, that these are simply the concepts of a "particular political philosophy" which seems wise to the present majority of the Supreme Court, and without constitutional standing. Justices Stewart and Clark deny that the rule of one-man-one-vote can be logically or historically drawn out of the equal protection clause, and they contend that the rule is much too rigid in its effect on systems of representation. Holding every state to the one-man-one-vote rule, they say, would deny "any opportunity for enlightened and progressive innovation in the design of its democratic institutions." The goal of equal protection as they see it is a broader one, "to accommodate within a system of representative government the interests and aspirations of diverse groups of people, without subjecting any group or class to absolute domination by a geographically concentrated or highly organized majority."

This is a rather vague standard. How is one to judge whether it has been achieved? There are two tests, according to Stewart. First, the plan of representation must be "rational," in the light of the state's own characteristics and needs. Second, "the plan must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State." Determining whether a state is meeting this test might seem to require the employment of whole cadres of political scientists, but Stewart suggests that a liberal arrangement for use of the initiative and referendum in approving or reviewing apportionment plans should be regarded as an acceptable guarantee against frustration of the basic principle of majority rule.

Application of this two-fold test led Stewart and Clark to uphold the legislative apportionments of New York, Colorado, Illinois, and Michigan, all of which were condemned by the six-judge majority as violative of one-man-one-vote. In addition, Stewart, but not Clark, would have approved the Ohio apportionment. The Stewart-Clark standard gave the same result as one-man-one-vote in the ten other states which the Court considered in the spring of 1964.[12]

Which of these standards has the better claim to validity? The Stewart-Clark rule of rationality has the pragmatic merit of flexibility. It does not clamp down so strictly on the discretion the states have traditionally exercised in making representation decisions, and consequently it may be more politically acceptable.

By contrast, one-man-one-vote is a rigorous rule. But I believe that it comes closer to summarizing current notions of democracy in representation than any other. For example, the Twentieth Century Fund in 1962 assembled a conference of sixteen distinguished research scholars and political scientists to discuss the problems of legislative apportionment. With only one dissent, they concluded that "the history of democratic institutions points compellingly in the direction of population as the only legitimate basis of representation today."[13]

Moreover, the Court's one-man-one-vote rule may not be as rigorous as it sounds. Chief Justic Warren's opinion in *Reynolds* v. *Sims* specifically disclaimed the intention "to spell out any precise constitutional tests." All that the Court asked was that apportionments be "based substantially on population and the equal-population principle was not diluted in any significant way." He also granted that "a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained." It therefore appears possible that one-man-one-vote may in practice be tempered by some of the same rationality which is the foundation of the Stewart and Clark approach.

IV

Fortunately for us, however, this comparison of the Court's two standards can be left to another occasion. For present purposes their similarity is more important than their differ-

[12] In four of these cases, however, Stewart voted to remand for further proceedings.

[13] "One Man-One Vote," The Twentieth Century Fund, 1962, p. 4.

ences. The significant fact is that eight members of the Court, though disagreeing as to the standard, have agreed that the Court must assume responsibility for bringing legislative apportionments under the coverage of the equal protection clause. And the more lenient of the two standards is still strict enough to invalidate ten of the first fifteen state legislatures to which it has been applied.

The basic division on the Court, then, is not over standards but over the proper role of the Court in handling political questions. In *Colegrove* v. *Green*, Justice Frankfurter first made the argument that legislative districting and apportionment was a "political thicket" which courts must shun. When he lost this argument in *Baker* v. *Carr*, he had to develop a positive justification for inequality of voting and representation arrangements in order to continue his posture of judicial non-intervention. His argument was that population had never been the sole basis for representation systems, either in the past or the present, and so it could not be part of the concept of equal protection. He presented a long historical review of the various systems of representation, and wound up with the conclusion that there had been "a decided twentieth century trend away from population as the exclusive base of representation." Only twelve state constitutions, he reported, provided for a substantially unqualified application of the population standard for even a single chamber. This appeared to Frankfurter to constitute a conclusive case against one-man-one-vote.

Frankfurter is of course correct on the mathematics. There *has* been a trend away from population as the exclusive base of representation in state legislatures. Such a trend has manifested itself, for example, in the state of Illinois, which affords an interesting commentary on Frankfurter's statistics. The Northwest Ordinance of 1787, the Illinois Enabling Act of 1818, the Illinois Constitution of 1848, and the present Constitution of 1870 all provided for two houses based on population. From 1818 to 1901 both houses were redistricted fourteen times in conformity with population changes. In 1870 Cook County contained only 14 per cent of the state's population. But by 1900 it had grown to 38 per cent, and 1901 was the last reapportionment that could be put through the legislature, because the population growth of Cook County would have had to be recognized. Efforts to force remapping in the courts failed. Finally, in 1954 a compromise constitutional amendment was presented to the voters—the lower house to be redistricted every ten years on a population basis, the senate to be drawn permanently with area the prime consideration to guarantee downstate control. The amendment was ratified by 87 per cent of Illinois voters.

This is a sample of how Frankfurter's trend was established. It is a trend resulting from rural legislators' persistent refusal to recognize state constitutional requirements and metropolitan expansion, and final acquiescence by city dwellers in permanent under-representation as the price of getting any reapportionment at all. Somehow Frankfurter's trend seems less impressive when put in this light. The principle of representation which his research has discovered is simply the principle that power holders do not willingly give up power.

Since Frankfurter did not recognize this as the operative principle of representation in the twentieth century, he did not have to defend it. But his colleague Justice Harlan did in fact do so in his several opinions. In *Baker* v. *Carr*, supplementing Frankfurter's dissent, he announced that he would not regard it as unconstitutional for a state legislature to conclude (a) "that an existing allocation of senators and representatives constitutes a desirable balance of geographical and demographical representation," or (b) "that in the interest of stability of government it would be best to defer for some future time the redistribution of seats in the state legislature," or (c) that "an electoral imbalance between its rural and urban population" would be desirable "to protect the State's agricultural interests from the sheer weight of numbers of those residing in the cities."

Bear in mind that in *Baker* v. *Carr* the legislature which was making these decisions was a legislature elected from districts drawn in 1901 and not subsequently revised, in defiance of the state constitution. So what Harlan was saying was that legislators representing the state as it was in 1901 could legitimately decide in 1962 that the 1901 balance of geography and demography had been preferable, that the political situation in the state would be more stable if the clock had been stopped in 1901, and that the rural interests as of 1901 could themselves decide, contrary to the state constitution, that they deserved protection against the cities and that it should take the form of keeping city representation in a minority.

Justice Harlan did not even stop with this. In the 1963 case of *Gray* v. *Sanders*, he was, alone on the Court, rash enough to argue that Georgia's county unit caricature of a representation system was not irrational. He said in its defense:

Given the undeniably powerful influence of a state governor on law and policy making, I do not see how it can be deemed irrational for a State to conclude that a candidate for such office should not be one whose choice lies with the numerically superior electoral strength of urban voters. By like token, I cannot consider it irrational for Georgia to apply its County Unit System to the selection of candidates for other statewide offices in order to assure against a predominantly 'city point of view' in the administration of the State's affairs.

The amazing doctrine here announced is that a state can rationally, and therefore lawfully, set up an electoral system under which the governor and other statewide officers must be chosen by the minority because if they represented the majority they might abuse the "legitimate interests" of the minority. By the same logic it could be argued that Negroes, who are in every state a minority more abused than rural interests ever were, could rationally be given the right to control the naming of public officials. Actually, Harlan suggests in his *Baker* dissent that he would accept as rational *any* legislative plan of allotting representatives short of throwing dice.

V

Justice Harlan would have been better advised not to try to find rational excuses for misrepresentation, and simply to confine himself to stating the case against judicial involvement in political questions. He does elaborate on Frankfurter's *Colegrove* reasoning, as in the following statement from the *Wesberry* case:

What is done today saps the political process. The promise of judicial intervention in matters of this sort cannot but encourage popular inertia in efforts for political reform through the political process, with the inevitable result that the process is itself weakened.

My response is that it is a naive, static view of politics which holds that if the courts do more, the legislature and executive will do less. If the courts act, it is quite possible that they will stimulate others to act. In fact, within four days after the *Wesberry* decision was handed down, the Georgia legislature, its political process not sapped but invigorated, passed a bill redistricting the state's congressional seats for the first tine since 1931 and giving Atlanta the representation in Congress to which it was entitled by population.

The *Wesberry* decision also motivated the House Judiciary Committee to take up a long pending measure drafted by Representative Celler providing that congressional districts must be composed of compact and contiguous territory, varying not more than 15 per cent from the average population of the state's congressional districts.[14] Prospects for eventual passage of the bill are regarded as favorable. Representative William McCulloch (Rep., Ohio) was quoted as saying, when the bill was being considered in committee: "With hindsight, we probably would have been well-advised to have taken some action heretofore."[15] Now that the Supreme Court has said that there is no defense for unequal congressional districting, everyone agrees and the districts are being made equal. But until the Supreme Court acted, there was no legislative action and no prospect of legislative action.

Justice Harlan puts his objection to judicial activism in a somewhat different way when he castigates the "current mistaken view . . . that this Court should 'take the lead' in promoting reform when other branches of government fail to act." Stated this broadly, Harlan's criticism must include the Court's historic accomplishment achieved by "taking the lead" in *Brown* v. *Board of Education*. The Court in 1954 could have decided that ending racial segregation was not a task for them—indeed, not a task for a court at all. The justices could have said, this is a job for Congress, which is specifically authorized by section 5 of the Fourteenth Amendment to enforce the equal protection clause by "appropriate legislation." They could have said, this is a job for the President, who has resources for marshalling opinion and providing the leadership and quite possibly the coercion that will be required to make equal protection a reality in many parts of the nation. The *Brown* Court could have said these things—but it did not. It took the lead.

Now, in 1964 the Court has taken the lead to achieve equality in the representative process at the state level. It has taken the lead in demanding that the naked power struggle, which up to the present has determined how state legislatures are composed, be subjected to the rule of law—specifically, equal protection of the laws. The Court has stirred the stagnant waters in the rotten boroughs. It has challenged the beneficiaries of the various systems of malapportionment and underrepresentation to justify if they can their privileged status. The Court has cut through the sophistry that to prevent the problems of rural minorities from being ignored, it is necessary to ignore the problems of urban majorities.

[14] H. R. 2836, 88th Cong.

[15] *New York Times*, March 19, 1964.

But stirring the waters is not enough, of course, and here is where Justice Harlan's reservations about judicial leadership have some relevance. Courts cannot lead unless some one will follow. The burden of achieving racial integration was too heavy for the courts to bear alone; they needed the executive and legislative assistance they have recently received. Just so the Supreme Court cannot expect to carry through a massive reform of American state legislatures unless there is substantial legislative support for the goals it has announced. It is true that some courts, when reapportionment deadlines imposed on state legislatures have not been met, have themselves carved up a state into legislative districts. But few can be happy to see courts assume such functions, for which they have so little qualification.

The Supreme Court, needing legislative support, must anticipate the possibility that this support may be less than complete. Many proposals for constitutional amendments have been put forward to modify in one respect or another the impact of the Supreme Court decisions on state legislatures. The principal proposal, backed by the Republican Party platform in 1964 and the Republican leadership in Congress, would accept the position that one house must be based on population, but would allow representation in the second house to take into account factors other than population if the people of the state approved in a referendum vote.[16]

If such an amendment were to be adopted, it would be regarded as a rebuff to the Supreme Court. But its adoption would actually require most of the states to revise their legislative apportionments in the direction of greater equality of representation than now exists, and the Court, even with its mandate thus limited, would have been responsible for stimulating the political process to accomplish the most sweeping reform of state legislative composition in American history.

In a very real sense, then, the Court's decision in *Reynolds* v. *Sims* is not an order. It is an opinion offering itself for belief; it is a recommendation proposing action. The Court proposes, but politics disposes.

The Court was justified in taking the lead on reapportionment in state legislatures because no other channels of protest were open to an aggrieved citizenry. The Court was justified in concluding that the stalemate of legislative representation could be broken only by holding one-man-one-vote to be a constitutional mandate. In a nation which is seventy per cent urban, the Court is saying to rurally dominated legislatures that the way to regain the position and prestige the states once had is to establish contact with the real world of the second half of the twentieth century. The Court is opening the way for state legislatures, which all too often have seemed engaged in an organized conspiracy against the future, to play a positive role in dealing with the staggering problems of metropolitan America.

"Courts are not representative bodies," said Justice Frankfurter in his concurring opinion in *Dennis* v. *United States*.[17] "They are not designed to be a good reflex of a democratic society." It is one of the strengths of the American system that this is not necessarily true. Not all elective institutions are representative, and not all representative institutions are elective. Students of public administration have demonstrated how much we rely on the representative character of the American civil service. Now *Brown* and *Baker* have again reminded us that judges who endeavor to speak for the constituency of reason and justice may truly represent the enduring principles of a democratic society.

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[16] In an effort to delay judicial enforcement of the Supreme Court reapportionment decisions until a constitutional amendment could be considered by Congress, several legislative measures were considered in the closing days of the 88th Congress. Senator Everett Dirksen sponsored H.R. 11380 as a rider to the Foreign Aid bill, providing that federal courts may not interfere with the election of state legislatures before January 1, 1966, and that they must allow states "a reasonable opportunity" to reapportion their legislative seats in regular legislative sessions, except in "highly unusual circumstances." Adoption of the rider was prevented by a filibuster, and eventually a compromise was approved in the Senate. It declared the "sense of Congress" that any order of a federal district court concerning apportionment of a state legislature could properly allow the legislature the length of time of its regular session plus thirty days, but no longer than six months, to apportion itself in accordance with the Constitution. House conservatives, angered at the mildness of H.R. 11380 as amended, forced its elimination from the Foreign Aid bill in conference, so the Eighty-eighth Congress adjourned without taking any action relating to the Court's apportionment decisions.

[17] 341 U. S. 494 (1951).

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
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June 10, 1965

FACT SHEET ON AMENDING THE CONSTITUTION OF THE UNITED STATES

Article V of the Constitution of the United States:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the first Article, and that no State, without its consent, shall be deprived of it's equal Suffrage in the Senate."

Thus Article V makes available two procedures for proposing amendments and two procedures for ratifying such proposals.

Although the Constitution has been amended 23 times, only the first procedure - adoption of a proposed amendment by two thirds of both houses of Congress - has ever been used. And only once - in the ratification of the 21st Amendment (repeal of the 18th Amendment which prohibited the manufacture, sale, or transportation of intoxicating liquors) - has the second procedure for ratification of amendments been used.

ARTICLE V AS IT MAY APPLY TO PROPOSING AN AMENDMENT

Using the second method for proposing amendments, that is, by application of state legislatures, many states have passed resolutions memorializing Congress, asking that a convention be called to amend the Constitution in the words proposed last December by the General Assembly of the States. For wording see May 1965 National Board Report. According to the Council of State Government office, up to this time 21 states have passed and sent resolutions to Congress in the identical wording proposed by the General Assembly of the States. Five other states have passed and sent resolutions with somewhat different wordings but with the same general objective. There are a few more additional states that, prior to this year, proposed the amendment (often called the Disunion Amendment) which would remove the subject of state legislative apportionment entirely from the jurisdiction of the federal courts.

Thirty-four is the number required by the Constitution for this never-used method of proposing amendments. Senator Douglas (D., Ill.) tells us that some authorities argue that all these state resolutions can be counted toward the requirement whether or not the wordings are identical. Other authorities claim that even identical applications have no weight because the intention of Article V is a constitutional convention for general revision, and that there is no purpose for a Convention when the delegates are instructed and limited to one specific amendment. The Senator

goes on to say "if a majority in each House of the Congress wanted to call a convention they could take any of these actions by the state legislatures as having weight. There would be no check on the decision of a majority in each House on this, except perhaps a Presidential veto."

Be that as it may, tremendous pressure has been exerted on Congress by the actions of states to propose some kind of a legislative reapportionment amendment. It seems highly probable that rather than calling such a convention Congress will prefer to send to the states some form of such an amendment.

ARTICLE V AS IT MAY APPLY TO RATIFYING AN AMENDMENT

Twenty-two of the twenty-three amendments which have been made to the Constitution were adopted by Congress and submitted to the states for ratification by state legislatures. The other amendment was ratified by state conventions. The different versions of proposed amendments on apportionment now before the Senate and House committees all contain provision for ratification by state legislatures within the usual seven year period. However, if the Congress decides to send an apportionment amendment to the states, provision for ratification by state conventions rather than state legislatures could be made. With this possibility in mind some background on the one instance when this method of ratification was used may be useful.

RATIFICATION OF A CONSTITUTIONAL AMENDMENT BY STATE CONVENTIONS

The 21st Amendment was proposed by Congress February 20, 1933, when it passed the House (the Senate had passed it on February 15). Ratification was completed on December 5, 1933, when the 36th state (Utah) approved the Amendment. It was certified by Acting Secretary of State Phillips that same day.

Section 3 of the 21st Amendment reads: "This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of submission hereof to the States by Congress."

When convention ratification was proposed there was much discussion in legal circles as to how it should be carried out. Discussion was devoted principally to consideration of the following three questions:

1) Is Congress subject to any legal obligation to prefer state conventions as the ratifying agency in submitting certain types of amendments?

2) If state conventions are specified as the ratifying agency, is Congress empowered to enact implementing legislation regulating their size and duration, the manner in which delegations are to be chosen, procedures and the size of the vote by which the amendment is to be approved or rejected?

3) Are conventions superior to state legislatures as a means of reflecting public sentiment as to the merits of a proposed constitutional amendment?

The first two questions were resolved without too much heat. A 1931 Supreme Court decision held that Article V of the Constitution means exactly what it says -- that Congress may select either legislatures or conventions as the ratifying bodies. As to whether Congress should regulate the conduct of the conventions, some Congressmen thought that this should be done and introduced bills setting forth procedures, but none of these bills was passed and there was a good deal of opinion that for Congress to lay down strict guidelines would not be practical.

But the argument about whether convention or legislature ratification of amendments was preferable was exhaustively debated.

Those in favor of the convention method held that convention delegates would be "superior types" of persons, willing to serve for a short period but not the kind of citizen attracted to serving in the legislatures; that delegates would be concentrating on the amendment while legislators would not give an amendment undivided attention; that delegates would truly represent a large spectrum of public sentiment built up either for or against the amendment while members of the legislature, elected before the amendment was proposed, might vote their own personal prejudices or be subject to pressure; and that conventions would come to quicker decision than would the legislatures.

Arguments for ratification by legislatures made much of the fact that conventions would be costly and that once a convention had met and come to decision it would disband so there would not be a chance for reconsideration if the arrived-at decision seemed unsatisfactory. State legislatures, being continuing bodies, would be able to switch votes if that seemed desirable. Those who held to this argument also believed that constitutional amendments should be considered by a deliberative body (which the conventions were not visualized as being and indeed were not) and cited a Supreme Court decision that "both methods of ratification, by legislatures and conventions, call for action by deliberative assemblages representative of the people...." (Hawke v. Smith, 253 U.S. 221, 226-227, 1920).

WHAT REALLY HAPPENED

The state legislatures acted promptly to establish procedures for the conventions. In 16 states laws were passed applicable to any such ratifying convention and these are still on the books.

Some states elected all delegates at large; some elected all by local districts; and some chose part in one way and part in another. No suits were brought in the courts challenging the constitutionality of any of these methods.

The conventions were not looked upon as deliberative bodies; the delegates were expected to, and did, simply meet and vote. In nearly all states, slates of delegates submitted to the voters by the states were composed of pro and con proponents of the amendment so, by voting for a slate of delegates, the voter was really participating in a popular referendum on the amendment itself. Some states also provided for the selection of additional unpledged delegates, perhaps because in those states a convention was thought of as a deliberative body. And some states held a referendum on the constitutional amendment at the time when the delegates were chosen and required the delegates to vote as a majority of the people had voted.

In Ohio, where an attempt was made to hold a referendum not on the amendment but on the act of the legislature providing for the ratifying convention, the state supreme court expressed the opinion that the action of the legislature in calling the convention rested upon the authority of Article V and was a federal function which, in the absence of congressional action, the state was required to perform. In Missouri, a similar attempt was made to secure a referendum on the state legislature's action in calling a convention and, like the Ohio court, the Missouri state supreme court concluded that the state legislature in calling the convention was exercising a power conferred upon it by the federal Constitution. A suggestion that the Supreme Court of the United States approved of this decision is found in the fact that it declined to review the decision of the state court.

The number of delegates in the conventions varied from 329 in Indiana to 3 in New Mexico, and the conventions differed in many other aspects. But in less than ten months, probably due to the emotional climate that had built up around the substance of the amendment, the required 36 had met, voted, and adjourned, and the amendment was a part of the Constitution.

Natl Prog - Apportionment

STATUS OF PROPOSALS TO ALLOW STATES TO APPORTION ONE HOUSE OF THE LEGISLATURE ON FACTORS OTHER THAN POPULATION

JUN 29 1965

Resolution passed requesting a national constitutional convention

Alabama
Arizona
Arkansas
Florida
Georgia
Idaho
Kansas
Louisiana
Maryland
Minnesota
Missouri
Montana
Nebraska
New Hampshire
New Mexico
North Carolina
Oklahoma
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia

Total: 23 states

Resolution failed passage or other negative action

Colorado
Connecticut
Delaware
Illinois
Indiana
Iowa
Massachusetts
Michigan
New Jersey
New York
Ohio
Oregon
Washington
West Virginia
Wyoming

Pennsylvania

Total: ~~25~~ 16 states

Resolution passed requesting Congress to propose amendment

Alaska
California
Nevada
North Dakota
Rhode Island

Total: 5 states

Resolution passed by one house, legislature still in session

~~Pennsylvania~~
Vermont*
Wisconsin

Total: ~~3~~ 2 states

*Deadlock has developed over wording of resolution

No action taken as of June 10, 1965

Hawaii
Kentucky
Maine
Mississippi

Total: 4 states

League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

This is going on
Duplicate Presidents Mailing

June 14, 1965

TO: Local League Apportionment Chairmen
FROM: Mrs. John A. Campbell, Director
RE: Apportionment of state legislatures.

An emergency by definition requires changing normal procedures, and so the adoption of a national emergency Current Agenda item means a change in orthodox League leadership and member Program publications. This kit is a substitute for such familiar materials as LEADERS GUIDES or CURRENT REVIEWS containing information for resource committees. A four-page supplement to the July NATIONAL VOTER will take the place of a pamphlet or FACTS & ISSUES for all-member use. It was only in this way that we could be sure of getting material to you in time for you to prepare for reaching consensus by January 1, 1966. Because this kit of outside material is so expensive we can only send one to each League, although while our limited supply lasts additional copies may be ordered from the national office for $5 each.

The Kit: What's in It and How to Use It.

Our goal in compiling the kit was to provide solid background material and samples of the various arguments and points of view on the subject of apportionment. Glendon Schubert's REAPPORTIONMENT was the best basic publication we could find that includes extensive excerpts from court decisions as well as cogent articles on the theory and practical politics of legislative apportionment. As a special help to Leagues in states with no state item on apportionment and to those that have not worked in the field recently, we have also included PATTERNS OF APPORTIONMENT by William J.D.Boyd. Although this pamphlet is a little dated (it came out in 1962 and so does not include developments after the Baker v. Carr decision), it gives an exceptionally clear account of the basic issues.

To supplement these two basic publications, the kit contains a series of shorter essays and congressional testimony that illustrate different viewpoints on the issues raised by Reynolds v. Sims (1964). Also, two recent state League publications are included to give all Leagues an idea of the different ways state Leagues have approached problems of apportionment. Finally, we have added the factsheet on Amending the Constitution of the United States to give some technical background.

At first glance, the sheer weight of all this material may seem overpowering, especially to apportionment committees of the League that have done no work in the field. But, to refer back to the outline in the May 1965 National Board Report (pp. 10-11) on what is and is not to be included in the emergency item, there is no reason to be overwhelmed. In the first place, we are not going to consider the propriety of the Court's assumption of jurisdiction. This means that although resource committees should probably know in general what was decided in Baker v. Carr (Schubert, pp. 106-115), there is no need for them to consider in detail the kind of cases over which the Supreme Court does or does not have jurisdiction. In the second place, because the scope of this national item does not include technical specifics on how legislative apportionment should be carried out in

each state, a great many knotty and time-consuming questions are eliminated that would be part of a state League study of apportionment problems. And last, we are not including the question of Congressional districting.

To turn to the kind of questions that <u>are</u> included in the item: We are going to consider what the Constitution as interpreted by the U.S. Supreme Court now provides with respect to state legislative apportionment. This means that we should look very closely at Reynolds v. Sims and subsequent court opinions. (Schubert, pp. 141-163). What exactly is entailed in the "population" standard for apportionment demanded by the equal protection clause of the 14th Amendment? Is this standard rigid? flexible? does it completely rule out "factors other than population"? We than can go into other questions: Is the present constitutional standard desirable? Is it practical? Should the Constitution be amended to allow a basis of representation other than population? If so, why? What factors other than population (e.g. counties, cities, areas) should be allowed? Are there factors other than population (e.g. race, religion) that would be undesirable? Background information on these questions is contained in most of the articles in the kit.

Finally, your League may decide that the Constitution should not be changed or it may conclude that an amendment is needed. In either case, you will want to consider the form an amendment should take if factors other than population should be allowed as a basis of representation in state legislatures: Who should decide this question? the legislature? the people? When do they decide? How often should the question be reviewed and by whom? Which alternative plans for ratification of amendments of the U.S. Constitution would be appropriate? This second series of questions illustrates the very real ties between practical politics and more theoretical issues of democratic concepts of the basis of representation.

As your committee reads the material in the kit it may be helpful to keep in mind both series of questions, as well as others you may devise yourself. In this way, your research may have a direction and focus it might lack if you plunged in with no framework. It is also important that each committee member read on both sides of the issue, although of course no individual need read everything. For example, someone might read both Cornelius Kennedy and Dean Fordham; or Senator Aiken's speech could be matched with Herman Pritchett's address to the American Political Science Association.

<u>CONSENSUS</u>

In the May National Board Report wordings are given of the most talked-about proposals for constitutional amendment in regard to the apportionment of state legislatures. Extensive hearings have been held by the Senate subcommittee on the Judiciary. Any proposal reported out of committee is likely to embody some changes and subsequent action in the Senate and House may make further changes. Some ideas for change are given in the article in the May-June Voter. For these practical reasons as well as the basic nature of consensus as the League understands and uses the term, consensus should not be stated in the form of approval or disapproval of any particular proposed amendment but in terms of general objectives. As usual it will be the role of the national Board to decide whether or not a particular proposal helps the League reach its agreed-to-objective.

For this reason the consensus report form poses broad questions. The forms are included in this kit, one for the national office as soon as your consensus has been reached but <u>no later than January 1, 1966</u>, one for the state office, and one for your own files.

Membership Meetings

Leagues with active state items on apportionment may need only one meeting on the national item in order to reach consensus. But these League members should at the same time be discouraged from looking at the basic issues solely from the standpoint of familiar state problems. Constitution-building on the national level is fundamentally different from state politics or even from constitutional provisions appropriate to one state.

Leagues with no recent experience in the apportionment field may have to have at least two membership meetings on the national emergency item. It might be well in the first meeting to combine the more theoretical questions of what should be a basis of representation with a consideration of practical politics that led to the Court's intervention and the present controversy. (For background on the nationwide picture, we suggest you look carefully at PATTERNS OF APPORTIONMENT, the various essays in Schubert, pp. 7-91, as well as the statistical information on pp. 67-82.)

Whether or not Leagues feel the need of one meeting or two and whether or not they are already well aware of specific problems of state legislative apportionment, by adopting the emergency item on the basis of representation all Leagues have taken the responsibility of assessing proposals relating to fundamental changes in the Constitution of the United States. This in no sense can be considered trivial, for as Chief Justice Marshall stated in 1803 "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric had been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it be frequently repeated. The principles, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent."

The Council of the League of Women Voters of the United States decided in May that the current constitutional issue of state apportionment has become an emergency on the national level. This kind of emergency may require exertion on the part of local Leagues throughout the country. But no League is likely to regret exertion that deals with the permanent principle of the basis of representation in as important bodies as state legislatures.

Selected Bibliography in addition to titles in REAPPORTIONMENT by Glendon Schubert.

Advisory Commission on Intergovernmental Relations, APPORTIONMENT OF STATE LEGISLATURES. Commission Report A15. December 1962. $1.00. Available from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

The Commission made its own study of the historical background of the basis of representation, and factors to be considered, and makes recommendations. Minority opinion also reported.

McKay, Robert B., REAPPORTIONMENT AND THE FEDERAL ANALOGY. 1962. 50¢. National Municipal League, 47 East 68th Street, New York, New York 10021

This analyzes comparison of the U.S.Congress with state legislatures, with excerpts from court opinions and political science literature.

De Grazia, Alfred, ESSAY ON APPORTIONMENT AND REPRESENTATIVE GOVERNMENT. February 1963. $2.00. American Enterprise Institute, 1200 - 17th Street, N. W. Washington, D.C. 20036

A vigorous dissent from the court opinions and from the doctrine of one-man-one-vote.

Hacker, Andrew, CONGRESSIONAL DISTRICTING, The Issue of Equal Representation. Revised 1964. $1.95. The Brookings Institution, 1775 Massachusetts Avenue,N.W. Washington, D.C. 20036

Mr. Hacker, in the first two chapters enlarges his views expressed in the flyer sent in the kit. Excellent statistical table on weight of individual's vote, June 19, 1964, at about the date of Reynolds v. Sims.

Jewell, Malcolm E., editor, THE POLITICS OF REAPPORTIONMENT. 1962. $6.00. Atherton Press, 70 Fifth Avenue, New York, New York 10011

This includes Mr. Jewell's essay on POLITICAL PATTERNS IN APPORTIONMENT quoted in the Glendon Schubert anthology and a number of case studies by others on the politics which produced the situation in many states prior to Baker v. Carr, shedding light on the cause of the basic controversy.

League of Women Voters of the U.S.
1200 - 17th Street, N.W.
Washington, D.C. 20036

LOCAL LEAGUE _____

STATE _____

REPORT ON CONSENSUS OF APPORTIONMENT OF STATE LEGISLATURES

(Send your report to the national office (copy to state) as soon as possible after determining consensus but no later than January 1, 1966. Detailed questions given in the Memo of June 14, 1965 and the May National Board Report may be used as a guide in responding to these more general questions.)

CONSENSUS COVERAGE
Report briefly how the subject of apportionment was brought to your membership and evaluate membership participation.

I. In interpreting the Constitution, Court decisions have established that the broad standard for the basis of representation of all state legislatures should be substantially population. Some people think this standard should be maintained; others think it should be changed. What does your League think?

II. A. If your League thinks there should be no change in the Constitution please give your reasons.

B. If your League thinks the Constitution should be amended, what should the amendment provide? (Give ideas not specific wording.) Please give your reasons.

III. Whether or not your League favors an amendment, what should <u>not</u> be included in any apportionment amendment to the U.S. Constitution?

IV. Any other agreement reached by your League.

_____ Date

League of Women Voters of Texas
612 NORTH 18TH STREET o WACO, TEXAS

On Duplicate
Presidents' Mailing

October 6, 1965

TO: Local League Presidents, Program Vice-Presidents and
Emergency National Current Agenda Chairmen
FROM: Mrs. Wilson Nolle, Apportionment Chairman

We are well into our study and discussion of the Emergency Current Agenda Item on Reapportionment. The scope and emphasis of this Item is national and we should avoid local or state emphasis. This may take particular care since specific reapportionment and redistricting plans are very much in the Texas news this fall.

For example, state and local officials have frequently been an excellent source for Program information and participation. However, in this instance Texas political figures would focus on the state-local rather than the national aspect. Moreover, the 59th Texas Legislature approved a resolution on this topic so most members have already taken a public stand on this question. On this occasion you may find a teacher of government or political science a more suitable speaker. Also, this subject would lend itself to presentation by League members in a series of summaries or reviews of a selection of articles from the Glendon Schubert volume, Reapportionment, and other materials from the kit sent to each local League.

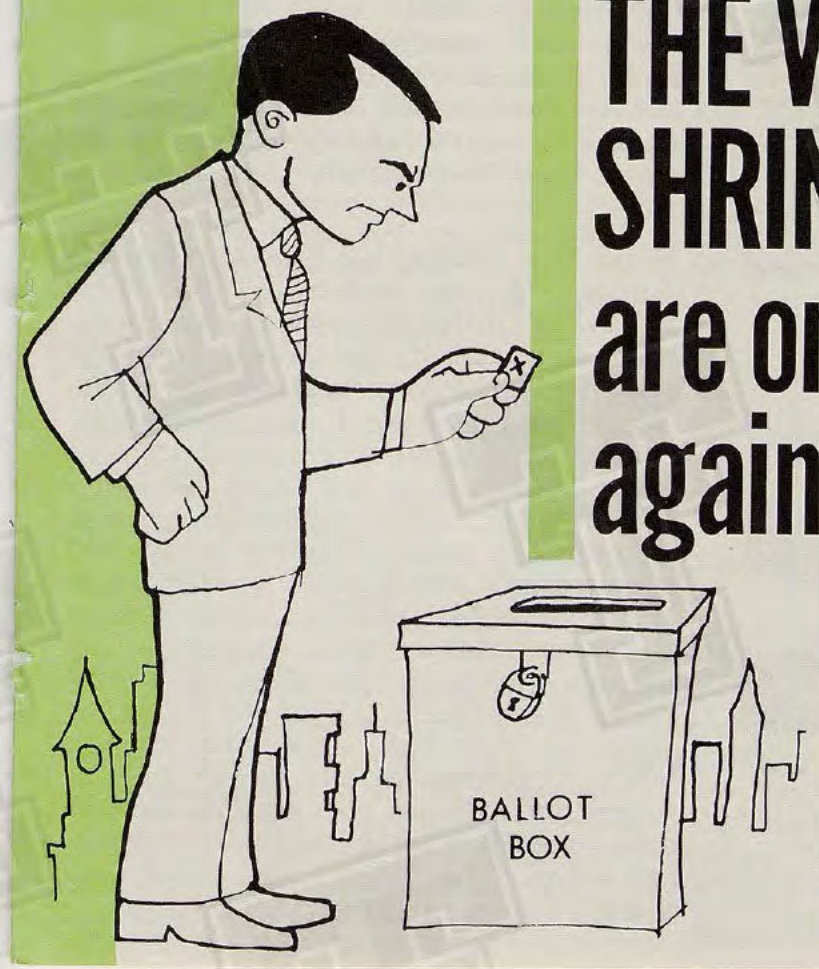
Although the Item is directed to the national issue involved, the resource committee might be interested in the article "Texas - Factions in a One-party Setting" by H. Dicken Cherry in The Politics of Reapportionment edited by Malcolm Jewell. This is the last reference listed in the memorandum from the National League office dated June 14, 1965. This article is not recommended for every-member use, but it is a lively and easily read description of the 1961 Redistricting Act and emphasizes the political and factional aspects of reapportionment within Texas. This book may not be generally available except in college libraries.

Many of you have been using your local VOTERS very effectively in presenting this Item to your members especially to explain its adoption and scope.

You have already received the consensus questions. In leading discussion you will find it useful to stimulate thinking on
.....what are the justifications for other factors than population as a basis for districting?
.....what should be the relative weight of population to such other factors in an apportionment formula?
.....who should determine permissible variations and how?
These questions need not be asked explicitly but if this aspect of the total problem is adequately explored, the specific questions will be easier.

# # # # # # # # # # # # # # # # #

THE VOTE SHRINKERS are on the move again



Where? In Congress and in nearly every state of the Union. They're leading a new drive to perpetuate an old injustice. They want to preserve the old systems of electing state governments, systems that often mean a vote cast in the city counts 4 or 5 or 10 times less than a vote in a small town.

What Are They Doing? They are trying to amend the Constitution of the United States to fix unequal representation for all time. They hope in this way to nullify one of the U. S. Supreme Court's major decisions.

Sanders in the Kansas City Star

"Great Scott! We've lost our vote!"

Historic "One Man, One Vote" Ruling. On June 15, 1964, The Court declared, *"as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportionad on a population basis."*—in short, *"one man, one vote."*

What Was Behind the Supreme Court's Ruling? A long history of inequities. When the United States was an agricultural country with people spread fairly even throughout each state, the legislatures **did** represent the population. But as more and more people moved from the farms to the cities the legislatures tried, with considerable success, to keep the reins of power in the old rural county seats, areas sparsely settled and easily controlled. Legislatures that once provided equal representation became distorted parodies of democratic government. Systems of representation that were reasonable enough when 75 percent of our people lived in towns and villages had become intolerable when 75 percent lived in metropolitan areas. The Court ruled equal representation was fundamental.

These were some of the facts that confronted the Supreme Court in the cases it decided last year:

1. In **Alabama,** only one-fourth of the total population lived in districts that elected the majorities of the state's House and Senate. A voter in the smallest district has 15.6 times more to say about how the House is run than a voter in the largest one.

2. In **Maryland,** the Court said, "the five most populous political subdivisions, with over three-fourths of the State's total 1960 population, are represented by only 10 Senators, or slightly over one-third of the membership" of the State Senate. The state's other 19 counties, with less than one-fourth of its people have 19 Senators, almost two-thirds of the Senate's members.

3. In **Colorado,** it takes more than two-thirds of the population to elect only a bare majority of the state's Senators.

4. In **Georgia,** a voter among the 1,876 people in the smallest district has 99 times the voting influence of a voter among the 185,442 people in the largest one.

And these are not the worst examples of unequal representation: In Nevada, a majority of the state Senate can be elected by a mere 8 percent of the people; in California, by 10.7 percent; in Vermont, by 11.9 percent.

As the Supreme Court remarked in its June 15th decision, "***it would appear extraordinary to suggest that a state could be constitutionally permitted to enact a law providing that certain of the state's voters could vote two, five or ten times for their legislative representatives, while voters living elsewhere could vote only once.***" Yet, the Court points out, that is the effect of the present districting schemes based on some other standard than one man one vote.

Chief Justice Earl Warren of the U. S. Supreme Court put the case for reapportionment bluntly and well, when he said: "*Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.*" (from Reynolds vs. Sims)

Shouldn't the States Correct These Inequalities? Of course. But so far they have shown little disposition to change until citizens who felt themselves under-represented went into court and sued to force reapportionment.

For instance: 1. Delaware has not reapportioned since 1897. 2. New York has been using an apportionment formula unchanged since 1894. 3. Alabama, in spite of a constitution that requires it to redraw district lines every ten years, didn't reapportion for almost 60 years and then it did not act until faced with a court order in 1962.

After considering such situations, the Supreme Court said the principal responsibility for reapportionment lay with the legislatures. It did not tell the states what to do; it simply pointed out their duty to them. Only **then** did most states begin to listen. As Professor Royce Hanson of American University puts it, "***Before the courts took jurisdiction of apportionment cases, the state legislatures consistently told the people petitioning for fair representation to go to hell. Now they do not have to go.***" But most states still have a great deal to do before they can be said to have complied with the Court's ruling.

A Plan to Nullify the Court. The campaign to overturn the Supreme Court's decision is being waged right now in Congress and the state legislatures.

In Congress, the principal threat lies in the constitutional amendment proposed by Senator Everett M. Dirksen (R., Ill.). This bill (S.J. Res. 2) would permit a state to apportion one house of its legislature on a basis other than population if a majority of the people voted for the change.

"Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation because the prejudices themselves cannot be justified."—*Thomas Jefferson (1819) in a letter to William King.*

That may sound fair, but here's what's wrong with it:

1. Some things—and your right to vote is one of them—were never meant to be determined by a majority. The Dirksen amendment would let a majority decide that you are not to have a full vote in electing the men who run your state. The essence of constitutional government lies in the restraints it places on the power of the majority to impair individual rights. As Mr. Justice Jackson said in 1943, "***One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.***" And in 1964, the Court, when it struck down Colorado's plan for reapportionment, even though it had been approved by the voters in the state, said, "***A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so.***"

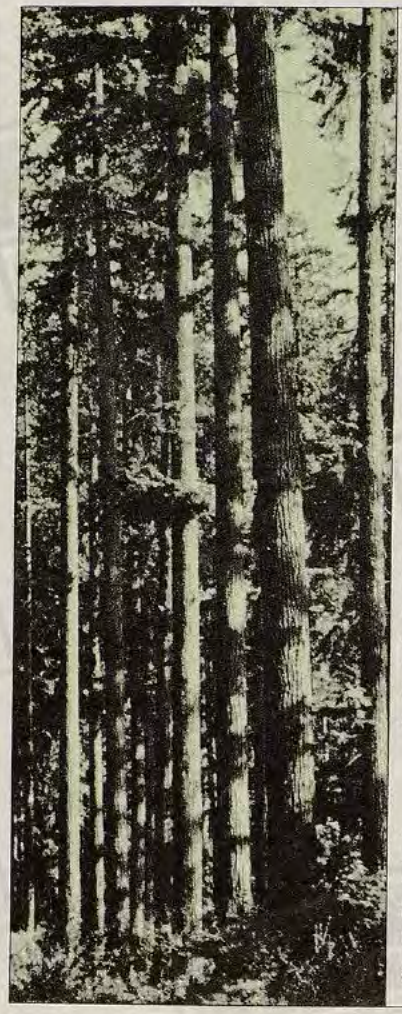
2. Unless both houses of your state legislature are fairly apportioned, your vote may not have full value. An obstinate minority, representing as few as 10 percent of the people, can if it controls one house, veto improvements in schools, housing, urban renewal, mass transportation, public welfare, state

taxation, fair labor standards, state cooperation in Federal poverty programs, etc. No **one** special interest group has a right to control one house of a state legislature forever. Yet that could be a result of the Dirksen amendment.

3. The men who oppose reapportionment often point to the U. S. Senate as proof of their argument that at least one house of a state legislature ought to be based on something other than population. ***But state and Federal governments cannot be compared.*** The Federal government represents both states **and** people. State governments were meant to represent people only. Congress cannot alter state boundaries to achieve more equal representation and so the Senate limits itself to two Senators from each state no matter what its size. But states, within their boundaries, can create and abolish counties and effect any arrangement they please in order to give equal weight to the votes of all their residents. Representation in the U. S. Senate is a state's right. Representation in the state legislature is a citizen's right.

4. The Dirksen proposal is so vague, it would appear to authorize the use of any standard of apportionment. That opens the way to vicious discrimination against some citizens or groups. Mississippi, for instance, might apportion its Senate on the basis of income and effectively deny state representation to Negroes who are just beginning to win the right to vote.

5. Another vice of the amendment is that it would become valid when three-fourths of the state legislatures ratified it. This means the very forces in a state legislature whose political future depends on keeping the old system intact would be asked to vote on whether or not it should be changed.



In The States—the opponents of full and fair representation are launching a campaign to bypass Congressional consideration of the Dirksen Amendment. They fear the kind of searching national debate that killed it last year. By means of a procedure never used before they are now trying to get the legislatures of two-thirds of the states, 34 of them, to petition Congress to call a constitutional convention. They think they can get such a convention to approve the kind of changes Mr. Dirksen wants without too much trouble and sneak the amendment into the Constitution through the back door.

Even if the opponents fail to get two-thirds of the states to apply to Congress they might conceivably build up enough local pressure to persuade Congress to enact the Dirksen amendment.

People or Trees? The Supreme Court put the issue clearly in its decision of June 15, 1964: ***"Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government and our legislatures are those instruments of government elected directly by and directly representative to the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."***

* * * * *

The men who want to keep malapportionment know their time's running out. Under court orders, more and more state legislatures are beginning to reapportion themselves. We must see that nothing interrupts this process. **Work for reapportionment!** Help make sure your vote in state contests counts as much as anyone's.

"They Have This Wild Idea That The House Of Representatives Should Be Representative"

Here's a checklist of what you can do to protect fair representation from the vote-shrinkers.

- ☐ **Wire or write** your Senators and Representatives, urging them to oppose the Dirksen amendment and any attempt in the House or Senate to keep the Supreme Court decision from having its full effect. Tell them so when you visit them in Washington or when they are at home.
- ☐ **Organize delegations** to visit your state legislators and express your opposition to any move at the State level to support the Dirksen approach. Stress your opposition to a constitutional convention.
- ☐ **Send delegations** to visit the governor. Try to get him on record for equal representation.
- ☐ **Visit mayors and city managers and suburban county officials,** since all have a proper interest in changes that would give them a fair voice in how the state is run. Try to get them to issue statements or resolutions calling for fair reapportionment.
- ☐ **Don't work alone.** Wherever you can, try to set up local committees broadly representative of civic, labor, business, religious, women's and civil rights groups who are backing reapportionment.
- ☐ **Make everything you do count double.** Send copies of resolutions and press releases on your visits to newspapers, radio and TV stations. Letters to the editors of city and suburban papers help educate the public on the issue. So do editorials, if you can get them. And so do radio and TV forums.
- ☐ Finally, please **keep the National Committee For Fair Representation informed** of any developments in your state.

distributed by

THE NATIONAL COMMITTEE FOR FAIR REPRESENTATION
2027 Massachusetts Avenue, N. W.
Washington, D. C.

Natl Proj - Apportionment

Have sent COMMENT issue on malapportionment on to Peggy - with comment of my own that I think it's timely for LLs.

May 31, 1965

JUN 1 1965

TO: Nollie, Joor, Brown
FROM: Casperson

RE: Emergency Item

I couldn't be more delighted that you've agreed to handle this, Peggy!! And working with Ruth will make for easier coordinationoof National Program. Hope to see you at the Board meeting, Ruth.....but understand your very valid reasons for trying to make the N.Y. trip at this time.

The National Memo of May 11 which went out on DPM gives a "bare bones" presentation - and I'm padding that out in the report to SB (which you should receive in the next few days). Because of the amount of time we gave this for total Board consideration, I think all SB members will want to see a fairly complete report.

As Dorothy has written, Texas presented the very valid reasons why this was not usual League procedure and protesting adoption along with pointing out that it is very possible any consensus we might reach could be "an exercise in futility".

I will say that the people at the microphones approached this in a different manner than at convention time. There was none of the undercurrent of debate urgency that convention delegates can get into - with success, sometimes. But the discussions were thoughtful and very considered. Since this was my first Council, perhaps that is more the usual atmosphere for it - with the "campaigning" atmosphere left to Conventions. Again, since this was the first time an item has been considered for adoption at Council, those attending as delegates felt an unusual amount of responsibility.

Unless the National Board Report tells us differently, materials will be supplied for this study from other than League sources. Something resembling a KIT will be assembled so that LLs can start with the item soon. If time allows (and Congress) League materials may come along at a later date.

Nollie only

Enclosed is a pamphlet that I bought from the Washington state President: "EQUAL REPRESENTATION - A Guide to Reapportionment in Washington State". She had just a few at Council and in a buzz session I attended, it was mentioned as being helpful because of the basic facts it contains. I haven't had time to really read it, but see that at least the first 10 pages are general information. Would you want to suggest that SO order extra copies for Ruth, SO file, me, PR-VP, anyone else? Or you might feel we could "left" whatever might be helpful to LLs and have it mimeographed if it's more comprehensive than what we get from National's KIT.

The states that have studied apportionment for these many years feel that Texas (and others) who are approaching it for the first time) is in a much better position to work with this than they are! Washington says it's going to be embarassing to them. Colorado says they can't believe it could happen - but still they can foresee that many years of work could go "down the drain" for their Leagues. So, at least, we won't have the repercussions in our state that other Leggues may have.

BACK TO TEXAS LEGISLATION - We've had some garbled news accounts about Poll Tax Repeal - but I heard on a news report this morning that it will be on the Nov.'66 ballot and that a special session will need to be called if it passes since no voter registration plan passed. Also that SB 252 finally came out of committee with Crump saying "the commission should be shut up from all contact with the outside wor

Apportionment

May 19, 1965

To Brown, Casperson

From Joor

Re: Emergency Item

It has been in the back of my mind ever since this problem first erupted that this would be an ideal item for Peggy - if her arm can be twisted. I do not think that it is necessary to get another person on the Board to cover this - both budget wise and personnel wise.

I am inclined to the idea of this being a sub-committee under me, for the reason that I have always thought that national program shouodd be coordinated. Now, frankly, Peggy is not the easiest person in hhe world to work with, but I would not interfere with her handling of the item, and therefore the problems would be at a minimum. Peggy is a p pain when she is criticising someone else's work. Then she must have every t crossed and every i dotted, and she drives me close to mayhem. But we love each other despite this, and I am sure could work this out.

Workshops: There is a workshop set up in Houston for July 9. This will cover the entire coast area with the exception of Corpus. It will include Port Arthur on the East and Victoria, possibly Austin and San Marcus. This was Houston's request, to which I acceded provided they would discuss the idea with the other Leagues. Their version of discussion was to extend an invitation. I have protested this and prodded them into sending out more publicity, and I will include in the post Board report an explanation that this is a State sponsored workshop. There will be no charge to State. We will charge a quarter registration and ask them to bring a sack lunch. The Leagues seem very interested. Galsveston is sending ~~sixty~~, eight, and Dickinson six, so far. When I go to Victoria Saturday, I will try to drum up enthusiasm.

Lucia is trying to set up a workshop in the Valley for Sept., which could include ~~Victoria.~~ Corpus

There should be one in Dallas, and possibly one in Midland. I would suggest that I cover the one in the Valley, that Beulah do the one in Midland, and that Betty Pettis and Eliz. Brownscombe do the one in Dallas. In such case Midland and Dallas could be in July or August. I will not be available from July 15 to the last week in August. I have not included Peggy because of dates and also because whe would have to be teamed with someone who knew the entire program. She could go to Dallas if she were home. I oppose sending her to the Valley with me because of money.

Another problem: It is possible that I will miss the June Board meeting, which will make it awkward, with both Peggy and me missing. This is not settled yet because our car is acting up, but Nancy and I want to drive to N. Y. in June. The reason is that this may be my last opportunity to go with my daughter, and to join my son in N.Y. prior to his marriage. Nancy will be off to greener fields next year, and Bill will be someone else's property. My husband is not too happy about the whole idea and has been putting off a decision, but I will let you know as soon as possible. Also will send plans for committee consideration. The agenda for the July 9th workshop will be worked up some time ih June, and I will send it to S O with a request that it be sent to the LL's. This workshop will make it easy to make an agenda for any other workshops.

clr

135 Montpelier Dr.
April 6, 1965

Mrs. Robert Stuart
1200 17th St., N.W.
Washington, D.C.

Dear Mrs. Stuart:

After spending considerable time at two board meetings discussing the emergency addition to national program as proposed by the Tennessee State League, we sould like to express our thinking and offer these suggestions.

1. We feel strongly that those leagues which have reached a position on apportionment for their states should not be prohibited from taking action where action is needed.

2. "Equitable representation" is a principle of the League of Women Voters.

3. Perhaps League structure is too much of a layer cake and needs to be "marbelized" to meet the dynamic changes in our government.

4. It may be too late to act in Congress if we go through program adoption, study, and consensus; therefore, we urge the national board, and/or national presidents council to grant permission to those leagues that have consensus to act now.

5. We strongly recommend a re-evaluation of league policy and structure to work for more flexibility to meet emergency situations.

6. The horns of our dilemma are: while we would recommend adoption of the emergency item if there is no other alternative for action, we are truly concerned about the effect it would have on the Human Resources item.

We passed this resolution at our last Board meeting.

"The San Antonio board of directors urges the National board to reconsider its position and allow state leagues to act in accordance with the League principle of representative government. Those leagues which have studied it should not be stopped by a procedural technicality of going through necessarily long procedure of adoption, study and consensus. We urge National Board to give those Leagues permission to act now."

Very sincerely yours,

Mrs. O. Paul Clark, Jr.
President
cc: Mrs. Maurice Brown, state president

MAR 24 1965

March 19, 1965.

Dear Members:

Here is the promised review of the proposed current agenda item:

The selection of program by the League of Women Voters is a careful process, deliberate in form. Essentially, the choosing of state and national program follows a pattern similar to that in choosing a local program. Six months before the biennial National Convention, local leagues begin discussion of issues and send program recommendations to the National Board (or State Board, as the case may be). The National Board (or State Board) considers the program suggestions from local leagues. On the basis of these suggestions the Board (National or State, as the case may be) formulates a proposed program and returns it to the local Leagues for a second round of discussion. Final decisions on program are made by a majority vote of qualified delegates representing local Leagues at National Convention. National and State conventions are held every two years. On odd years, State President's Council and National Council meetings are called for the purpose of interim decisions on budget and program direction.

Today we are faced with a call for an emergency item to our National Current Agenda. On the basis of Article X, Section 3 of the Constitution of the League of Women Voters of the U.S., five state Leagues have asked the National League at National Council meeting to adopt an emergency item on the agenda. The state Leagues that have requested the action are Tennessee, Missouri, New Jersey, Nebraska, and New Mexico. The item they want added to the agenda is "A study of apportionment in state legislatures and the Unites States Congress including the protection of each citizen's right to equitable representation."

Article X, Section 3 states: "The Council is authorized to change the Current Agenda only in the event of an emergency, provided that notice of proposed modifications of the Program shall have been sent to the local, state and territorial leagues at least two months in advance of the Council, and provided also that a two-thirds vote of the members of Council present and voting shall be required to adopt the modification." The Council is composed of two delegates chosen by each State Board, two delegates from the District of Columbia, one delegate chosen by the local Leagues in each state territory where there is no state or territorial League, and the members of the Board of Directors of the League of Women Voters of the United States.

At the present time, there are some thirty state Leagues of the League of Women Voters that have apportionment as a state study item. Many of these leagues have reached consensus as a result of their study. Some of the Leagues have filed a brief on behalf of the petitioner seeking relief in the courts from unfair representation in state legislatures. On the basis of completed

study and consensus, the National Board has granted to these State Leagues permission to take action in their state legislatures on apportionment. These state Leagues cannot go before their United States Congressional Representatives and state their position. Our National By-Laws provide that action of state and local Leagues on a national basis must involve items on the National Agenda. Stated another way, permission to appear before a congressional delegation is granted only when the subject under discussion is part of the national program.

The problem before the National Board is this: How can these state Leagues make known their position to the Congressional Delegations? The Council has three alternatives: (1) do nothing; (2) adopt an emergency item on apportionment on the National Current Agenda; or (3) amend the by-law so that those state Leagues which have reach consensus can make their views known to Congressional Delegations.

The Tennessee League, as well as the other state Leagues that are asking for an emergency item, are concerned lest their years of hard work for fair representation are lost. Texas, along with 15 other states, has passed a resoltuion asking Congress to call a convention for the purpose of amending the United States Constitution to allow bicameral state legislatures to have one house based on population and one house based on area. It would further be stipulated that Federal Courts could not have any jurisdiction over state apportionment. If this amendment were passed by Contress and sent to the states for ratification, it is reasonable to assume that the states would ratify it. A citizen would no longer have recourse to the courts to seek relief from unfair representation.

At the February Board meeting, your Board talked at some length on this item. Our sympathies are certainly with the state Leagues that have worked for so many years on this item. Our Board was of the opinion that this item is basically a State item. Because of the possibility that states might not be in agreement in their conclusions, it would be difficult to place this item on the National Agenda at this time. However, we were in favor of the National Council's devising a procedure which would enable state Leagues having a consensus on apportionment to appear before their Congressional Delegations. Our Board was in favor of an amendment, if necessary, which might grant National Council the power to take action in an emergency situation.

Please refer to your National and State Voters for additional background material.....National Voter: April 1964 and November-December 1964; State Voter: November 1964.

Cris

P.S. Keep this for reference. We will try to answer your questions at the April General Meeting.

LEAGUE OF WOMEN VOTERS
OF TYLER

TYLER, TEXAS

TYLER, TEX.
1965

League of Women Voters
of Texas Box [redacted]

League of Women Voters of the United States
1200 17th Street, N.W.
Washington, D.C. 20036

March 2, 1965

EMERGENCY CURRENT AGENDA PROPOSALS

INTRODUCTION

Leagues have already been notified in the January National Board Report that proposals to adopt a Current Agenda item in the field of apportionment of state legislatures and the federal courts will be discussed and voted upon at the National Council meeting in Washington, May 4-7. The national Board has not made a recommendation for or against the proposal but may have a recommendation to make to the Council as the result of its pre-Council Board meeting deliberations. A two-thirds vote is required for the adoption of an item at a Council meeting.

Following the formal proposals of five state Leagues are supplementary materials prepared by the national Board which we hope will be helpful to your League in deciding the merits of the Program item proposed. Though there is no formal procedure for doing so, we urge you to let your state Board know the views of your League. The national Board would be grateful for carbons of your letters to your state Board.

FORMAL PROPOSALS

In accordance with Section 3 of Article X of the national Bylaws, the national Board forwards to all Leagues the following formal proposals made for the adoption at the National Council meeting of a national Program item in the field of state legislative apportionment and the federal courts.

The Tennessee Proposal:

A STUDY OF APPORTIONMENT IN STATE LEGISLATURES AND THE U.S. CONGRESS INCLUDING THE PROTECTION OF EACH CITIZEN'S CONSTITUTIONAL RIGHT TO EQUITABLE REPRESENTATION.

Reapportionment is one of the most urgent issues in government in the United States today. Unless legislative bodies are representative of those governed and are sensitive to the will of those they represent, the very essence of self-government has broken down.

We feel this item breaks down into two major areas of study and action as follows:

A. Apportionment in State Legislatures and the Congress

1. Congressional districting -- Malapportionment has existed in the field of Congressional districting for many years -- though the inequities, generally, have not been as gross as in State Legislatures. After the decennial Federal Census determines the number of seats in the House of Representatives to which States are entitled, it then becomes the responsibility of a State Legislature to district that State as equally as is possible and practical. Is it really logical to expect a malapportioned State Legislature to provide equitable representation for its voters in the lower house of Congress when it has consistently ignored unfair representation "at home"?

   In the face of continual disregard for this responsibility by State Legislatures, the Supreme Court ruled on February 17, 1964, in a precedent-setting case that the Georgia congressional districting was unfair. The

Court ruled that congressional districts must be as nearly equal as possible from a population standpoint to avoid unfair voting apportionment. Now that the Supreme Court has ruled in this area, activity can be anticipated in the various State Legislatures. A national position for the League of Women Voters on congressional districting is necessary so we can work with these State Assemblies that have the power and obligation to afford each citizen his equal voice in government.

2. State legislative districting -- Thirty State Leagues have studied the reapportionment issue as it relates to their State Legislatures and have reached positions in this area. Even so, when members of the recent Congress took it upon themselves to erase the progress made in the apportionment field in very recent years, the League of Women Voters of the United States had no national position so, according to our own policies, could take no action. We must prevent a recurrence of this discouraging situation.

   Positions reached by League members in states having studied reapportionment must be studied in light of the Reynolds vs. Sims case (U.S. Supreme Court, June 15, 1964). Do alternatives exist? Membership consensus must be arrived at rapidly in order that action on a national position can be taken in the Congress and in State Legislatures if constitutional revision concerning apportionment of State legislative seats is further attempted.

B. Protection of Citizen's Constitutional Right to Equitable Representation.

1. The Role of the U.S. Constitution and the Federal Courts in apportionment -- It is our belief that responsible citizens prefer not to have the Federal Courts force State governing bodies to redistrict. Yet bitter experience has taught us that, when rural-dominated legislatures consistently disregard their obligations in this matter, there has been no other recourse than the courts for the under-represented citizens. Usually State courts have blindly refused to rule on reapportionment questions even when State Constitutions have spelled out clearly the guidelines to be used to protect the individual's voice in government. The Federal Courts have afforded the only relief available.

   Mr. Anthony Lewis, writing in the New York Times Magazine for June 17, 1962 suggests that Supreme Court doctrine has "changed dramatically" in the last 25 years. "One constant . . . has been the ethical element. In intervening in behalf . . . of the citizen disenfranchised by malapportionment, the Supreme Court has been responding to what it deemed to be a moral demand -- a demand of the national conscience. Moreover, the national conscience had found no way to express itself except through the Supreme Court. The Court moved in only when the rest of our governmental system was stymied, when there was no other practical way out of the moral dilemma."

   Again, Mr. Fred Rodell of the Yale Law School, in an article in the New York Times Magazine for September 27, 1964, says that "the Warren (Court) majority sees its highest duty in militantly upholding, against legislative or executive encroachment, the individual rights and liberties guaranteed by the Constitution. From freedom of speech to fair trials to equal protection of law and all the others, it is these rights that mainly distinguish our Government from dictatorships, right or left." We dare not let these rights go by default or inaction.

   The Court's role in the protection of the individual's rights must be protected and respected. If this avenue of sympathetic relief (Baker vs. Carr, U.S. Supreme Court, March 26, 1962) is not allowed to continue, what other recourse is there?

2. Disunion Amendment -- One of the three amendments to the Constitution proposed at the December 1962, meeting of the General Assembly of the Council of State Governments says: "Nothing in the Constitution shall restrict or limit any state in the apportionment of representation in its Legislature." Are members of the League of Women Voters to sit idly by while State Legislatures attempt "to remove from all citizens the avenue of relief from malapportionment which the Supreme Court decision in the Tennessee case had opened to them?" (quotation from Mrs. Phillips's letter to State League presidents, January 21, 1963). We must be prepared for the League of Women Voters to take action on this "silent amendment" in all State Legislatures.

In urging the adoption of the item the Tennessee League says:

"We realize that there will be objections to expanding National Program due to the fact that we have four items on our Current Agenda as it is. However, with no resource work being planned for on the U.N. and Water Resources item, and with the final consensus on Aid and Trade to be completed by April 1, we feel this reapportionment item can be managed. The fact that much information is already on record in the various states and the fact that thousands of League members are already quite learned on this subject will make our work more manageable. More important, Leagues that have studied and worked on reapportionment for many years see in the immediate future -- for the first time -- hope for successful culmination to a long, frustrating, and often discouraging struggle for truly 'representative government.' For the size of our National Program to stifle the use of our total influence as a national organization in the final and critical phase of this struggle is unthinkable."

The Missouri Proposal:

"A study of apportionment of state legislatures and the U.S. House of Representatives including the protection of each citizen's constitutional right to equitable representation."

The scope of the Missouri proposal is the same as the Tennessee proposal. The use of "House of Representatives" rather than "Congress" is more precise language.

The New Jersey Proposal:

"Support of measures to achieve the citizen's constitutional right to equitable legislative representation.

A. Examine the role of the U.S. Constitution and the Federal Courts in apportionment.

B. Examine proposals to regulate state and congressional apportionment.

We do not think that apportionment in the individual states is a national item."

The Nebraska Proposal:

"A study of the jurisdiction of the Supreme Court in reapportionment cases."

The Nebraska League wishes to limit the item in this way.

The New Mexico League formally proposed the item in the Tennessee wording and a number of other Leagues informally gave it their support. Other states have indicated they are opposed. Many have not yet been heard from.

SUPPLEMENTARY MATERIALS

Background Information:

The January 1965 National Board Report, pages 27-28, carries some background information on the subject of reapportionment and the federal courts. Reference is made to "Continued Story" in the November-December NATIONAL VOTER. For further information we are enclosing an article by William J. D. Boyd of the National Municipal League which appeared in the November 1964 National Civic Review. Permission has been granted for us to reproduce the article for your use.

Situation on the Hill and Problems of Timing:

A number of joint resolutions to amend the Constitution of the United States have been introduced into this session of Congress, all designed to invalidate the ruling of the Supreme Court that both houses of bicameral legislatures should be based substantially on population. In general they propose that one house need not follow the population ruling but representation may be based on other factors such as geography. Some provide that a basis of representation other than population must be approved by the people within the state. One spells out provisions for review at regular intervals by the people of the state of such arrangements which allow factors other than population. One specifies that the one-man-one-vote ruling does not apply to local governing bodies (such as Boards of County Supervisors). These resolutions have been sent to the House and Senate Judiciary Committees. The Senate Judiciary Sub-Committee on Constitutional Amendments expects to hold hearings beginning March 3.

Meanwhile resolutions memorializing Congress to call a Convention for the purpose of amending the Constitution in a similar manner have been entered in many state legislatures and have passed in at least sixteen.

The fact that hearings have started suggests that problems of timing are basic to the question of adding a new item. If the Congress takes no action in this session and if the League gives the new item the priority an emergency deserves, the League might be ready for action in the second session of this Congress (January 1966), if a position were reached. If the Congress passes an amendment and sends it to the states for ratification, the League might be ready for action in state legislative sessions, regular or special, after the first of 1966. If the League were not ready by then, it might be too late, though if the drive to amend moves more slowly than some observers believe it will, a longer period of time may be available for the League to prepare itself.

Effect on total Program and handling the item:

As the League makes up its collective mind whether or not to adopt an item in the field of apportionment there are a number of factors which the Board has been considering and which you too may wish to consider. In the first place, if a new item is added there is the problem of the increase in the size of the League Program commitment and all the attendant problems of rescheduling, assignment of Board responsibilities, etc., which result when we change our plan of operations. The Board thinks that if an emergency exists which the League chooses to meet, the new item should be given immediate attention and the League should attempt with all deliberate speed to study and if possible reach a position so that we would be prepared to meet the emergency with action in the near future. In order to be able to do this effectively there needs to be in the League a clear desire to undertake this work, and to do so under the pressure of an emergency. If the pace of League work is to be "business as usual" then the work should properly be undertaken through the usual Program adoption process.

As usual the outlook for work under a new item would be outlined by the national Board but the Board foresees the possibility that if there is a new item materials for study would need to be in the hands of the resource committees early in the summer. This would preclude the publication of a League pamphlet but there are many materials in print which might be assembled in a Kit for committee use and perhaps suggestions given for every-member materials not prepared by the League.

Possible scope of an item as the Board sees it:

If there is need to move rapidly through the study and consensus process, the scope of the item should be decided with this in mind. If an emergency item is adopted no more should be undertaken than is necessary to meet the emergency. For this reason the Board thinks that the subject of congressional redistricting should not be included in an emergency item.

Apportionment of the House of Representatives is provided for by Congress. It is the duty of the state legislatures to draw the district lines. A state League can work for a fair districting plan for its state under a state item. No national position is needed. Since the work can go forward at the state level the Board thinks this aspect should be excluded in the interests of keeping a new item as manageable as possible, not because it thinks that the subject of congressional districting might not be an appropriate national item at some time.

It has been proposed by two state Boards that the scope of the item be limited to consideration of the jurisdiction of the federal courts in state legislative apportionment. Such a study might start with the jurisdiction of the Court over questions arising from the Constitution and then go on to the specific question of the jurisdiction of the Court in protecting individual rights under the Fourteenth Amendment especially in regard to legislative representation. In this limited way the League could consider the history of the Court decisions and come to a position on the jurisdictional question decided in Baker v. Carr. Such a study would cover the actual role played by legislatures in reapportioning themselves over the last several decades and touch upon the balance between the Courts and the legislative branch. In considering some amendments proposed we would give thought to the role of the people in determining representation. From such a study the League could come to a position for or against proposals contained in such amendments as may come before the Congress.

Such a study would be bound to touch at least peripherally on the issue of the basis of representation in state legislatures and the League might decide to broaden the item to include a full study of this question as has been proposed by Tennessee. Baker v. Carr covered the question of jurisdiction. Reynolds v. Sims covered the question of a standard for the basis of representation in both houses of the legislature -- substantially on population. A study of the basis of representation in state legislatures would consider the question of who or what should be represented -- people, geography, counties, towns, taxpayers, and/or other factors.

Such a study would not consider <u>how</u> the basis of representation would be carried out. For example, if area were to be a factor, it would not consider <u>what</u> area as this might be different for different states. It would <u>not</u> consider other facets of apportionment such as single versus multi member districts, when reapportionment should take place and who should do the job, or what specific formula or other device would be used to see that the chosen basis of representation is carried out. These are all matters which will vary from state to state and are not touched on by the Court decision nor the proposed amendments. As the result of the study of the basis of representation the League might decide on a national standard for the

basis of representation, or it might decide that the states should be allowed discretion in the choice of the basis of representation in one or both houses.

One aspect of these particular proposals for amendments to the federal Constitution which the League might want to include in the scope is the manner of ratification. Should the state legislatures affected by the amendment act upon the proposal or should the Congress provide, as it may, that the people ratify in state Conventions called for that purpose? If a new item is adopted the League might wish to consider this question.

In summary:

The final decision of whether an item on reapportionment will be added and what its scope will be if it is added will be made by the national Council. The information given here is to provide some background on this very "lively issue."

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League of Women Voters
of the United States

Memorandum

1200 17th Street, N. W. - Washington, D. C. 20036

Memo is going on
State Board Supplement
Enclosures are not

February 5, 1965

TO: State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Reapportionment: National Board Response to state Leagues' requests for authorization to act, revision of procedures, and change of Current Agenda.

Unfortunately the press of getting out the January Board Report has delayed completion of this Memo which was promised to you in our brief Memo of January 15 authorizing limited action in state legislatures on reapportionment resolutions. The delay has given time for us to receive some reaction to that Memo. Some state Leagues have already gone to work in opposition to resolutions proposed in their legislatures. Other Leagues have raised questions for which we hope this Memo will supply the answers.

I. Authorization for Limited Action in State Legislatures

To recap the authorization of January 15 so that all the information will be in one place: State Leagues working in the field of reapportionment may act in opposition to state legislative proposals memorializing Congress to amend the Constitution by curtailing the jurisdiction of the federal courts in the field of state legislative apportionment.

This authorization is a renewal of the authorization of two years ago to oppose the Disunion Amendment which would have removed the subject of state legislative apportionment from the jurisdiction of the federal courts. The national Board's authorization to oppose was extended to similar proposals which would have limited those powers in regard to one house or the apportionment of local governmental bodies.

The reasons for the Board's authorization of this January are the same as those for the authorization two years ago. The Board believes that state Leagues working in the field of reapportionment should be allowed to take action to retain for themselves and the citizens of their states the opportunity which the decision in the Tennessee case (Baker v. Carr) had opened to them to seek relief from current malapportionment through the federal courts. This authorization was unprecedented because, to quote the January 1963 Memo, "This is an unprecedented situation."

In authorizing the limited action only in state legislatures and only on resolutions memorializing Congress the national Board made a distinction between working on a measure initiated by Congress and working on a measure initiated by a state legislature. This is perhaps a fine distinction but it seemed to the Board a reasonable one to make when the work of so many state Leagues was at stake. The authorization rests not on state League positions on the basis of representation but on allowing

state Leagues to work to retain the right to appeal to the federal courts, perhaps the only practicable means for action on apportionment left open to them. Because it rests on retaining the right of appeal, the national Board has not given permission to support resolutions which would take away or limit the possibilities of appeal.

The national Board will not authorize action in the Congress in regard to proposals for a constitutional amendment on reapportionment even with a state League's own congressional delegation and if such an amendment passes the Congress and is sent to the states for ratification, will not authorize action on ratification. These would be federally initiated measures affecting the federal constitution and there is neither national Program nor national consensus emergeing from state Programs on which to authorize action, at least at present.

X It would be most useful if you would keep the national office informed of state legislative action on resolutions whether or not you take League action.

II. Matters of Procedures.

Standard League procedures require Program authorization at the governmental level affected. That is, national Program authorizes action on matters that affect the whole country, state Program authorizes action on matters affecting the whole state. For example, no local League may write to its congressional delegation in support of a federal housing bill affecting the whole country even if the bill would make it possible for the League to carry out its local Program position on local housing. On the other hand, the national Board recently authorized action by a state League with its own congressional delegation in regard to a measure which would, if passed, affect only that state and help the state League bring about its state Program goals. The rule about action in the Congress parallels the rule about action by local Leagues in their state legislatures. The policy on this is outlined on page 16 of the State Board Handbook. State Boards are very much aware of their responsibilities in regard to authorizing action in their respective legislatures. They realize that action must stem from state Program positions or be authorized on the basis of local Program work only in specified circumstances.

The reasons for these procedures are two. If a state League could talk with its own Congressmen on a measure affecting the country as a whole with no regard for the fact that members in the League all over the country had no opportunity to express themselves on the issue, the state League would be bypassing the basic consensus process designed to make general agreement possible through democratic procedures. Furthermore, the eventual result could be that state Leagues would be expressing themselves on opposite sides of the issue. Not only would this be confusing to the Congress and to the public, but it would seriously undermine the effectiveness of the League when it speaks with one voice as it does when it speaks on national Program. The same confusion and possible weakening of League action on state Program would occur if local Leagues were allowed to speak to their state legislative delegations on matters of general state law, speaking perhaps with different voices and in spite of the fact that other members in the state have had no share in deciding on the League position. This is not to say that League procedures may never be changed but to explain present procedures and the reasons why they seem good.

Action limited to one's own Congressmen (or state legislative delegation) is not necessarily a "private" matter between the League and its own lawmakers. There is nothing to prevent a Congressman from quoting the League on the floor of Congress or in public. We know League letters are frequently read into the Congressional Record. Congressmen from one state might quote one League point of view and those from

another a differing League position. Whether or not Congress or the public is confused, members in state A might not be happy to see their legislative efforts offset by members in state B and vice versa.

Perhaps the reasons for our present procedures may best be summed up by this quote from the President of the Corvallis, Oregon League in the local Bulletin: "In general I approve the framework of the League. If only 135,000 women are to create the beginning of a stampede toward a better future, they must move in the same direction at the same time."

III. The Proposed Additional National Item

The national Board is not at this time making a recommendation on the proposal for an emergency item. The matter will be considered again at the pre-Council Board meeting.

Having resolved what action, if any, might be authorized in January, the Board turned its attention to the Tennessee proposal. It asked itself a series of questions. Was this an emergency? Were the political events of the months before Council likely to change the situation? What about timing? What should be the scope of the item and how would it be handled? What about the commitment to Program already adopted? The Board spent considerable time considering these factors from many angles so that in the event the item is adopted it will be prepared to fulfill its obligations in regard to supplying information and providing guidance in the development of the Program item. We thought it would be helpful if you knew our tentative thinking and that perhaps your state Board might find it useful to think through in advance what its role would be in the event of a new item, how your Board might assist local Leagues to meet this new commitment.

The length of this Memo and the extent of advance thinking should not be construed to constitute a Board recommendation or even a prophesy as to the chances that the proposed addition to Program will be adopted!

A. The nature of the emergency

1) Suggested reading: Though many state leaders are exceedingly well informed on all aspects of apportionment we are aware that many others have not had the need or the opportunity to study and keep abreast of recent developments. Because we think it will make it easier to discuss the nature of the emergency and the possible scope of the item we are including some background materials: first, the three VOTERS (July-August 1962, April 1964, and November-December 1964) which have articles on reapportionment; second, a reprint of the article in the November 1964 National Civic Review by William Boyd, "Apportionment Facts"; and third, Commission Report No. A-15 prepared by the Advisory Commission on Intergovernmental Relations. In the Commission Report we particularly call attention to pages 67 through 76 which cover the majority and minority reports on the basis of representation in state legislatures. (The report antedated the decision of the Court on one-man-one-vote.)

   Extra VOTERS may be ordered from the office at 15¢ each. The reprint of Apportionment Facts is available from the National Municipal League at 47 East 68th Street, New York, New York 10021, for 10¢ each; 50 for $3.50 and 100 for $5. The Commission Report may still be available free in single copies from the Commission, Washington, D.C. 20575.

In addition each state League has at least one copy of the Inventory of Work by State Leagues of Women Voters on Reapportionment. State Leagues not in the field will find a full description of the extent of the problem and the extent of League concern. States in the field might reread in order to see the over-all picture of League positions with all their variations. Though the information in the Inventory is two years old, this is still a useful if incomplete picture of League work in the field. Most of League work through the courts has happened since the Inventory was written. Inventories available from the national office at 60¢ each.

2) The situation on the Hill: In reporting the situation on the Hill we are writing another chapter in the Continued Story of the November-December VOTER. The Tuck bill is again before the House and Representative McCulloch's proposal for a constitutional amendment has been reintroduced.

The biggest fanfare has accompanied Senator Dirksen's proposed amendment. Section 1 of the amendment reads: "The right and power to determine the composition of the legislature of a State and the apportionment of the membership thereof shall remain in the people of that State. Nothing in this Constitution shall prohibit the people from apportioning one house of a bicameral legislature upon the basis of factors other than population, or from giving reasonable weight to factors other than population in apportioning a unicameral legislature if, in either case, such apportionment has been submitted to a vote of the people in accordance with law and with the provisions of this Constitution and has been approved by a majority of those voting on that issue."

Co-sponsors were: Senators Aiken, Allott, Bennett, Boggs, Carlson, Cooper, Cotton, Curtis, Dominick, Fannin, Fong, Hickenlooper, Hill, Holland, Hruska, Jordan of Idaho, Kuchel, Lausche, McClellan, Miller, Morton, Mundt, Murphy, Pearson, Prouty, Robertson, Saltonstall, Scott, Simpson, (Mrs.) Smith, Sparkman, Stennis, Symington, Thurmond, Tower, Williams of Delaware, and Young of North Dakota.

Senator Javits had been a co-sponsor but subsequently withdrew his name and told the Senate that he would submit a proposal of his own. He said his proposal would provide: "First, that the Supreme Court shall retain jurisdiction of the one-person-one-vote basis for the house which is not the subject of the people's action under the constitutional amendment; second, that compliance with the amendment -- the way in which a house is to be apportioned not on the basis of population -- also be subject to the review of the Supreme Court; and third, that the people have continued control so that having apportioned one house not on the basis of population, they might make changes in their determination, or even reverse their determination without having a built-in constitutional amendment to that effect." A resolution to this effect has not yet been introduced.

Senator Church of Idaho has introduced a joint resolution for an amendment worded by the Assembly of the States, as follows:

"Section 1. Nothing in this Constitution shall prohibit any State which has a bicameral legislature from apportioning the numbers of one house of such legislature on factors other than population, provided that the plan of such apportionment shall have been submitted to and approved by a vote of the electorate of that State.

"Section 2. Nothing in this Constitution shall restrict or limit a State in its determination of how membership of governing bodies of its subordinate units shall be apportioned.

"Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission to the States by Congress."

He then introduced a new version which was prepared by professors of the School of Law of the University of Idaho which would provide not only for approval by the electorate of one house on other than population but would also provide for periodic review by the people of the system they have chosen. The significant wording is:

"Any State having a legislature composed of more than one house may depart from the principle of equal representation in one house by adopting another reasonable system of representation with the approval of a majority of the electorate, provided review be permitted periodically."

All proposals formally introduced have gone to the House and Senate Judiciary Committees.

There is no way of telling whether hearings will be held and if so when, or whether action in the Congress will come early or late. There is some thinking on the Hill that with a five-day recess planned for Lincoln's Birthday and a long recess planned at Easter, nothing will happen very fast on these measures.

The resolutions memorializing Congress passed by the Arkansas, Idaho, and Oklahoma legislatures have been sent to the Congress. This resolution is in the wording prepared by the General Assembly of the States (Council of State Governments) which excludes the apportionment of one house and governing bodies of subordinate units from the jurisdiction of the Court.

3) Events between now and Council: An emergency is an "unforeseen combination of circumstances." It is the view of the Board that the decision in Reynolds v. Sims of last June which has given the major impetus to proposals to amend the federal Constitution was an event which it was difficult for the Leagues to foresee at the Convention in April. Had this decision been other than it was, current events would likely have been quite different. The Board is postponing making its recommendation to allow time for the development of these circumstances so that there may be a clearer indication of whether the League should take the unusual step of adding to its Program in the interim between Conventions.

Perhaps by late April we will know more of what may be expected from Congress in this session, or even in the next. Will there have been hearings? Will a joint resolution to amend be reported out of Committee: If so, what will be the Committee's proposal? Will votes in either chamber have been taken? (Two thirds of both houses is required for passage.)

Memorializing resolutions from three fourths of the states are needed to require the calling of a Constitutional Convention. Will enough petitions pour into Congress from state capitols to pressure Congress to make

proposals of its own even if three fourths of the states are not heard from? If progress in either the Congress or the state legislatures is slow does that mean that the emergency nature of the item no longer exists or will these proposals gradually gather strength over a period of time?

The situation may remain unpredictable in May as it is unpredictable now, but the Board thinks it is reasonable to wait before committing itself. During this time, too, we will learn the full extent of the proposals of Congress and state legislatures which should be considered. We do not yet have in final form at least one proposal which will be introduced in Congress. There may be others.

We know that state Boards too will be watching current events as they develop over the next months. Certainly the topic is being well covered in periodicals if not in your local newspapers.

B. Effect on total Program

As the League makes up its collective mind whether or not to adopt an item in the field of apportionment there are a number of factors which the Board has been considering and which you too may wish to consider. In the first place, there is the problem of the increase in the size of the League Program commitment and all the attendant problems of rescheduling, assignment of Board (and staff) responsibilities, etc., which result when we change our plan of operations. The Board thinks that if an emergency exists which the League chooses to meet, the new item should be given immediate attention and the League should attempt with all deliberate speed to study and if possible reach a position so that we would be prepared to meet the emergency with action in the near future. In order to be able to do this effectively there needs to be in the League a clear desire to undertake this work, and to do so under the pressure of an emergency. If the pace of League work is to be "business as usual" then the work should properly be undertaken through the usual Program adoption process.

C. Possible scope of the item

If there is need to move rapidly through the study and consensus process, the scope of the item should be decided with this in mind. No more should be undertaken than is necessary to meet the emergency. With this in mind the Board thinks that the subject of congressional redistricting should not be included in an emergency item.

Apportionment of the House of Representatives is provided for by Congress. It is the duty of the state legislatures to draw the district lines. A state League can work for a fair districting plan for its state under a state item. No national position is needed. Since the work can go forward at the state level the Board thinks this aspect should be excluded in the interests of keeping a new item as manageable as possible, not because it thinks that the subject of congressional districting might not be an appropriate national item at some time.

It has been proposed by two state Boards that the scope of the item be limited to consideration of the jurisdiction of the federal courts in state legislative apportionment. Such a study might start with the jurisdiction of the Court over questions arising from the Constitution and then go on to the specific question of the jurisdiction of the Court in matters affecting individual rights under the Fourteenth Amendment especially in regard to the weight of their vote in

legislatuve representation. In this limited way the League could consider the history of the Court decisions and come to a position on the jurisdictional question decided in Baker v. Carr. Such a study would cover the actual role played by legislatures in reapportioning themselves over the last several decades and touch upon the balance between the Courts and the legislative branch. In considering some amendments proposed we would give thought to the role of the people in determining representation. From such a study the League could come to a position for or against proposals contained in such amendments as may come before the Congress.

Such a study would be bound to touch at least peripherally on the issue of the basis of representation in state legislatures and the League might decide to broaden the item to include a full study of this question as has been proposed by Tennessee. Baker v. Carr covered the question of jurisdiction. Reynolds v. Sims covered the question of a standard for the basis of representation in both houses of the legislature -- substantially on population. A study of the basis of representation in state legislatures would consider the question of who or what should be represented -- people, geography, counties, towns, taxpayers, and/or other factors.

Such a study would not consider how the basis of representation would be carried out. For example, if area were to be a factor, it would not consider what area as this might be different for different states. It would not consider other facets of apportionment such as single versus multi member districts, when reapportionment should take place and who should do the job, or what specific formula or other device would be used to see that the chosen basis of representation is carried out. These are all matters which will vary from state to state and are not touched on by the Court decision nor the proposed amendments. As the result of the study of the basis of representation the League might decide on a national standard for the basis of representation, or it might decide that the states should be allowed discretion in the choice of the basis of representation in one or both houses.

One aspect of these particular proposals for amendments to the federal Constitution which the League might want to include in the scope is the manner of ratification. Should the state legislatures affected by the amendment act upon the proposal or should the Congress provide, as it may, that the people ratify in state Conventions called for that purpose?

D. Summary of state League positions

Your response to our request for up-to-the-minute news of state League positions on state legislative apportionment was nothing short of superb. We had heard from almost all of you before the first meeting of the Board's Committee on the Emergency Item. Your replies showed much the same answers that we have found in our files, proving that state Leagues report to us fully on a regular basis.

Because we think there is a bearing on the discussion of the scope of the item we will summarize briefly positions on the basis of representation. The reports showed a considerable number of states from all sections of the country prepared to support both houses of their legislatures on the basis of population. A small group of Leagues are in the midst of consideration of the basis of representation, either as part of new work or in one instance, a reevaluation of an old position. Some state League positions which go back a number of years, in one instance to 1935, allow for other than population factors but no restudy is at present underway. In some instances Leagues have assumed the Court

decision requiring a population basis for both houses to be an accomplished fact and have proceeded with studies to implement the court decision. All in all the weight of state League thinking where the issue has been studied favors the Court ruling but in relation to all state Leagues is far from a national consensus on this subject.

Requests from state Leagues for permission to act in opposition to proposals to remove from the jurisdiction of the Court the whole matter of state legislative apportionment or the legislative apportionment in one house, make it clear that these Leagues want to keep the federal courts as a means of reaching goals which they have been unable to reach through legislative action. No League has made a study of the powers of the Court in this regard so this could not be construed as consensus. Interestingly enough, not all Leagues which wished to oppose curtailment of Court powers have a position on the basis of representation which coincides with the Court ruling -- one-man-one-vote.

Please report to the national office any new consensus as it is reached so that we have available at all times the latest picture of League thinking.

E. Handling the item

After considering the current developments contributing to the emergency, the question of additions to the Program work of the League and its effect on all League operations, and the possible scope of an item to meet the emergency, there remains the question of timing. If the Congress takes no action in this session and if the League gives the new item the priority an emergency deserves, the League might be ready for action in the next session of Congress if a position were reached. If the Congress passes and sends an amendment to the states for ratification, the League might be ready for state legislative sessions, regular or special, after the first of 1966. If the League were not ready by then, it might be too late, though if the drive to amend moves more slowly than some observers believe it will a longer period of time may be available for the League to prepare itself. By the time for Convention in 1966 it seems not unlikely that we will be able to see far enough ahead for purposes of Program making.

As usual the outlook for work under a new item would be outlined by the national Board but the Board foresees the possibility that materials for study would need to be in the hands of the resource committees early in the summer. This would preclude the publication of a League pamphlet but there are many materials in print which might be assembled in a Kit for committee use and perhaps suggestions given for every-member materials prepared outside the League.

F. Response of state Boards to the Tennessee proposal for an emergency item

About 20 Leagues have indicated their reaction to the Tennessee proposal. Eight state Leagues (and two local Leagues) have expressed support but two of these would limit the item to consideration of the jurisdiction of the federal courts. Six state Boards express opposition. Other Boards are undecided and all of course are hoping to hear more from their local Leagues.

There was indication that some states would be happy with procedural changes which would allow them to talk with their own Congressmen about the proposals now before the Congress and to act on ratification in their state legislatures of any congressional proposal to amend the Constitution. Now that the national Board has made it clear that these two steps are not authorized, some states may alter their views on the need for an emergency item.

We urge you to keep the national Board abreast of the thinking of your state League.

IV. Procedures in regard to the Council

In the letter which you have received from the League of Women Voters of Texas, our attention is called to the inconsistency between the definition of Current Agenda as "such current governmental issues as the Convention shall choose" and the provision under the Council article for the Council to "change" the Current Agenda. We see their point and hope that this inconsistency is one that will be cleared up at the next Convention along with other less important ones as part of the over-all revision of the Bylaws requested at the last Convention.

The definition of CA's was adopted in 1946 at the time of the complete overhaul of the national Bylaws. Present Section 3 of the Council Article goes back to 1954. At that time the Convention changed the powers of the Council in this way: the Council had been allowed to modify in the event of altered conditions, the amendment of 1954 allowed the Council to change in the event of an emergency. It is perfectly clear from a reading of the transcript of the proceedings of the 1954 Convention that the intent in amending in this way was to increase the powers of the Council and that the powers were to include the ability to add a new item. In the debate on the amendment the "pros" spoke in favor of the power to adopt a new item or move a CR to a CA. The "cons" spoke against. Mrs. Leonard of the national Board had this to say about the word "emergency": "we have not formulated any particular definition of 'emergency', but when we were asked about it, when I was asked about it I said that I believed that it might arise out of a situation in which no item on the current agenda or on the continuing responsibilities would cover the work that all of us felt vital". The amendment carried. It carried even though at that time the definition of CA's as "chosen by the Convention" was "on the books". Everybody at the 1954 Convention must have thought that after the amendment was passed the Council had been given the power to change, including the power to add a new item. Certainly this was the intent and the powers, though unused, have been assumed.

It seems to us relevant to take note of the Council powers which have been used at the state level. The same inconsistency exists in State Standard Bylaws as exists in national Bylaws and has been carried over into many state Bylaws. In spite of the inconsistency, of which no doubt they were entirely unaware, both Ohio and California last spring added new items to their state Program. There have been many other occasions on which state Leagues have done this but the two states mentioned are good examples for both Leagues went into the field of civil rights which seemed an emergency to them, as the question of malapportionment seems an emergency to some state Leagues now.

Until the matter of the powers of the Council as given in the Bylaws can be considered by the Convention of 1966, the national Board on the basis of the intent of the Convention of 1954, sees no reasonable alternative to assuming that the Council now has the power to add a new item.

Bylaw provisions for the adoption of an emergency current agenda item at Council are relatively uncomplicated. Notice of the proposed Program change must be sent to state and local Leagues two months prior to the Council. The vote for adoption at Council is two-thirds.

There is no requirement that the national Board make a recommendation in regard to the proposals and no difference in the vote required for adoption if the Board does or does not make a recommendation at Council time. In other words there are no legally "recommended" and "not recommended" items. All will have equal standing on the floor.

Full information on the various Program proposals in regard to the apportionment issue with some brief background information on the subject will be sent to all Leagues well before the deadline, March 3, along with the Call to Council. Local Leagues have no formal role to play in this process but certainly they may have a large if informal share in making the decision by letting their state Boards know their views. We hope to provide enough basic information to make this informed participation. Though there is no obligation for local Leagues to report to the national Board, the Board would welcome any information which would keep us abreast of local League thinking.

V. Recap of requests for Information to be sent to this office by state Leagues

a) News of state legislative action on resolutions and state League work if any.

b) Any new consensus on basis of representation.

c) Thinking of local Leagues and state Board on an additional item.

THE NATIONAL Voter
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

NOVEMBER-DECEMBER 1964

1200 17th Street, N.W., Washington, D.C. 20036

The United Nations: Year of Decision

By Mrs. George A. Little, *Observer for the League of Women Voters at the United Nations*

Until "the week that was" in mid-October, the 19th session of the General Assembly was forecast as the African Assembly. With Liberia, Ghana, and the Sudan each offering a candidate, an African for president of the Assembly seemed assured. With the 84-item agenda liberally sprinkled with such problems as apartheid and human rights, vestiges of colonialism, and obstacles to developing countries' trade, an African-oriented session seemed certain.

Then, in staccato fashion, Mr. Khrushchev disappeared from the picture, Communist China exploded its first atomic bomb, and the Labor Party defeated the Conservatives in England. To allow time to assess what these events might mean, the Assembly opening was postponed (from November 10) to December 1 upon request of the smaller nations. Agenda items which were expected to have cursory discussion were suddenly of lively concern.

As to China

Perhaps first in this category is the question of seating Red China. In the 1963 Assembly, an Albanian-Cambodian proposal to seat the Peoples Republic of China in place of Nationalist China was defeated 57 to 41, with 12 abstentions.

But this year Red China, having become a member of the nuclear club, holds the cards for a higher bid. In reaction to events, Mali encouraged an African movement toward accepting a change in Chinese representation. Cambodia hurried to be first to place such an item on the agenda, and a general Asian-African push may be under way.

Despite these moves, unless the Assembly reverses its decision that the question of Chinese representation requires a two-thirds vote, the status quo will probably not change this year. However, the U.S. delegation will not find it any easier to defend our country's long-standing position against the seating of Communist China.

Arms and Man

At the same time the Peking government announced its bomb explosion, it proposed a "summit conference of all the countries of the world" to discuss abolition of nuclear weapons. The proposal was generally greeted as "propaganda." But later, U.N. Secretary General U Thant said in a press interview that, as suggested by former Kansas Governor Alfred M. Landon, a conference of the five nuclear powers (U.S., U.K., U.S.S.R., France, and now China) "could be very worthwhile." Certainly the major powers are under new pressure to make the current 18-nation U.N. disarmament talks in Geneva more productive. Few would argue with U Thant that "protocol and diplomatic considerations should be secondary, while the consideration of destructivity and radioactivity should be primary."

The whole problem of disarmament will receive more conscience-laden attention in the coming Assembly than was foreseen before that momentous week in October. We can expect the 19th session to point up the general desire to extend the test-ban treaty to cover underground testing, the urgent need to stop proliferation of the bomb among non-nuclear nations, and increased emphasis on setting up nuclear-free zones (particularly in Africa).

The Purse Strings

As this issue of THE NATIONAL VOTER goes to press, one major problem unchanged by October's dramatic news is U.N. financing. The Soviet Union still refuses to pay one kopek to meet its arrears on past peacekeeping costs, and no formula has been devised for financing future peacekeeping operations.

The first roll-call vote in the Assembly may take away the votes of the Soviet-bloc nations under Article 19 of the U.N. Charter, as they are now two years behind on payments. The U.S. delegation has made a strong case for the mandatory nature of Article 19. The Soviets counter-argue on the basis of Article 18. Small and medium-sized nations, caught in the squeeze, fear to take sides and hope that by some miracle a compromise will be found to avoid a shattering confrontation.

To meet future peacekeeping costs, the Special Committee of 21 is trying to hammer out a satisfactory formula. Results of its deliberations will be presented to the Assembly

and will, hopefully, provide a more regularized and acceptable approach to financing than the past ad hoc improvisation has allowed.

To help provide for the future, eight member states have earmarked forces in their armies for U.N. use on call. Recently 18 smaller nations which have provided troops or technicians to U.N. peacekeeping operations met in Canada to seek better methods for standby forces.

Crises Simmer

Cyprus: Inclusion of the Cyprus question as a supplementary item on the Assembly agenda has been requested by the government of Cyprus. Since authorization for the present U.N. force on the island ends December 31, 1964, and any extension would be a Security Council matter, possibility of discussion of the Cyprus problem simultaneously in both Assembly and Council is not unlikely. There has been no major military action on the island since the August Security Council cease-fire. The new U.N. mediator, Galo Plaza, is seeking to reconcile two points of view: Greek emphasis on self-determination, Turkish concern that treaty commitments be fulfilled.

The Cairo meeting of 47 unaligned nations endorsed "unrestricted and unfettered independence for Cyprus with removal of all foreign bases, Greek, British, and Turkish." This stand, which the 47 are expected to support in the Assembly, seems to ignore the key political issue which the constitution and treaties of 1960 tried to settle: protection of the Turkish minority.

Congo: For the first time in years, the Congo is not on the agenda. But there was somehow an unreal quality to the picture of Moise Tshombe in Leopoldville making a U.N. Day speech expressing gratitude for U.N. economic and military assistance in preserving the Congo. While some African leaders deplore what they consider an "Uncle Tom" attitude on the part of Tshombe and were infuriated by his hiring of white mercenaries from South Africa to help maintain order in the rebel provinces, he does seem to have control of the situation and to be in the process of strengthening the central government. As one African leader said, "We may not be totally happy over the present situation, but it is certainly better than we would have faced had the United Nations not gone in and made possible this chance for unity."

Development Politics

Proposals for U.N. machinery on trade which came out of the March-June 1964 U.N. Trade and Development Conference in Geneva, will be submitted to the General Assembly for approval (see THE NATIONAL VOTER, August 1964, "The Geneva 77—A New Trade Force?"). However, voting and operational procedures for the new 55-nation Trade and Development Board are still to be worked out. A 12-man Special Committee on Conciliation will report to the Assembly on "a process of conciliation to take place before voting" within the new board. Creation of this committee reflects not only the developed nations' fear that the 77 less-developed countries may push through unrealistic resolutions for which the developed would have to sign the check, but also an awareness on the part of "the 77" that resolutions not approved by the wealthier countries cannot be effectively implemented. Should a workable formula be found to take into account both the opinions voiced by the majority and the responsibility borne by the minority, it may be carried into other committees where similar concern exists.

The U.N. Economic and Social Council (ECOSOC) will put before the Assembly a proposal to merge the Special Fund and the Expanded Program of Technical Assistance (EPTA) into a new organ called the U.N. Development Program and headed by a single governing council. Sound as is the idea for this merger, developing and developed countries hassled for two summers over voting procedures and representation on the council. The developing countries wanted a simple majority vote and geographic representation (as in EPTA); the developed countries sought a two-thirds vote and parity representation between developed and developing countries (as in the Special Fund). The idea of a simple majority vote was accepted; the matter of representation and number of members has been left to the Assembly.

Projecting into Future

So the coming Assembly faces tremendous policy decisions basic to its operation. The problem of peacekeeping and its financing involves the underlying question of whether authority lies in the Security Council, with the veto, or in the General Assembly. The seating of Red China depends on whether the Charter provision that membership is open only to "peace-loving states" is rigidly adhered to or whether the point of view that *all* nations should participate in the United Nations is the prevailing interpretation. As to the decision-making process, a way must be found to preserve the one-nation-one-vote right of the small countries and yet not ignore the interests of the major powers that bear the heaviest responsibility.

By its nature the agenda is limited to problem areas so looks disheartening. The average citizen has little opportunity to hear of the enormous strides already made toward a peaceful and better world. In part to fill this gap, an attempt will be made in 1965—designated as International Cooperation Year—to tell of the many accomplishments of the United Nations in its 20 years of existence.

But the emphasis is to be not only on the past but on the future. In proclaiming 1965 as the ICY in the United States, President Johnson said: "International cooperation . . . is a fact of life. Our challenge is not to debate the theory but . . . to perfect and to strengthen the organizations that already exist." A White House Conference will be held in 1965 "to search and explore and canvass and thoroughly discuss every conceivable approach and avenue of cooperation that could lead to peace."

Many other nations also have announced plans for ICY. Cooperation of governments, participation of nongovernmental organizations, tireless efforts of just plain people who believe in the U.N. ideal—all will be needed. From this joint effort should come a stronger United Nations "serving all nations but dominated by none, with the continual obligation to avoid disaster and misery and to provide for a better and more productive future for all peoples" (U Thant in his U.N. Day Address).

Dear Member:

We, as your Budget Committee, have just tied the shoestring for a third step toward that realistic budget demanded by the League's concern for greater citizen participation in government. A sizeable stride forward indeed—a budget of $356,860 or, roughly, an increase in pledges of 28 cents per member.

What, you ask, is the increase for?

- $5,500 more is needed annually to keep pace with the growth in number of Leagues and members;
- $2,500 is a more realistic allowance for the activities of the Board and its committees;
- $1,000 is for new equipment in the new office (1200 17th Street, N.W., Washington, D.C. 20036);
- $1,400 is for a stepped-up public relations program and clipping service to help gauge its effectiveness;
- $3,400 will give members one more issue of THE NATIONAL VOTER, making the total 11 per year;
- $2,000 will allow us to maintain field service at the current level;
- $22,500 is for one additional staff member and salary increases for our present staff of 37.

After a day and a half of concentration on the budget those of us privileged to work on it have a real appreciation of what money, added to the many hours of volunteer time, *can* and *does* do for the League. But how can we reduce a day and a half of learning into a capsule of a few paragraphs for you who may have only a few minutes? Can a $356,860 budget be made meaningful? Perhaps it can if we glance at what our income is "buying" in a two-hour period—the same brief time you spend in a unit meeting.

Scene: the National Office Washington, D. C.

An average of almost 400 pieces of first-class mail arrive in the national office each working day. These may set Miss Drake to phoning Mrs. Stuart (in Spokane, or any State, U.S.A.) about a complicated nonpartisanship question raised by a local League; Mrs. Cleveland to assembling facts and figures to be used by a state budget chairman in a State Budget Building Day; Miss Urban to outlining plans for Mrs. Zurbach's trip to San Juan, Puerto Rico, our first bilingual League; Mrs. Long to preparing a memorandum to the Board describing progress in the provisional League of Crosstown, U.S.A., which hopes the national Board will soon recognize it as a new local League; Mrs. Mills to writing Mrs. Little about a VOTER article on the United Nations; Miss Harned to working up a bibliography for the Leaders Guide on Development of Human Resources; Mrs. Sharpe to consulting with resident Board member Mrs. Rosenblum about a request for permission to act regionally under the national Program item on Water Resources; Mrs. Heatwole to conferring with the hotel management about space and arrangements for the national Council meeting next spring; Mrs. Hamm to poring through League Bulletins for good stories for a Swap Shop for Voters Service chairmen.

Meanwhile Mrs. Douglas is on the phone with a member of the staff of the Senate Foreign Relations Committee, requesting the hearing schedule so that Mrs. Kenderdine may time her draft of the Board's statement before the Committee; Mrs. Girton is editing copy for the next issue of THE NATIONAL VOTER; Mrs. Guyol is off to New York to confer with publishers about placing a League article in a popular magazine. Typewriters click. Mimeographed material flies off the machine. The mail room hums as some 60 orders for League publications are filled and almost 500 pieces of mail are stuffed into outgoing mail bags by the end of the day.

And don't forget that in her home town each national Board member is reading her mail, writing speeches, drafting agendas, examining new books and pamphlets on Program, or packing her bag for a week in a neighboring state to conduct workshops, attend Board meetings, or speak. Mrs. Little may be covering a session of the United Nations. Postage, phone calls, and travel cost money; the time of our dedicated staff, whose hours too often run to overtime not paid for, deserves increased compensation.

All this activity is set in motion by the demands of our Conventions—in preparation for the next one or to implement decisions of the last one. This activity is what we blueprint when we frame and adopt a budget.

The buzz of the national office is felt across the country, pulling together and enhancing the efforts of each of us to make every American more alert to the meaning of self-government. Our budget figures are the essential means to fulfilling the League's purpose. When the figures are presented in this light, the community support they require will be forthcoming.

NATIONAL BUDGET COMMITTEE: MRS. VERNON C. STONEMAN, CHAIRMAN, *a Director of the League of Women Voters of the United States; State League of Women Voters Officers:* MRS. DAVID G. BRADLEY, *President, North Carolina;* MRS. KENNETH W. GREENAWALT, *President, New York;* MRS. JANE D. MARTIN, *President, Georgia; Officers and Directors of the League of Women Voters of the United States:* MRS. WILLIAM M. CHRISTOPHERSON, *Director and Finance Chairman;* MRS. HANS-ARNOLD FRAENKEL, *Treasurer;* MRS. JOHN F. TOOMEY, *Director and Voters Service Chairman;* MRS. WILLIAM H. WOOD, *First Vice President.*

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CONTINUED STORY

(See THE NATIONAL VOTER:
April 1964, "The Other Shoe"
July-August 1962, "Equal Protection of the Laws")

1964 has been a big year in the story of state legislative reapportionment. 1965 may be bigger, whether opponents of last June's Supreme Court decisions win or lose; it might be the deciding year.

In March 1962 in Baker v. Carr the Court decided that voters could, under the 14th Amendment, seek protection in federal courts against "invidious discrimination" in apportioning state legislative seats. In June 1964 in a series of opinions the Court established a basic standard for judging whether apportionment affords "equal protection of the laws." This standard requires districts "as nearly of equal population as is practicable" in both houses of a bicameral legislature. At least one house in almost all states fails to meet this standard.

Politicians' Rebellion

The Court neither required nor counseled haste. But its moderation did not forestall what Anthony Lewis in *The New York Times* has called the "politicians' rebellion."

There was an increase in the volume of judicial action country-wide. There was some state legislative activity. And there was a great outburst of action in a legislative body not hitherto concerned with apportionment—the Congress.

One measure assaulted not only the standard set but the Court itself. Representative Tuck (D., Va.) proposed and the House passed a bill which would by statute deny federal courts any jurisdiction over state legislative apportionment. To an urban voter in Tennessee, where in spite of a state constitution stipulating regular reapportionment of both houses on basis of population there was no reapportionment (until court action) for over 60 years, the import of such a statute is clear. The constitutionality of the Tuck proposal is doubtful.

Deep Freeze

The text of the Tuck bill was brought to the Senate floor as a substitute for the Dirksen proposal and was defeated 21-56. Senator Dirksen (R., Ill.) had introduced an amendment to the foreign aid bill; the avowed purpose of this rider was to slow down the judicial process long enough to allow passage of a constitutional amendment which would allow one house of a two-house legislature to be apportioned on a basis other than population. Senator Kuchel (R., Calif.) likened this to putting the judicial process in "statutory refrigeration." By attaching the rider to "must" legislation Senator Dirksen hoped for a favorable vote unlikely if the vote were strictly on merit. Important as the aid legislation was, a sizeable body of Senators felt the issue involved in the rider was of such importance that they embarked on an extended debate to defeat it. Proponents cried "filibuster."

Accommodation was sought not only in order to authorize foreign aid but to allow Congressmen to go home to campaign. As an alternative to the rider a "sense of Congress" resolution was proposed, not binding on the Court but suggesting a slowdown of Court action in apportionment cases. This went through a number of wordings, each progressively weaker, and when finally passed by the Senate amounted more to an affirmation of the Court's decision than a slap. It died in conference on the foreign aid bill.

What's Next?

Opponents of the Court and its standard for fair apportionment tried and are expected to try again to push through Congress a joint resolution calling for a constitutional amendment to attain their end. The proposed amendment given most publicity and best chance to succeed was introduced by Representative McCulloch (R., Ohio). His proposal provided for ratification by three fourths of the state legislatures and said: "Nothing in the Constitution of the United States shall prohibit a State, having a bicameral legislature, from apportioning the membership of one house of the legislature on factors other than population, if the citizens of the State shall have the opportunity to vote upon the apportionment."

Even advocates of some such proposal advise against rushing it through Congress without hearings and legal advice on wording. Questions about the McCulloch wording center around who would propose the "different" apportionment, could it be changed after 10 or 20 years if the people chose, should *any* limitations on factors other than population be taken into account, might civil rights be involved? What does Mr. McCulloch mean when he says, in explanation of his proposal, "the citizens of the State shall have, *or shall have had,* the opportunity to vote upon such apportionment"?

Who's to Ratify?

Just as serious questions are raised in regard to the proposed method of ratification. Is it reasonable and proper to place the power of ratification in the hands of the people directly affected by the amendment? Were such an amendment to go quickly to the states, the malapportioned legislatures would have the say. The Congress could provide for ratification by the peoples in the states through Conventions. Such a method was stipulated for repeal of the prohibition Amendment—people were allowed to vote for a slate in favor of repeal or a slate opposed.

Joint Resolutions proposing constitutional amendments require a two-thirds vote. The Tuck bill passed the House 218-175—by no means two thirds—but the McCulloch proposal is much less sweeping than the Tuck bill.

Leagues in some states—for example Tennessee and Washington, which have fought the long fight to have their legislatures apportioned on population in conformity with their state constitutions, and Iowa, which has successfully fought against attempts to apportion the larger house by area only—feel alike insecure in such victories as they have had.

What will the new Congress propose? Watch these pages for another chapter in the Continued Story.

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THE NATIONAL Voter
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

APRIL 1964

1026 17th Street, N.W., Washington, D.C. 20036

The 1964 Aid Round

The President's foreign aid message, sent to Congress March 19, outlined a barebones plan for continuing foreign aid in fiscal 1965. It called for $2.4 billion for economic aid programs, $1 billion for military assistance—the smallest budget request in the history of U.S. aid efforts.

"The most important ingredient in the development of a nation," the President said, "is neither the amount nor the nature of foreign assistance. It is the will and commitment of the government and people directly involved. To those nations which do commit themselves to progress under freedom, help from us and from others can provide the margin of difference between failure and success."

He said "We will be laying up a harvest of woe for us and our children if we shrink from the task of grappling in the world community with poverty and ignorance" and the aid proposals "express our self-interest at the same time they proclaim our national ideals."

The program plan has been built around five down-to-earth objectives:

• *Realism.* The Administration has taken heed of what Congress said and did about aid last year and has presented a minimum program. "These requests reflect a determination to continue to improve the aid program both in concept and administration," the President said.

• *Concentration of funds and emphasis on self-help by recipient nations.* Two thirds of development lending will go to six countries—Chile, Colombia, Nigeria, Turkey, Pakistan, India. Funds for educational and technical cooperation—to help start schools, health centers, agricultural experiment stations, credit services, other institutions—are not concentrated in a few countries, but will go to selected projects "to raise the ability of less fortunate peoples to meet their own needs. To carry out these projects we are seeking the best personnel available in the United States—in private agencies, in universities, in state and local governments and throughout the federal government.

"Wherever possible we will speed up the transition from reliance on aid to self-support. In 17 nations the transition has been completed and economic aid has ended; 14 countries are approaching the point where soft economic loans and grants will no longer be needed."

Four fifths of supporting assistance to aid "countries facing defense or security emergencies" will go to four countries—Korea, Vietnam, Laos, Jordan. Two thirds of military assistance will go to 11 countries "along the periphery of the Sino-Soviet bloc."

• *Use of private initiative.* "Increased private resources for the development task" will be used, the President said. During the past year the first new houses financed by private U.S. funds protected by Agency for International Development (AID) guaranties were completed in Lima, Peru; the first rural electrification surveys, conducted by the National Rural Electric Cooperative Association under contract to AID, were completed, and the first rural electrification loan—in Nicaragua—was approved; the first arrangement linking public and private resources of one of our states to a developing country was established, between California and Chile. Such efforts are to be expanded.

Establishment of an Executive Service Corps will be encouraged, to provide American businessmen with an opportunity to furnish, on request, technical and managerial advice to businessmen in developing countries. An Advisory Committee on Private Enterprise in Foreign Aid will be established to make studies and recommendations for using the private enterprise provisions of foreign aid legislation.

• *Greater international participation.* The President said "other free world industrial countries have increased their aid commitments" and more increases seem to be in store. Total aid provided by other member

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countries of the Development Assistance Committee of the Organization for Economic Cooperation and Development reached $2.5 billion in 1962 and the terms of loans made by them have been greatly relaxed in the last few years. Canada recently announced that it expects to increase its aid expenditures by 50 percent next year. Britain and France have indicated that they plan for larger expenditures. Other nations have reduced interest rates and have extended maturities on loans to developing countries.

The President made a strong plea for passage of legislation permitting U.S. participation in replenishment of IDA capital resources.

• *Increased efficiency in administration of aid programs.* The AID will continue as the basic administering organization, a decision that seems to stem from the confidential report made to the President by the interagency committee which was headed by Under Secretary of State George Ball and was set up in December 1963 to advise on administration problems and to consider the possibility of reorganization.

The AID Administrator has been directed to reduce the number of Agency employees by 1200 by the end of fiscal 1965, including the 300 employee reduction already made in fiscal 1964. He has also been directed to continue to consolidate AID missions with U.S. embassies and, wherever possible, to eliminate separate AID field missions.

The President also announced that he is establishing a citizens advisory committee to examine aid programs in individual countries, as the 1963 legislation permitted him to do. It is expected that four or five country reviews will be completed in 1964.

The following table shows the amounts the President requested to carry on foreign aid at minimum levels in fiscal 1965:

Mutual Defense and Development Programs, Requests for Authorizations and Appropriations, fiscal 1965 (in millions):

Program	*Previously Authorized*	*Authorizations Request*	*Appropriations Request*
Economic Assistance			
Development Loan Fund	$1,500.[1]	$.....	$922.2
Technical Cooperation and Development Grants	.....	224.6	224.6
American Schools and Hospitals Abroad	.....	18.	18.
Alliance for Progress:			
Loans ($465.) Technical Cooperation ($85.)	600.[2]	.....	550.
International Organizations and Programs	.....	134.4	134.4
Supporting Assistance	.....	335.	335.
Contingency Fund	.....	150.	150.
Survey of Investment Opportunities	.....	2.1	2.1
Administrative Expenses:			
AID	.....	52.5	52.5
State Department	[3]	.....	2.9
Total	$2,100.	$916.6	$2,391.7
Military Assistance	[4]	[4]	$1,000.

[1] Development Loan Fund—Foreign Assistance Act of 1963 authorized $1,500 million for fiscal 1965 and 1966.

[2] Alliance for Progress—Foreign Assistance Act of 1963 authorized $600 million for fiscal 1965 and 1966.

[3] Foreign Assistance Act authorized such amounts as may be necessary from time to time for administrative expenses incurred for functions of the Department of State.

[4] Request is for authorization for such amounts as may from time to time be necessary.

The Long View of Aid or: Why We Are Persistent

Each year congressional grumbling about "the burden of foreign aid" seems to grow louder, the margin of votes "for" grows smaller, and the total cut grows deeper. What does this growing hostility really reflect? Does it mean, as some say, that more and more Congressmen find aid a convenient scapegoat on which to hang accumulated frustrations? Or does it indicate the dashing of illusions that quick results are possible, that aid will make friends for us overnight, that aid will automatically create a host of little democracies across the face of the earth? Or is it any of the many other possible reasons, including the perennial explanation—"public apathy"?

Whatever the reasons, the challenge facing the League and other aid supporters in the 1964 aid round is the need for a national reaffirmation of economic aid as a key, long-term policy of this country.

League support for development assistance efforts—public and private—bilateral and multilateral—trade and aid—is based on the belief that all the world's nations should have an opportunity to become self-sustaining, self-respecting members of a stable and peaceful world community, and that it is in the best interest of the United States to help them do so.

League support of the U.S. economic aid program is not to deny its weaknesses, its miscalculations. Constructive criticism is vital to the success of any program. We should constantly press for aid programs which meet League standards of long-range planning, adequate financing, effective coordination and administration, and which emphasize cooperative efforts by developed countries and maximum self-help by developing countries. However, no program has been more constantly reviewed, analyzed, and reorganized, in the hope of achieving greater efficiency and effectiveness. The present AID administration should, in our judgment, be given sufficient time, free from harassment, to do the job with which it is charged.

More and More a Common Effort

Quite rightly, the United States is continuing to urge other industrialized countries to increase their development efforts. The Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD) is a principal forum for encouraging such cooperation. In this committee the policies and programs of member nations are critically reviewed at least once a year, when suggestions for improvement are made and further opportunities for development assistance are explored.

Unfortunately, the U.S. citizen is often unaware and unappreciative of the extent and importance of the aid programs financed by the Western European countries and Japan, to say nothing of the technical assistance given by developing countries such as Israel. While the U.S. program is the largest in dollar expenditures, others—the French program for one—are greater in terms of per capita costs.

In the early postwar years, OECD's predecessor organization contributed to the success of the Marshall Plan by helping to bring the European nations into full participation in the revival of their societies. Something of the same impetus is expected from the new Inter-American Committee for the Alliance for Progress (ICAP), a committee of seven members, including one from the United States. This predominantly Latin American committee will judge development plans and evaluate performance in self-help

and reform; also it will involve South Americans more directly in the decisions of what kind of aid, how much, to whom.

Meanwhile, the "aid through international trade" focus of two international meetings in Geneva—the U.N. Trade and Development Conference and the 21st session of the GATT—should create further momentum toward joint programs to help cope with the trade problems of the developing nations.

* * *

Let us face the reality that all is not perfect; that the dimensions of this vast undertaking have been grossly underestimated.

And let's also face the reality that the total development effort around the world is fundamental and pervasive. It is no less than an attempt to bring two thirds of the world into the twentieth century *in a few years;* it took Western Europe and the United States a century and more to progress so far in an evolution of similar magnitude – the industrial revolution. Our part in this common effort offers a positive way to achieve the peaceful and prosperous world we want to live in. Are there any constructive alternatives?

The Other Shoe

League members wrestling in season and out with the subject of state legislative reapportionment are (as of April 10) waiting for "the other shoe" to drop. They heard the first one February 17 when the Supreme Court handed down a decision on congressional districting.

Justice Black, delivering the majority opinion, said: "It would defeat the principle solemly embodied in the great compromise—equal representation in the House of equal numbers of people—for us to hold that, within the states, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others."

A long chain of events will follow this decision; some have already taken place. To quote *The Georgia Voter,* the new districting in Georgia resulting from the decision is "a great leap forward toward just, popular representation."

But what about "the other shoe"?

When redistricting cases were heard in the fall of 1963, a number of cases on state legislative apportionment were also heard. Since the 1962 Baker v. Carr decision, in which the Court accepted apportionment cases for judicial decision, lower court action has been widespread and divergent. Now the issue is back on the doorstep of the Supreme Court. Chief questions are: 1) is population the only standard of representation or are there other values? 2) should different standards apply to the two houses of a legislature? Constitutionality of the "little federal plan"—one house on population, one on area—is at stake.

Behind the scenes or in the headlines, urged on by the 1964 general elections, the League and others are hard at work. The Florida League devised a system of apportionment to meet League standards. The Florida legislature has for years occupied the unenviable position of being the least representative legislature. Amendments for change have been proposed by the legislature, opposed by the League, voted down by the people. A suit has been heard in the Federal District Court. The legislature has once more reapportioned. This latest apportionment improves somewhat the degree of representation and has been approved by the Federal District Court, but it is being appealed to the Supreme Court.

The Florida League proposal calls for representation in both houses on basis of population. District lines drawn by the League would allow this to be achieved without crossing county lines—in League opinion, a conservative plan. The newest apportionment allows about 27 percent of the people to elect a majority of the House; 15 percent, a majority of the Senate. Under the League plan the percentage would move close to 50 percent in both cases.

The Florida League also proposes that, after the first apportionment, reapportionment be periodic and automatic and that the process be removed from the legislature's hands. The League proposal will be presented to the 1965 legislature as a constitutional amendment. Whatever the outcome, this venture in lawmaking guarantees informed and highly motivated League action.

It is dismal to report that automatic machinery for reapportionment doesn't always work. *The Illinois Voter* tells of "the sword of Damocles" which "turned out to be a feather duster." The story began a decade ago when a League-supported referendum established the basis of representation for each house and provided this "fail-safe": If the legislature failed to act, a bipartisan commission appointed by the Governor would perform the duty; if the commission failed to act, elections would be held at large. Politicians, the thinking went, abhor at-large elections as much as nature is said to abhor a vacuum. Fear of such an eventuality would, it was assumed, prod the legislature or the commission into action.

Not so. The first time the machinery was put to use, in late 1963, it failed to function and, in 1964, 177 members of the Illinois House will be elected at large.

A special legislative session has provided a way to lessen the impact of such an election. In 1964 there will be no primaries for nomination to the House. Candidates will be chosen by party conventions. To prevent a sweep of all seats by either party, neither may nominate more than 118; they may mutually agree to nominate fewer and a figure of 100 is being considered. Meanwhile there is talk of an independent slate nominated by petition.

The Illinois Voter describes the situation as "one of the severest tests ever to be made of the democratic process" and foresees a busy future for Voters Service. The article says: "This is the first time a state has had an election at large. It is an interesting experience, but one hopefully not to be repeated. It should be pointed out that whoever is elected under this hazardous system will face the obligation to redistrict in 1965."

A suit attacking the constitutionality of the composition of the Illinois Senate on an area basis was dismissed by the Federal District Court, which cited the federal analogy. The case has been appealed to the Supreme Court.

Fear of at-large elections has led Maryland to maintain, at least for 1964, the status quo on congressional districting. Redistricting is needed,

says the Maryland League, which for years has pled with the legislature and worked against halfway measures through petition for referendum and action at the polls.

After the February Supreme Court decision there was no doubt of the unconstitutionality of existing and proposed districting, and the Federal District Court so declared. But, reluctant "to contemplate a proposal to order elections at large with consequent lessening of direct contact between representatives and their constituents," the Court ruled that the 1964 elections may be held under the old—now unconstitutional—districting, continuing the underrepresentation of suburban areas. The court retains jurisdiction and awaits action by the state legislature following fall elections.

In Connecticut, Butterworth v. Dempsey is as famous as Baker v. Carr. This citizens suit attacking constitutionality of the makeup of both houses of the state legislature was largely mobilized and supported by the Connecticut League.

The Connecticut House is an area-based body providing representation for every town regardless of size. Relative voting strength between smallest town and largest is 423 to one. The population-based Senate now has an eight-to-one disparity between districts. Tradition in the House has in the past proved sacrosanct, but Butterworth v. Dempsey may change it. Early in 1964 the Federal District Court ruled unconstitutional the composition of both houses.

Variations among Federal District Court rulings must be resolved by the Court finally responsible – the Supreme Court. Whatever that Court says or fails to say, the Monday when the decision is handed down will be another landmark Monday.

KULP (Keeping Up with League Program) (as of Apr. 10)

President Johnson has appointed Mrs. Robert J. Phillips, whose term as national President of the League will end April 24, to the Public Advisory Committee for Trade Negotiations. The Committee will be kept informed of U.S. objectives and policies during the Kennedy Round of GATT negotiations and will submit comments and views to the Office of the Special Representative for Trade Negotiations, which is headed by Christian A. Herter.

Committee members include representatives of industrial, financial, agricultural, labor, educational, and consumer organizations; members have been asked to speak for the public interest rather than for any particular group.

* * *

Because of the prolonged Senate debate on civil rights, which begins early in the day and continues late, timing of Senate action on other legislation is unpredictable. A logjam of bills is piling up in Senate committees, which can meet only when the Senate is not in session. When action on civil rights is completed the Senate may act swiftly on other measures.

FOREIGN AID: House Foreign Affairs Committee began hearings March 23 on H.R. 10502, authorization for the President's requests for foreign aid. Senate Foreign Relations Committee has the program before it in two forms: S. 2658 (companion to H.R. 10502), and a series of eight bills introduced by Senator Fulbright, chairman of the Committee, each bill covering one section of the omnibus bill. Hearings on these eight began March 30. The League will file statements on four: S. 2659, to provide technical assistance to friendly countries; S. 2660, to provide additional investment guaranties and surveys of investment opportunity under Foreign Assistance Act of 1961; S. 2661, to provide Alliance for Progress assistance; S. 2662, to provide permanent authorization for U.S. contributions to international organizations (H.R. 10502 and S. 2658 do not include this provision; if granted, the authority to make annual contributions to U.N. voluntary organizations would be delegated to the State Department and would not come before Congress each year, except for review).

IDA (S. 2214): House Banking and Currency Committee April 7 reported to the House a Senate-passed bill authorizing U.S. contribution of $312 million to the capital resources of the International Development Association over three years, beginning in 1965. S. 2214 is almost identical to H.R. 9022 which the House sent back to Committee February 26. Prospects for early passage seem good.

COFFEE (H.R. 8864): Senate Finance Committee March 12 reported House-passed bill to implement International Coffee Agreement ratified by Senate May 21, 1963.

TRADE (H.R. 1839): Senate Finance Committee March 11 began series of hearings on legislation to impose lower quotas on imports of beef, veal, mutton, and lamb. About 80 similar bills have been introduced in the House and sent to Ways and Means Committee.

WATER RESOURCES:

Pollution Control (S. 649): House Public Works Committee completed hearings February 19 on Senate-passed bill to: authorize higher ceilings on federal grants to larger cities for construction of sewage treatment plants; seek to regulate waste discharge from federal installations; speed up availability of biodegradable detergents; make changes in administration of Federal Water Pollution Control Act.

Research (S. 2): House Rules Committee February 25 refused rule to bring Senate-passed bill to House Floor for a vote.

Resources Planning Act (S. 1111): House Interior and Insular Affairs Committee has scheduled final hearing on this Senate-passed bill for April 20. Bill provides for: Water Resources Council to set principles, standards, and procedures for water development; federal-state River Basin Commissions to carry out coordinated, multipurpose planning; financial aid to states for comprehensive water planning.

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COORDINATION COMING?

The proposed Water Resources Planning Act may be considered in the Senate and House in 1962. This bill is designed to improve coordination on the federal level and to foster planning for entire river basins. Since 1958 the League has supported these objectives.

Toward League Goals

Title I of the Water Resources Planning Act provides for a four-member cabinet-level Water Resources Council which would:

1) make recommendations to the President concerning the nation's supply of good-quality water and the management of it under existing water programs and policies (*the League in its Water Continuing Responsibility advocates "national policies . . . which promote comprehensive long-range planning for conservation and development of water resources"*);

2) establish, subject to presidential approval, principles, standards, and procedures for river-basin planning and for evaluation of federal water-resource projects (*the League's Water CR calls for "better coordination and elimination of conflicts in basic policy at the federal level"*);

3) review river-basin plans made by the commissions proposed under Title II (*again, a means of "better coordination . . . at the federal level"*).

Title II permits the President to create a water-resources commission for a river basin, a region, or a group of related river basins. Commission members would be appointed by the President and would include representatives of interested federal departments, agencies, and interstate commissions; also representatives of the states in the basin, these to be nominated by the Governors.

Each river basin commission would coordinate federal-state-local development plans and would prepare and keep up to date a comprehensive integrated plan for water and related land resources of the basin. The proposed bill gives these commissions no construction or administrative functions. Such functions would continue to be the responsibility of appropriate federal, state, or local agencies.

In a basin where there is no agency to do coordinated planning, or an inadequate one, the commission would fill the gap. The present proposal does not fix the form of these commissions but leaves it flexible to allow for regional variation. (*The League Water CR advocates "machinery appropriate to each region which provides coordinated planning."*)

Title III, the last section, authorizes $5 million a year for 10 years for grants-in-aid to help states develop comprehensive water-resource plans and participate in the planning by the river basin commissions. As usual, state programs would have to be substantially financed by states and meet certain standards to be eligible for grants-in-aid. (*League position reached in 1959 following study and consensus supports "comprehensive planning . . . on a regional basis" and declares "the federal government has a necessary role in financing water-resource development, but state governments . . . should share such costs."*)

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What's the Outlook?

The Water Resources Planning Act of 1961 was introduced in both houses in the first session of the present Congress, with Administration backing. The Senate Interior and Insular Affairs Committee held hearings, jointly with the Public Works Committee, and will probably report out S. 2246 early in the second session. The House Interior and Insular Affairs Committee is expected to consider an identical proposal, H.R. 8177, in the second session. Public Works Committees in both houses have expressed interest in reviewing the bill.

The top administrative level of the Department of the Army supports the bill. The Army Corps of Engineers, the operating level, opposes it, since it might impair the pre-eminent position the Corps now has in river-basin planning. This opposition is reflected in the Public Works Committee of each house and in Corps-oriented navigation groups and waterway associations.

Modification of the bill in committee is expected, particularly in the part setting up the river basin commissions. The interdepartmental cabinet-level Water Resources Council and grants-in-aid for state water-resource planning have aroused less opposition. However, there is some question whether states should re-

ceive grants-in-aid for planning unless there is a satisfactory regional agency with which state planning is coordinated.

What To Do Now

League members can begin to familiarize themselves with proposals in the present bill. Local officials, individuals, and other groups in each community will also be interested in the proposed legislation. An exchange of views between the local League and other groups and individuals will help develop understanding of the proposals.

Ten cents sent to the League office will bring copies of the two statements by Mrs. Rosenblum, a Director of the League of Women Voters of the United States, at the hearings of the Senate Interior and Insular Affairs Committee. (Each local and state League has received these.)

Better still, why not give yourself the fun of reading League testimony in the context of an actual hearing? Write the Senate Committee on Interior and Insular Affairs for a copy of the Joint Hearings on the Water Resources Planning Act of 1961 on July 26 and August 16, 1961. The document contains the bill, everyone's testimony, and all the questions and answers. Of course you can get a copy of just the bill from one of your Congressmen or from the House or Senate Document Room; ask for H.R. 8177 or S. 2246, depending on whom you are addressing.

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In Memoriam

December 4, 1961

Mrs. William G. Hibbard

Member of the National Board
1922-1928 and 1936-1940

U.S. ROLE IN U.N. TODAY

By Mrs. George A. Little, *Observer at the United Nations for the League of Women Voters*

This decade may well go down in history as the "Age of Frustration" for Americans. In a world of changing values, changing economic systems, changing leadership as nation after nation emerges free, we find ourselves catapulted into a position of extreme involvement. We find that we cannot remain aloof and isolated from world affairs, but neither can we call the tune to which the world revolves.

The United Nations, which now has 104 members as compared with 51 at its inception, is the world in microcosm, and the United States encounters frustrations in the U.N. as elsewhere. Some U.S. citizens feel so beset with the multiplicity of problems which seem all but insoluble that they would have us withdraw from the world body and go it alone. However, our withdrawal from the U.N. would not make the problems go away. They will stubbornly remain, and they are so complex as to require protracted and patient negotiation.

The United States has patiently participated in such negotiations; at times we have gotten what we wanted and at other times we have not. But the American public is impatient, accustomed to quick results. The give-and-take in the U.N. process prompts some to ask "is the U.N. the best place to conduct our negotiations?" Before deciding on an answer we should review the U.N.'s record of achievements so far.

To Help Economies

In the economic field, most experts agree that raising the standard of living around the world is desirable from the viewpoint of an advanced economy, such as ours, as well as from the viewpoint of the underdeveloped countries.

Through the U.N. Expanded Program of Technical Assistance and the U.N. Special Fund almost $98 million, pledged voluntarily by participating nations, will be put to work in 1962 to raise living standards. In addition, the International Monetary Fund, the World Bank, and the International Development Association enlist funds from their member nations toward a vital program of economic development.

If the purpose of foreign aid is to forward economic development in politically responsible and independent countries—not to buy friends or gratitude—surely development assistance through the U.N. qualifies as sound foreign aid. Furthermore, multilateral aid enables member nations, whether highly developed or less developed, to work together for the common cause of world development.

To Avoid War

In the area of keeping the peace, we may feel let down because the U.N. has not resolved the cold war. But it has kept many a warm issue from becoming hot. It has, for example, been keeping peace in the Middle East. And while the Congo cannot by a wide stretch of the imagination be called peaceful, widespread civil war has been held off, a central government has been established, and U.N. forces stepped in to restore law and order pending a peaceful settlement between the central government and Katanga. We want a stable Middle East, we want a stable Congo, and both are being furthered through U.N. action.

To Keep U.N. Strong

Upon Secretary General Hammarskjold's death in September 1961 we were plunged into the depths of gloom not only over losing him but because the loss put the U.S.S.R. in position to press its demand for a "troika" to replace him. A solution was reached after six weeks of quiet negotiation in which the neutral nations as well as our own delegation played a part. Firmness on basic principles was combined with flexibility on minor points. Finally the "troika" was defeated at all administrative levels, and U Thant, a man of ability, integrity, strength, was elected Acting Secretary General as an independent, international servant. This was a stinging defeat to the Russians. The nations of the world were neither cowed by Russian might nor blinded by Russian arguments, but backed unswerv-

ingly the kind of a U.N. which would best promote a free world.

To Protect Freedom

Finally, there is no better training ground in democracy for leaders of new nations of the world than the U.N. Attend a General Assembly session when an election takes place and hear the roll call of nations. See each delegate file up to put his ballot in the box. No textbook on democracy could be half so impressive. The first experience of delegates of new nations as part of the world community thus comes in an atmosphere of democracy in action. They see majority rule at work in the General Assembly. They experience the privilege of free speech; at the same time they begin to see that with the right of freedom goes the obligation of responsibility. They even learn the old American custom of logrolling, worse luck! They live in an atmosphere where the press is free, subject only to *self*-control, and they can judge for themselves what America is, not through the eyes of a propaganda machine but through their own experience.

The U.N. has been through a turbulent 16 years, but even a cursory look at its achievements cannot but be encouraging. It has survived Russian boycott, attack, veto. It has done a job in economic development, refugee care, health and social improvements, and it has provided peace-keeping mechanisms —all with a minimum of financial support.

Which China?

On December 15 the General Assembly rejected a proposal to admit Red China as a U.N. member. The vote was 48-36, with 20 abstentions.

But the basic problem has not gone away, and a new challenge will come to the U.S. role in the U.N. if Red China is admitted on some future try. The U.S. stand has been that Red China should not be admitted to the U.N. because it is not a peace-loving nation as required by the Charter. Nations in increasing number believe that China should be represented in the U.N. by the government on the mainland rather than by the government on Formosa. And then there are those who advocate admitting both Chinas.

If Red China is eventually admitted, to what extent would it add to the threat of Communist control? There are now 10 nations in the Soviet bloc in the U.N. Any resolution passed by the General Assembly must get at least a majority vote. If a measure has the status of an "important question" it must get a two-thirds vote to pass. How, then, could the Soviet bloc control a 104-nation body, even if the bloc be increased by admission of Red China?

Should Red China become a member, it would seem more urgent than ever that the United States remain in the U.N. and use all political opportunities, negotiating potential, and personal influence afforded by our membership to help shape the future of the world body.

On his arrival at the U.N. in 1953, Mr. Hammarskjold was asked about his interest in mountain climbing. He replied: "What I know about this sport is that the qualities it requires are just those which I feel we all need today—perseverance and patience, a firm grip on realities, careful but imaginative planning, a clear awareness of the dangers but also of the fact that fate is what we make it and the safest climber is he who never questions his ability to overcome all difficulties." He was a very wise man.

On Trade

THE PRESIDENT PROPOSES

". . . If the West is to take the initiative in the economic arena, if the United States is to keep pace with the revolutionary changes which are taking place throughout the world, if our exports are to retain and expand their position in the world market, then we need a new and bold instrument of American trade policy. . . .

"We can no longer haggle over item-by-item reductions with our principal trading partners, but must adjust our trading tools to keep pace with world trading patterns. . . .

"What I am proposing is a joint step on both sides of the Atlantic, aimed at benefiting not only the exporters of the countries concerned but the economies of all the countries of the free world. Led by the two great common markets of the Atlantic, trade barriers in all the industrial nations must be brought down. . . .

". . . if we can obtain from the Congress, and successfully use in negotiations, sufficient bargaining power to lower Common Market restrictions against our goods, every segment of the American economy will benefit. . . ."

—President Kennedy on December 6, 1961, to the annual Congress of American Industry of the National Association of Manufacturers.

* * *

"This is no time for timid answers or tired solutions. The European Economic Community is closing the history books on 2000 years of divisive and self-centered trading philosophies. The new, once underdeveloped nations are seeking new outlets for their raw materials and new manufactures. . . .

"No part of the world market is any longer ours by default. The competition grows keener. . . .

"Just as our Government helped in the readjustment of men from military to civilian life—just as it helped in the reconversion of our economy from a wartime to a peacetime basis—so, too, does it have an obligation to help those who must adjust to a national trade policy adopted for the national good.

"We could, of course, give those who claim injury what they mistakenly believe to be more absolute protection—raising our tariffs . . . driving potential trading partners into the arms of the Soviets, denying competitive prices to our consumers and industry, and shutting off the export markets abroad on which our own job and growth opportunities depend. That is one alternative—and in the long run it only postpones or prolongs the agony of those who seek it.

"But there is another alternative. I first proposed it in 1954, and I shall propose it to the Congress again next year. And that is to include in our trade proposals a program for adjustment assistance—a program to help those few communities, industries, and workers who may actually be injured by increased import competition.

"Such a program will supplement and coordinate, not duplicate, what we are already doing or proposing to do for depressed areas, for small business, for investment incentives, and for the retraining and compensation of our unemployed workers.

"This cannot be, and will not be a program of permanent Government paternalism. It is instead a program to afford time for American initiative, American adaptability, and American resiliency to assert themselves. Temporary tariff relief may be a part of the prescription in individual cases. Whatever is required, we will make certain that no community suffers unduly from trade. For, on the contrary, America must trade—or suffer. . . ."

—President Kennedy on December 8, 1961, to the AFL-CIO convention.

What Are Conventions Made Of?

Programs and mikes . . . shuffling papers and bright lights . . . sugar and spice and everything nice. That's what conventions are made of—League Conventions, anyway.

To appreciate a League Convention properly, however, one needs to go backstage. Take, for instance, the 25th national Convention, which will be held April 30 to May 4, 1962, in Minneapolis, Minnesota. It went into production in 1957. Hotels must be booked at least four years in advance, so possible Convention sites were already under consideration five years ago.

Early in 1958 the League's national Board, acting upon the Convention Secretary's report on facilities in the several cities, most of which she had inspected, chose Minneapolis as the preferable site for 1962, everything considered.

Members and Money

Distribution of League membership and cost of transportation are two of the three controlling factors in selecting a site. More than two thirds of League members live east of the Mississippi River. So it is clear why more Conventions have been held in the East or Midwest than in the far West, since the site must be as accessible as possible to the greater percentage of members if it is to attract delegates. For example, the maximum delegate potential for the 1960 Convention was 1,677, of whom 1,144 were from east of the Mississippi; 533, west. Of the 1,094 delegates who actually attended, 736 were from east of the Mississippi; 358, west.

In order not to balance the scales completely in favor of the membership east of the Mississippi or closest to Convention site, a system of "travel equalization" is used. The formula is intricate, but in essence it is as follows: A list is compiled of the cost of a round-trip tourist-class airplane ticket from the Convention city to a central city in each of the 50 states. Then an average is drawn, based on fares rather than geography. Next, 10 zones are established, by states. In the case of the 1962 Convention, each delegate from a state in one of the first two zones will *pay into* the travel equalization fund a fixed sum over her actual cost of transportation, the sum being greater for the first zone than for the second. Delegates from states in the third zone neither pay into nor draw from the fund. Delegates from states in the remaining seven zones *draw from* the fund. The over-all formula will "equalize" the travel cost of each delegate to approximately $140 (plus tax).

If You Believe . . .

. . . it does make a difference that there is a League of Women Voters . . .

One way to say it is:

I hereby give and bequeath the sum of . . . dollars to the League of Women Voters of the United States, a corporation organized September 15, 1923, under the laws of the District of Columbia.

Needs to Be Met

The third important consideration is facilities. Meeting-room requirements are as follows: one room to accommodate 1,800 persons; 25 rooms to accommodate 25 to 100 each; eight to accommodate 150 to 200 each. Other necessities include exhibit space, press room, workroom, office space, public-address system adequate to carry a number of floor and table mikes, 1,000 bedrooms for delegates, and accommodations for Board and staff.

Even the most careful planning can go awry. At the 1960 Convention in St. Louis, the hotel's convention room, capacity 1,800, was outfitted with new chairs shortly before Convention. A big improvement, the hotel thought, but sharp League eyes noticed that the new chairs were bigger than the old ones. So staff Leaguers got down on hands and knees with tape measure to compute the maximum number of chairs that could be squeezed into the room. The count was 1,116—enough to seat all 1,094 delegates and a part of the national Board and staff. Visitors, guests, and working press were seated in the balcony.

Cost is the determining factor in considering facilities. A hotel which houses delegates will usually supply free space for League meetings and exhibits. A table Convention, requiring an auditorium beyond the size most hotels could offer, would involve an outlay for high rentals and this cost would have to be passed on to delegates in higher registration fees. So having a place to put papers, take notes, and rest elbows is an expensive luxury. (Fortuitous circumstances enabled the League to have a table Convention in Atlantic City in 1958.)

Spring Not Far Behind

But back to Minneapolis and on to the 1962 Convention. Local and state Leagues of the Minneapolis area have set up the Convention Committee, which soon will organize 150 to 200 League volunteers to help with registration, office work, public relations, and so on.

And at the national office the travel equalization formula has been refigured on the basis of the latest increase in air rates, which had already gone up at least once since the 1960 Convention. Registration fees, held to $15 in 1958 and 1960, have been raised to $20 for 1962 because of higher costs in general.

Soon it will be April and the Convention Secretary will go to Minneapolis to set up office, open accounts, rent equipment, and hold training meetings for the volunteers. She will be followed by three secretaries from the national office. Next, the national Board and the national executive staff will arrive for the pre-Convention Board meeting.

Then, most important of all, is the arrival of delegates, the potential number being 1,729 until revision based upon the 1962 representation figures from local Leagues due January 15.

And on April 30 at one o'clock in the Hall of States of the Hotel Leamington the League's national President will rap her gavel and call delegates to order and the 25th national Convention of the League of Women Voters will begin.

THE NATIONAL VOTER

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League of Women Voters of Texas

[redacted]

January 22, 1965

Mrs. Robert J. Stuart, President
League of Women Voters of the U.S.
[redacted]

Dear Mrs. Stuart:

The Texas state Board discussed the proposal for an emergency national CA and the procedures for action on the reapportionment issue at its quarterly meeting last week. The Board opposes the proposal and deplores the disposition of certain segments of the League to replace foresight with hindsight. It seems that if the issue were of such grave importance as this appears to be to some Leagues, it should have had strong support at the Program making discussion at Convention which was not the case.

The League's main strength is in looking ahead in its thoughtful approach to the problems of government. We would prefer not to jump on a bandwagon already rolling toward a solution. The main question to be resolved is - how effective can the League be at this late date on such an issue? We think the answer is - very little nationally, if at all.

Among the questions raised by the Board the most basic and those upon which we report our opposition and request serious consideration, are the following:

1) Are the 30 state Leagues now working on reapportionment willing to risk the possibility that the other Leagues would not agree with their consensus? Should this happen, a national consensus might nullify their previous efforts. The Leagues not now working on reapportionment could not be expected to accept the already-reached conclusions of the 30 Leagues since this is completely contrary to the League consensus process.

2) This is still much more of a state problem than a national one, State Legislatures in many cases are under mandate to reapportion (Texas among them) and the necessary pressures should be brought to bear on them. If the 30 Leagues can prevent the amendment to the federal Constitution from being introduced and/or passed in their state Legislatures, the problem is partially solved. It seems unlikely, as a result of the November elections, that the Dirksen Amendment can pass in the 89th Congress and even more unlikely that the necessary states would ratify it. If it should pass the Congress, then it seems that there would be very little the LWV could do nationally.

3) We question the interpretation of the procedures outlined in the bylaws since the two sections dealing with Program are contradictory. The Council Article outlines procedures for "modifying" the Current Agenda; the Program Article defines Current Agenda as "such current governmental issues as the Convention shall choose for action." Therefore, since the Current Agenda chosen by the Convention does not include reapportionment, we think that the inconsistency in the bylaws rules out the possibility of adding a completely new item to the Current Agenda. The authority is given for changing or modifying existing Current Agenda, not adding a new item to it. If the Council Article conformed to our present definition of total Program, then this possibility would exist. We feel that it does not now exist.

4) It would be detrimental to the rights of the members of the League of Women Voters enrolled in local Leagues to express their convictions on the choice of subject matter for national CA if we were to give the state leaders assembled in National Council the prerogative of adding to the CA the members have chosen.

5) It would be almost impossible for the League to reach a meaningful national consensus in time to take action in the first session of the 89th Congress. The State of Texas has an August 1, 1965 deadline for Congressional redistricting and an August 2, 1965 deadline for legislative redistricting - with no state LWV position on the subject, any study and consensus the Texas League might reach under a national CA would be merely academic and an exercise in futility. This is probably true of the other states which have not been working in this field.

We endorse the suggestion made by the LWV of Washington for a statement of policy that would allow state Leagues to work with their own Congressmen on Congressional proposals affecting apportionment of state legislatures. We have used a similar procedure successfully at the state level for many years in Texas and find it completely satisfactory and workable. After clearance and permission from state Board, local Leagues are free to work with their own state legislators for bills of a purely local nature that will not affect other parts of the state nor be contrary to any state positions. We would support such changes in national procedure -- adopted preferably by the National Convention, but we remain open to conviction on its adoption by National Council.

Sincerely,

Mrs. Maurice H. Brown
President

ir

THE NATIONAL
Voter
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

NOVEMBER-DECEMBER 1964

1200 17th Street, N.W., Washington, D.C. 20036

The United Nations: Year of Decision

By Mrs. George A. Little, *Observer for the League of Women Voters at the United Nations*

Until "the week that was" in mid-October, the 19th session of the General Assembly was forecast as the African Assembly. With Liberia, Ghana, and the Sudan each offering a candidate, an African for president of the Assembly seemed assured. With the 84-item agenda liberally sprinkled with such problems as apartheid and human rights, vestiges of colonialism, and obstacles to developing countries' trade, an African-oriented session seemed certain.

Then, in staccato fashion, Mr. Khrushchev disappeared from the picture, Communist China exploded its first atomic bomb, and the Labor Party defeated the Conservatives in England. To allow time to assess what these events might mean, the Assembly opening was postponed (from November 10) to December 1 upon request of the smaller nations. Agenda items which were expected to have cursory discussion were suddenly of lively concern.

As to China

Perhaps first in this category is the question of seating Red China. In the 1963 Assembly, an Albanian-Cambodian proposal to seat the Peoples Republic of China in place of Nationalist China was defeated 57 to 41, with 12 abstentions.

But this year Red China, having become a member of the nuclear club, holds the cards for a higher bid. In reaction to events, Mali encouraged an African movement toward accepting a change in Chinese representation. Cambodia hurried to be first to place such an item on the agenda, and a general Asian-African push may be under way.

Despite these moves, unless the Assembly reverses its decision that the question of Chinese representation requires a two-thirds vote, the status quo will probably not change this year. However, the U.S. delegation will not find it any easier to defend our country's long-standing position against the seating of Communist China.

Arms and Man

At the same time the Peking government announced its bomb explosion, it proposed a "summit conference of all the countries of the world" to discuss abolition of nuclear weapons. The proposal was generally greeted as "propaganda." But later, U.N. Secretary General U Thant said in a press interview that, as suggested by former Kansas Governor Alfred M. Landon, a conference of the five nuclear powers (U.S., U.K., U.S.S.R., France, and now China) "could be very worthwhile." Certainly the major powers are under new pressure to make the current 18-nation U.N. disarmament talks in Geneva more productive. Few would argue with U Thant that "protocol and diplomatic considerations should be secondary, while the consideration of destructivity and radioactivity should be primary."

The whole problem of disarmament will receive more conscience-laden attention in the coming Assembly than was foreseen before that momentous week in October. We can expect the 19th session to point up the general desire to extend the test-ban treaty to cover underground testing, the urgent need to stop proliferation of the bomb among non-nuclear nations, and increased emphasis on setting up nuclear-free zones (particularly in Africa).

The Purse Strings

As this issue of THE NATIONAL VOTER goes to press, one major problem unchanged by October's dramatic news is U.N. financing. The Soviet Union still refuses to pay one kopek to meet its arrears on past peacekeeping costs, and no formula has been devised for financing future peacekeeping operations.

The first roll-call vote in the Assembly may take away the votes of the Soviet-bloc nations under Article 19 of the U.N. Charter, as they are now two years behind on payments. The U.S. delegation has made a strong case for the mandatory nature of Article 19. The Soviets counter-argue on the basis of Article 18. Small and medium-sized nations, caught in the squeeze, fear to take sides and hope that by some miracle a compromise will be found to avoid a shattering confrontation.

To meet future peacekeeping costs, the Special Committee of 21 is trying to hammer out a satisfactory formula. Results of its deliberations will be presented to the Assembly

and will, hopefully, provide a more regularized and acceptable approach to financing than the past ad hoc improvisation has allowed.

To help provide for the future, eight member states have earmarked forces in their armies for U.N. use on call. Recently 18 smaller nations which have provided troops or technicians to U.N. peacekeeping operations met in Canada to seek better methods for standby forces.

Crises Simmer

Cyprus: Inclusion of the Cyprus question as a supplementary item on the Assembly agenda has been requested by the government of Cyprus. Since authorization for the present U.N. force on the island ends December 31, 1964, and any extension would be a Security Council matter, possibility of discussion of the Cyprus problem simultaneously in both Assembly and Council is not unlikely. There has been no major military action on the island since the August Security Council cease-fire. The new U.N. mediator, Galo Plaza, is seeking to reconcile two points of view: Greek emphasis on self-determination, Turkish concern that treaty commitments be fulfilled.

The Cairo meeting of 47 unaligned nations endorsed "unrestricted and unfettered independence for Cyprus with removal of all foreign bases, Greek, British, and Turkish." This stand, which the 47 are expected to support in the Assembly, seems to ignore the key political issue which the constitution and treaties of 1960 tried to settle: protection of the Turkish minority.

Congo: For the first time in years, the Congo is not on the agenda. But there was somehow an unreal quality to the picture of Moise Tshombe in Leopoldville making a U.N. Day speech expressing gratitude for U.N. economic and military assistance in preserving the Congo. While some African leaders deplore what they consider an "Uncle Tom" attitude on the part of Tshombe and were infuriated by his hiring of white mercenaries from South Africa to help maintain order in the rebel provinces, he does seem to have control of the situation and to be in the process of strengthening the central government. As one African leader said, "We may not be totally happy over the present situation, but it is certainly better than we would have faced had the United Nations not gone in and made possible this chance for unity."

Development Politics

Proposals for U.N. machinery on trade which came out of the March-June 1964 U.N. Trade and Development Conference in Geneva, will be submitted to the General Assembly for approval (see THE NATIONAL VOTER, August 1964, "The Geneva 77—A New Trade Force?"). However, voting and operational procedures for the new 55-nation Trade and Development Board are still to be worked out. A 12-man Special Committee on Conciliation will report to the Assembly on "a process of conciliation to take place before voting" within the new board. Creation of this committee reflects not only the developed nations' fear that the 77 less-developed countries may push through unrealistic resolutions for which the developed would have to sign the check, but also an awareness on the part of "the 77" that resolutions not approved by the wealthier countries cannot be effectively implemented. Should a workable formula be found to take into account both the opinions voiced by the majority and the responsibility borne by the minority, it may be carried into other committees where similar concern exists.

The U.N. Economic and Social Council (ECOSOC) will put before the Assembly a proposal to merge the Special Fund and the Expanded Program of Technical Assistance (EPTA) into a new organ called the U.N. Development Program and headed by a single governing council. Sound as is the idea for this merger, developing and developed countries hassled for two summers over voting procedures and representation on the council. The developing countries wanted a simple majority vote and geographic representation (as in EPTA); the developed countries sought a two-thirds vote and parity representation between developed and developing countries (as in the Special Fund). The idea of a simple majority vote was accepted; the matter of representation and number of members has been left to the Assembly.

Projecting into Future

So the coming Assembly faces tremendous policy decisions basic to its operation. The problem of peacekeeping and its financing involves the underlying question of whether authority lies in the Security Council, with the veto, or in the General Assembly. The seating of Red China depends on whether the Charter provision that membership is open only to "peace-loving states" is rigidly adhered to or whether the point of view that *all* nations should participate in the United Nations is the prevailing interpretation. As to the decision-making process, a way must be found to preserve the one-nation-one-vote right of the small countries and yet not ignore the interests of the major powers that bear the heaviest responsibility.

By its nature the agenda is limited to problem areas so looks disheartening. The average citizen has little opportunity to hear of the enormous strides already made toward a peaceful and better world. In part to fill this gap, an attempt will be made in 1965—designated as International Cooperation Year—to tell of the many accomplishments of the United Nations in its 20 years of existence.

But the emphasis is to be not only on the past but on the future. In proclaiming 1965 as the ICY in the United States, President Johnson said: "International cooperation . . . is a fact of life. Our challenge is not to debate the theory but . . . to perfect and to strengthen the organizations that already exist." A White House Conference will be held in 1965 "to search and explore and canvass and thoroughly discuss every conceivable approach and avenue of cooperation that could lead to peace."

Many other nations also have announced plans for ICY. Cooperation of governments, participation of nongovernmental organizations, tireless efforts of just plain people who believe in the U.N. ideal—all will be needed. From this joint effort should come a stronger United Nations "serving all nations but dominated by none, with the continual obligation to avoid disaster and misery and to provide for a better and more productive future for all peoples" (U Thant in his U.N. Day Address).

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Dear Member:

We, as your Budget Committee, have just tied the shoestring for a third step toward that realistic budget demanded by the League's concern for greater citizen participation in government. A sizeable stride forward indeed—a budget of $356,860 or, roughly, an increase in pledges of 28 cents per member.

What, you ask, is the increase for?

- $5,500 more is needed annually to keep pace with the growth in number of Leagues and members;
- $2,500 is a more realistic allowance for the activities of the Board and its committees;
- $1,000 is for new equipment in the new office (1200 17th Street, N.W., Washington, D.C. 20036);
- $1,400 is for a stepped-up public relations program and clipping service to help gauge its effectiveness;
- $3,400 will give members one more issue of THE NATIONAL VOTER, making the total 11 per year;
- $2,000 will allow us to maintain field service at the current level;
- $22,500 is for one additional staff member and salary increases for our present staff of 37.

After a day and a half of concentration on the budget those of us privileged to work on it have a real appreciation of what money, added to the many hours of volunteer time, *can* and *does* do for the League. But how can we reduce a day and a half of learning into a capsule of a few paragraphs for you who may have only a few minutes? Can a $856,860 budget be made meaningful? Perhaps it can if we glance at what our income is "buying" in a two-hour period—the same brief time you spend in a unit meeting.

Scene: the National Office Washington, D. C.

An average of almost 400 pieces of first-class mail arrive in the national office each working day. These may set Miss Drake to phoning Mrs. Stuart (in Spokane, or any State, U.S.A.) about a complicated nonpartisanship question raised by a local League; Mrs. Cleveland to assembling facts and figures to be used by a state budget chairman in a State Budget Building Day; Miss Urban to outlining plans for Mrs. Zurbach's trip to San Juan, Puerto Rico, our first bilingual League; Mrs. Long to preparing a memorandum to the Board describing progress in the provisional League of Crosstown, U.S.A., which hopes the national Board will soon recognize it as a new local League; Mrs. Mills to writing Mrs. Little about a VOTER article on the United Nations; Miss Harned to working up a bibliography for the Leaders Guide on Development of Human Resources; Mrs. Sharpe to consulting with resident Board member Mrs. Rosenblum about a request for permission to act regionally under the national Program item on Water Resources; Mrs. Heatwole to conferring with the hotel management about space and arrangements for the national Council meeting next spring; Mrs. Hamm to poring through League Bulletins for good stories for a Swap Shop for Voters Service chairmen.

Meanwhile Mrs. Douglas is on the phone with a member of the staff of the Senate Foreign Relations Committee, requesting the hearing schedule so that Mrs. Kenderdine may time her draft of the Board's statement before the Committee; Mrs. Girton is editing copy for the next issue of THE NATIONAL VOTER; Mrs. Guyol is off to New York to confer with publishers about placing a League article in a popular magazine. Typewriters click. Mimeographed material flies off the machine. The mail room hums as some 60 orders for League publications are filled and almost 500 pieces of mail are stuffed into outgoing mail bags by the end of the day.

And don't forget that in her home town each national Board member is reading her mail, writing speeches, drafting agendas, examining new books and pamphlets on Program, or packing her bag for a week in a neighboring state to conduct workshops, attend Board meetings, or speak. Mrs. Little may be covering a session of the United Nations. Postage, phone calls, and travel cost money; the time of our dedicated staff, whose hours too often run to overtime not paid for, deserves increased compensation.

All this activity is set in motion by the demands of our Conventions—in preparation for the next one or to implement decisions of the last one. This activity is what we blueprint when we frame and adopt a budget.

The buzz of the national office is felt across the country, pulling together and enhancing the efforts of each of us to make every American more alert to the meaning of self-government. Our budget figures are the essential means to fulfilling the League's purpose. When the figures are presented in this light, the community support they require will be forthcoming.

NATIONAL BUDGET COMMITTEE: MRS. VERNON C. STONEMAN, CHAIRMAN, *a Director of the League of Women Voters of the United States; State League of Women Voters Officers:* MRS. DAVID G. BRADLEY, *President, North Carolina;* MRS. KENNETH W. GREENAWALT, *President, New York;* MRS. JANE D. MARTIN, *President, Georgia; Officers and Directors of the League of Women Voters of the United States:* MRS. WILLIAM M. CHRISTOPHERSON, *Director and Finance Chairman;* MRS. HANS-ARNOLD FRAENKEL, *Treasurer;* MRS. JOHN F. TOOMEY, *Director and Voters Service Chairman;* MRS. WILLIAM H. WOOD, *First Vice President.*

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MRS. ROBERT J. STUART, *President*
MRS. FRED GIRTON, *Editor*

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CONTINUED STORY

(See THE NATIONAL VOTER:
April 1964, "The Other Shoe"
July-August 1962, "Equal Protection of the Laws")

1964 has been a big year in the story of state legislative reapportionment. 1965 may be bigger, whether opponents of last June's Supreme Court decisions win or lose; it might be the deciding year.

In March 1962 in Baker v. Carr the Court decided that voters could, under the 14th Amendment, seek protection in federal courts against "invidious discrimination" in apportioning state legislative seats. In June 1964 in a series of opinions the Court established a basic standard for judging whether apportionment affords "equal protection of the laws." This standard requires districts "as nearly of equal population as is practicable" in both houses of a bicameral legislature. At least one house in almost all states fails to meet this standard.

Politicians' Rebellion

The Court neither required nor counseled haste. But its moderation did not forestall what Anthony Lewis in *The New York Times* has called the "politicians' rebellion."

There was an increase in the volume of judicial action country-wide. There was some state legislative activity. And there was a great outburst of action in a legislative body not hitherto concerned with apportionment—the Congress.

One measure assaulted not only the standard set but the Court itself. Representative Tuck (D., Va.) proposed and the House passed a bill which would by statute deny federal courts any jurisdiction over state legislative apportionment. To an urban voter in Tennessee, where in spite of a state constitution stipulating regular reapportionment of both houses on basis of population there was no reapportionment (until court action) for over 60 years, the import of such a statute is clear. The constitutionality of the Tuck proposal is doubtful.

Deep Freeze

The text of the Tuck bill was brought to the Senate floor as a substitute for the Dirksen proposal and was defeated 21-56. Senator Dirksen (R., Ill.) had introduced an amendment to the foreign aid bill; the avowed purpose of this rider was to slow down the judicial process long enough to allow passage of a constitutional amendment which would allow one house of a two-house legislature to be apportioned on a basis other than population. Senator Kuchel (R., Calif.) likened this to putting the judicial process in "statutory refrigeration." By attaching the rider to "must" legislation Senator Dirksen hoped for a favorable vote unlikely if the vote were strictly on merit. Important as the aid legislation was, a sizeable body of Senators felt the issue involved in the rider was of such importance that they embarked on an extended debate to defeat it. Proponents cried "filibuster."

Accommodation was sought not only in order to authorize foreign aid but to allow Congressmen to go home to campaign. As an alternative to the rider a "sense of Congress" resolution was proposed, not binding on the Court but suggesting a slowdown of Court action in apportionment cases. This went through a number of wordings, each progressively weaker, and when finally passed by the Senate amounted more to an affirmation of the Court's decision than a slap. It died in conference on the foreign aid bill.

What's Next?

Opponents of the Court and its standard for fair apportionment tried and are expected to try again to push through Congress a joint resolution calling for a constitutional amendment to attain their end. The proposed amendment given most publicity and best chance to succeed was introduced by Representative McCulloch (R., Ohio). His proposal provided for ratification by three fourths of the state legislatures and said: "Nothing in the Constitution of the United States shall prohibit a State, having a bicameral legislature, from apportioning the membership of one house of the legislature on factors other than population, if the citizens of the State shall have the opportunity to vote upon the apportionment."

Even advocates of some such proposal advise against rushing it through Congress without hearings and legal advice on wording. Questions about the McCulloch wording center around who would propose the "different" apportionment, could it be changed after 10 or 20 years if the people chose, should *any* limitations on factors other than population be taken into account, might civil rights be involved? What does Mr. McCulloch mean when he says, in explanation of his proposal, "the citizens of the State shall have, *or shall have had,* the opportunity to vote upon such apportionment"?

Who's to Ratify?

Just as serious questions are raised in regard to the proposed method of ratification. Is it reasonable and proper to place the power of ratification in the hands of the people directly affected by the amendment? Were such an amendment to go quickly to the states, the malapportioned legislatures would have the say. The Congress could provide for ratification by the peoples in the states through Conventions. Such a method was stipulated for repeal of the prohibition Amendment—people were allowed to vote for a slate in favor of repeal or a slate opposed.

Joint Resolutions proposing constitutional amendments require a two-thirds vote. The Tuck bill passed the House 218-175—by no means two thirds—but the McCulloch proposal is much less sweeping than the Tuck bill.

Leagues in some states—for example Tennessee and Washington, which have fought the long fight to have their legislatures apportioned on population in conformity with their state constitutions, and Iowa, which has successfully fought against attempts to apportion the larger house by area only—feel alike insecure in such victories as they have had.

What will the new Congress propose? Watch these pages for another chapter in the Continued Story.

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THE NATIONAL
Voter
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

JANUARY 1965

MRS MAURICE BROWN
[redacted]
T-119

1200 17th Street, N.W., Washington, D.C. 20036

SUCCESSION TO THE PRESIDENCY

Ambiguity of language in sections of the Constitution dealing with presidential succession leaves two great gaps which might sometime create a sudden vacuum and lead to a serious national—even world—crisis. These gaps appear in 1) the method of filling the vice presidency when the President dies and the Vice President succeeds to the presidency and 2) the means of determining the inability of the President to carry on his duties during illness.

In the fall of 1964 the Senate approved a constitutional amendment designed to cope with both of these shadowy areas. Both houses will probably study and perhaps take action on similar proposals during the 89th Congress.

1789 to 1965

This is the language of the Constitution which has created one of the problems:

Article II, Section 1, Clause 5: In case of the removal of the President from office, or at his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

During the nearly 176 years since adoption of the Constitution the office of the vice-presidency has been vacant 16 times, for a total of almost 40 years. Eight Vice Presidents have succeeded to the presidency through the death of a President. (See table below.) The first one to do so, John Tyler, faced with the question of whether in such a situation a Vice President should assume only the "powers and duties of the office" or the office *and* title, resolved the matter by asserting his right to both.

Seven Vice Presidents have died in office and one resigned. (See table.)

Congress in 1947 established the present line of succession, beginning with the Speaker of the House, next the President pro tempore of the Senate (it might happen that neither of these would be a member of the President's political party), then through Cabinet members in the order in which the Executive Departments were established, beginning with the Secretary of State. Since the Vice President has become more than a figurehead, as he was in the early days of our country, this solution no longer seems realistic.

President Truman urged Congress to make the Vice President a member of the National Security Council and Congress did so in 1949. President Eisenhower and President Kennedy saw to it that their Vice Presidents were kept informed and in close touch with all affairs of state. They gave them important assignments to carry out. In other words, they were preparing their Vice Presidents to take over in case of necessity. President Johnson seems to be planning to continue this practice. It is impossible for any other elected official, such as the Speaker of the House, burdened with his own duties, to be similarly trained to take over as President.

The amendment which was adopted by the Senate and which

Uncompleted Terms of Presidents and Vice Presidents

Presidents who died in office and Vice Presidents who then became Presidents:

President	Length of Service	Succeeded by
William Henry Harrison	Mar. 4, 1841 - Apr. 4, 1841	John Tyler
Zachary Taylor	Mar. 5, 1849 - July 9, 1850	Millard Fillmore
*Abraham Lincoln	Mar. 4, 1865 - Apr. 15, 1865 (2nd term)	Andrew Johnson
*James A. Garfield	Mar. 4, 1881 - Sept. 19, 1881	Chester A. Arthur
*William McKinley	Mar. 4, 1901 - Sept. 14, 1901 (2nd term)	Theodore Roosevelt
Warren G. Harding	Mar. 4, 1921 - Aug. 2, 1923	Calvin Coolidge
Franklin D. Roosevelt	Jan. 20, 1945 - Apr. 12, 1945 (4th term)	Harry S. Truman
*John F. Kennedy	Jan. 20, 1961 - Nov. 22, 1963	Lyndon B. Johnson

**Assassinated*

Vice Presidents who died in office and Presidents with whom they were serving:

Vice President	Length of Service	President
George Clinton	Mar. 4, 1809 - Apr. 20, 1812 (2nd term)	James Madison
Elbridge Gerry	Mar. 4, 1813 - Nov. 23, 1814	James Madison
William R. King	Mar. 4, 1853 - Apr. 18, 1853	Franklin Pierce
Henry Wilson	Mar. 4, 1873 - Nov. 22, 1875	Ulysses S. Grant
Thomas A. Hendricks	Mar. 4, 1885 - Nov. 25, 1885	Grover Cleveland
Garret A. Hobart	Mar. 4, 1897 - Nov. 21, 1899	William McKinley
James S. Sherman	Mar. 4, 1909 - Oct. 30, 1912	William H. Taft

John C. Calhoun was elected Vice President in 1828 and served from March 4, 1829, to December 28, 1832, when he resigned to become a United States Senator. Andrew Jackson was President at the time.

has the endorsement of the American Bar Association would permit a President who moves up to the presidency to nominate a Vice President, subject to congressional approval.

In Case of Disability

And what happens when a President becomes unable to discharge the "powers and duties of the said office?" No Vice President has ever stepped in as a substitute President in such a situation, although three Presidents have suffered extended periods of disability. In the first two cases (Chester A. Arthur under President Garfield, Thomas R. Marshall under President Wilson) the Vice Presidents did not act for fear of being accused of usurping the presidential powers and office. When President Eisenhower was incapitated three times during his eight years in office, Vice President Nixon presided over meetings of the Cabinet and the National Security Council because the President had made an arrangement with him to do so.

The Senate-passed amendment proposed that whenever the President declared in writing that he was unable to discharge the powers and duties of his office, the Vice President would become Acting President until the President declared in writing that his disability had ended.

If the President did not make known his disability, the Vice President, with the concurrence of a majority of the Cabinet or such body as Congress may determine, could declare the President disabled and would assume the powers and duties of but not the office of President. If the President disputed the action of the Vice President and Cabinet, Congress would decide the issue, with a two-thirds vote of each house necessary to enable the Vice President to continue as Acting President.

In Case of Death

What happens if a presidential nominee dies before the election or a President elect dies between his election and the inauguration date?

If a Democratic presidential nominee dies before the election, the Democratic National Committee could select another nominee. In the Republican Party, a new nominee could be selected by the Republican National Committee or the Committee could call another nominating convention.

If a President elect were to die after the popular election but before the inauguration date, U.S. election laws would determine the procedures, depending on the date of his death:

1) If a President elect dies between the day of his election and the day on which the members of the Electoral College meet (electors of the 50 states and the District of Columbia meeting in their respective jurisdictions) on the first Monday after the second Wednesday in December to cast their ballots, the electors would be free to vote for anyone they pleased. Probably they would cast their votes for the Vice President elected by popular vote on the same ticket, but they would in no way be bound to do so. Lack of precedent makes this a very shady area indeed.

DATES AND DATA

- *Nov. 3, 1964.* Total popular vote in presidential election was 70,640,289: 43,121,085 for Democratic ticket (61%), 27,145,161 for Republican ticket (38.4%), 374,043 for others (.6 of 1%). Latter figure includes 265,460 for unpledged Electors on Democratic slate in Alabama, 105,354 for five minor parties (25 states reported count of such votes, 3 had minor parties on ballot but did not report count, 22 and District of Columbia reported no minor-party vote), 3,229 scattered and write in votes.
- *Dec. 14, 1964.* 538 Electors (from 50 states and District of Columbia) comprising Electoral College cast votes: 486 Democratic, 52 (Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina) Republican.
- *Jan. 6, 1965.* In joint meeting of House and Senate, President pro tempore of Senate presiding, two tellers appointed from each house will open certified sealed lists received from Electoral College and call out votes of 50 states and District of Columbia. Presiding officer will announce results.
- *Jan. 20, 1965.* President Johnson and Vice President Humphrey will take their oaths of office.
- *From 1864 to 1964, both inclusive,* the Republican Party has won 15 presidential elections; the Democratic Party has won 11.

2) If a President elect were to die after the members of the Electoral College had balloted but before the votes were counted by Congress on January 6, Congress would still have to count the votes for him. Under this circumstance the Constitution provides as follows:

> *Article XX, Section 3: If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.*

If the first sentence of Article XX, Section 3, applied, there would be no Vice President.

3) If the President elect should die between January 6 and January 20, the inauguration date, the Vice President elect would become President as provided in Article II, Section 1, Clause 5.

Go On Wondering?

As to Article XX, Section 3, a report prepared by Mollie Z. Margolin of the Legislative Reference Service, Library of Congress, asks:

"Will the phrase 'shall have failed to qualify' include disability or a refusal to accept office before inauguration, or will it be held that the phrase 'if . . . the President elect shall have died' will include refusal to accept or disability? If the former interpretation will be accepted, then the Vice President elect will act as President until a new President is chosen. If the latter is the proper interpretation, the Vice President elect would become President. It would appear to be a matter for the courts to determine."

The United States has for a long time lived dangerously in respect to presidential succession. Can we afford to go on doing so?

In Memoriam

December 9, 1964

Mrs. Minnie Fisher Cunningham

Member of the National Board
1924-1925

THE NEW CONGRESS ORGANIZES

When the 89th Congress begins its First Session January 4 at noon, 90 new Members (86 freshmen, and four who formerly served in the House but were not Members of the 88th) and 345 re-elected incumbents will, as a body, take the oath of office in the House of Representatives. Members will stand, according to party, on opposite sides of the center aisle which divides the Democrats from the Republicans. On the Democratic side will be 295 Members; on the Republican, 140.

In the other wing of the Capitol, in the Senate Chamber, seven new Senators, each escorted by the senior Senator from his state, will go down the aisle and be sworn in when their names are called by the Senate's presiding President pro tempore (if there were an incumbent Vice President he would preside). Five of the new Senators will be Democrats; two, Republicans. Democrats will be seated at 68 desks on one side of the middle aisle, Republicans will occupy 32 places across the way.

The Senate considers itself a continuing body since only a third of its members are up for election every two years. The party leadership in the Senate—President pro tempore, Majority Floor Leader, Majority Whip, Minority Floor Leader, Minority Whip—chosen by the two parties in their Conferences, hold over from Congress to Congress except when party control of the upper house changes hands or when death, retirement, resignation, or defeat at the polls causes a vacancy.

This year the Democrats must select a new Whip (assistant floor leader) because of Senator Humphrey's resignation from the Senate following his election to the vice presidency. Three Senators (Long of Louisiana, Monroney of Oklahoma, Pastore of Rhode Island) have announced their candidacy for this position and on January 4 the Democratic Conference will announce the winner.

As a continuing body the Senate has operated under the same rules ever since the Constitution went into effect in 1789 (although revisions have been made from time to time) therefore adoption of rules is pro forma unless some movement to amend gains support.

House Gets Going

In the House the First Session of the 89th Congress will begin when the Clerk of the 88th Congress calls the meeting to order. After a prayer by the Chaplain of the 88th, the Clerk will announce that certificates of election covering 435 seats have been received and are on file in his office. He will call the roll to ensure that a quorum is present. Then the Chairman of the Democratic Caucus and the Chairman of the Republican Conference will rise to place in nomination the name of their respective party's candidate for Speaker of the House. Tellers from the two parties will be appointed and as the roll is called they will keep score. Since the Democrats have a majority of 155 the outcome will not be in doubt: the Democratic nominee will be elected. The Republican nominee will become the Minority Leader.

The Speaker will be escorted by the Majority Leader and the Minority Leader to his desk on the rostrum and the House will go on with its first-day business: organization. Staff officers of the House will be elected: the Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, Chaplain.

A Committee will be appointed to notify the Senate that the House has organized. The Clerk will be directed to notify the President that a Speaker has been elected.

Committees in 89th Congress

In the House, each party's Committee on Committees will have important legislative Committee positions to fill because of new members, election defeats, retirements, and deaths during 1964. No Committee chairmanships are involved in the changes, but composition of several Committees may be affected by the appointment of new members. These appointments will be announced and formally approved by the House early in the session.

There will be some changes in Senate Committees, too, but these will be fewer because most incumbents running for another term were reelected and there are only seven new members to be assigned.

The Democratic members of the House Ways and Means Committee, earlier chosen in the Democratic Caucus, will be elected by the whole House, because they constitute the Democratic Committee on Committees. (The Republican Committee on Committees is composed of one member from each state delegation which has Republican representation. Assignments to legislative Committees are made, on a party basis, by these two party Committees.)

The Majority Leader will move the adoption of the rules of the 88th Congress. This is the moment when motions to amend the rules are entertained.

Rules May Change

Because of the size of the House, its rules are extremely important, setting up as they do procedures for consideration of all House business. The Constitution states that each house may make its own rules. At the beginning of each new Congress the House must adopt its rules. (Since the House makes its rules it is always possible for the House to disregard them and sometimes this occurs, but only when there is general agreement.)

This year both parties are considering some changes.

Most revolutionary are those which the House Democratic Study Group (an informal organization of Democratic Representatives) will present to its party Caucus, hoping to gain party endorsement.

One of these changes would make it easier to bring legislation to the floor by reducing from 218 to 175 the number of signatures required on a discharge petition (to release a bill from a Committee).

Another change would empower the House by majority vote to take up a bill if the Rules Committee fails to clear it in 21 days (the House now can bypass the Rules Committee only through very cumbersome procedures).

Still another would empower the House to send to conference with the Senate any bill that has passed both houses (now if a single member objects to a conference the bill must be sent to the Rules Committee which makes the decision

about sending it to conference).

In each of these three cases—discharge petition, 21-day rule, conference motions—the Speaker would be given discretion to recognize or not recognize a Member to make the motion.

Also to be recommended is a proposal that the party ratio of membership in all committees be changed to reflect the 68 percent Democratic control of the House. Most Committee ratios do change when party ratios change, but two of the most important—Ways and Means, and Appropriations—have been frozen by tradition for nearly 25 years at 3-to-2. A change would give Democrats 17 instead of 15 members on the 25-member Ways and Means Committee, and 34 instead of 30 members on the 50-member Appropriations Committee.

The Caucus may also be asked to consider the creation of a Democratic steering committee to set party policy on legislation and the establishment of a House-Senate committee to consider modernization of congressional procedures.

Perhaps the Caucus will consider taking away the Committee assignments and seniority of two southern Democrats in the House who publicly supported the Republican presidential candidate in the 1964 election. While many of the younger Representatives would like to do this in order to strengthen party control, it is probable that the leadership, backed by the President, will not give the idea support for fear of later repercussions.

Another proposal is that appointments to legislative Committees, made by the Committee on Committees (the Democratic members of Ways and Means), be referred back to the Caucus for approval before being sent to the floor. If the Caucus did not approve an appointment, including a chairmanship, it could change it. Since this proposal is an attack on the seniority system, chances of adoption are not good.

The Democrats will hold a first meeting of their Caucus January 2.

The Republicans have called a first meeting of their Conference for December 16 to organize and to discuss possible changes in House rules and presentation of Republican legislative programs during the session. One proposal which the Conference is sure to want brought to the floor is that the House provide the minority with more professional staff for Committees.

Congress Reorganize?

There seems to be growing sentiment in Congress for a general overhaul of its organization and procedures, and perhaps 1965 will be the year that sets in motion an apparatus for achieving changes.

Almost 20 years have gone by since the Reorganization Act of 1946 was passed. This Act reduced the number of legislative Committees and proposed other changes (some were adopted, some not). One of the cosponsors of that legislation, Senator Monroney, intends to introduce on January 4 a resolution which would set up a joint committee to draft a reorganization program. A similar bill will be introduced in the House.

The proposed committee would consist of five Senators and five Representatives and would probably report back to the two houses in 1966. During the study year the joint committee would hold hearings at which political scientists, business leaders, and specialists such as auditors and computer experts would make recommendations for increasing efficiency.

Senator Monroney believes one of the "biggest and most essential tasks" is to modernize procedures for handling appropriation bills. He suggests borrowing computing machines from Executive agencies and hiring accountants as Appropriations Committee aides.

Proposals for speeding Committee action on legislation would be studied by the joint committee so that a target date for annual adjournment, perhaps August 15, could be set. Committee structure would be considered. The seniority system, absenteeism, and the Senate rule on closing debate are other areas which could be examined.

The Senator has characterized the present congressional procedures as something like "a group of farmers sitting around a cracker barrel and a potbellied stove and trying to run a $100 billion business." It will be interesting to see if a majority of the House and Senate agree that now is the time for Congress to move into the age of automation and to streamline its procedures.

3 Rs on 4 Ps

Many readers have written the national office of the League in praise of four publications giving information about the federal government, Congress, the U.S. presidency, the 1964 elections.

• *Choosing the President,* launched in August 1964, has brought such comments as "clear and concise" (from a national research organization)—"well done" (from a leading university)—and a big corporation's magazine gave it prominent mention. Price, 75¢; as of December 10, sales totaled 21,124.

• *When You Come to Washington,* published April 1964, has elicited remarks such as "wonderful job" (from a Member of Congress)—"most helpful booklet" (from a national leader of one of the two major parties)—and a leading magazine for women, in sending a tearsheet mentioning the pamphlet, wrote "quite informative and very interesting." This one is mostly about Congress, costs 35¢, and on December 10 sales total was 15,150 copies.

• *You and Your National Government* appeared in January 1962 and continues popular. About it a U.S. Senator wrote "hope this will be used by study groups everywhere"; the director of a leading federal agency described it as an "effective, valuable contribution to understanding the process of government"; and in October 1964 a social studies instructor who had just discovered the pamphlet wrote "it is one of the best explanations I have read on the structure and functioning of our federal government; it is superior to our current texts and I hope to purchase one for every history student in our school." At 25¢ a copy, 110,313 copies had been sold as of December 10.

• The September issue of THE NATIONAL VOTER, devoted almost solely to factual briefs on platforms and candidates of the two major parties in the 1964 presidential election, hit a high press run of nearly three quarters of a million. It was a popular giveaway throughout the country by Leagues and other public-service organizations; 9,000 copies were handed out during Women Voters Week at the New York World's Fair; at least five large industrial corporations (one of which ordered 65,000 copies) distributed it to customers.

THE NATIONAL VOTER

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MRS. FRED GIRTON, *Editor*

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[redacted]

January 22, 1965

Mrs. Robert J. Stuart, President
League of Women Voters of the U. S.
[redacted]

Dear Mrs. Stuart:

The Texas state Board discussed the proposal for an emergency national CA and the procedures for action on the reapportionment issue at its quarterly meeting last week. The Board opposes the proposal and deplores the disposition of certain segments of the League to replace foresight with hindsight. It seems that if the issue were of such grave importance as this appears to be to some Leagues, it should have had strong support at the Program making discussion at Convention which was not the case.

The League's main strength is in looking ahead in its thoughtful approach to the problems of government. We would prefer not to jump on a bandwagon already rolling toward a solution. The main question to be resolved is - how effective can the League be at this late date on such an issue? We think the answer is - very little nationally, if at all.

Among the questions raised by the Board the most basic and those upon which we report our opposition and request serious consideration, are the following:

1) Are the 30 state Leagues now working on reapportionment willing to risk the possibility that the other Leagues would not agree with their consensus? Should this happen, a national consensus might nullify their previous efforts. The Leagues not now working on reapportionment could not be expected to accept the already-reached conclusions of the 30 Leagues since this is completely contrary to the League consensus process.

2) This is still much more of a state problem than a national one, State Legislatures in many cases are under mandate to reapportion (Texas among them) and the necessary pressures should be brought to bear on them. If the 30 Leagues can prevent the amendment to the federal Constitution from being introduced and/or passed in their state Legislatures, the problem is partially solved. It seems unlikely, as a result of the November elections, that the Dirksen Amendment can pass in the 89th Congress and even more unlikely that the necessary states would ratify it. If it should pass the Congress, then it seems that there would be very little the LWV could do nationally.

3) We question the interpretation of the procedures outlined in the bylaws since the two sections dealing with Program are contradictory. The Council Article outlines procedures for "modifying" the Current Agenda; the Program Article defines Current Agenda as "such current governmental issues as the Convention shall choose for action." Therefore, since the Current Agenda chosen by the Convention does not now include reapportionment, we think that the inconsistency in the bylaws rules out the possibility of adding a completely new item to the Current Agenda. The authority is given for changing or modifying existing Current Agenda, not adding a new item to it. If the Council Article conformed to our present definition of total Program, then this possibility would exist. We feel that it does not now exist.

4) It would be detrimental to the rights of the members of the League of Women Voters enrolled in local Leagues to express their convictions on the choice of subject matter for national CA if we were to give the state leaders assembled in National Council the prerogative of adding to the CA the members have chosen.

5) It would be almost impossible for the League to reach a meaningful national consensus in time to take action in the first session of the 89th Congress. The State of Texas has an August 1, 1965 deadline for Congressional redistricting and an August 2, 1965 deadline for legislative redistricting - with no state LWV position on the subject, any study and consensus the Texas League might reach under a national CA would be merely academic and an exercise in futility. This is probably true of the other states which have not been working in this field.

We endorse the suggestion made by the LWV of Washington for a statement of policy that would allow state Leagues to work with their own Congressmen on Congressional proposals affecting apportionment of state legislatures. We have used a similar procedure successfully at the state level for many years in Texas and find it completely satisfactory and workable. After clearance and permission from the state Board, local Leagues are free to work with their own state legislators for bills of a purely local nature that will not affect other parts of the state nor be contrary to any state positions. We would support such changes in national procedure -- adopedd preferably by the National Convention, but we remain open to conviction on its adoption by National Council.

Sincerely,

Mrs. Maurice H. Brown
President

ir

January 22, 1965

Mrs. Robert J. Stuart, President
League of Women Voters of the U. S.
[redacted]

Dear Mrs. Stuart:

Another letter expressing our general opposition to the Tennessee proposal is in the mail. But we are most concerned with the implications of a change in, or a different interpretation of, the actions open to state Leagues in their state Legislatures expressed in the January 15 memo re limited authorization to Leagues to act in state legislatures on the reapportionment issue.

This seems to be a very limited interpretation of the avenues open to state Leagues to act on their State Program items and to impose restrictions never before specified in either our bylaws or procedures.

It has been our understanding that a state League could oppose or support in its legislature measures on which it had followed the usual Program procedures - even including support of or opposition to the ratification of federal amendments that affected the state's Program position. For instance, we had supposed that had Amendment 24 (the poll tax amendment) been introduced in our legislature for ratification, we could have supported it because of our very active Item on poll tax repeal and voter registration requirements. It comes as quite a shock to learn that had we done so, we would have been violating League procedures - particularly since we were unaware that any such procedure exists. We think we can better understand Tennessee's frustration now, if this is the interpretation being given to procedures.

We cannot understand why state Leagues should be denied the authority to talk to their own Congressmen about matters to which they have given so much effort and in which they have such a stake. We would agree that action in the Congress should not be authorized but heartily disagree with the National Board's refusal to allow Leagues to express their state's wishes to their own U. S. Congressmen.

We are interested in learning the reasons for this seemingly new and exceedingly strict interpretation of League procedures and await amplification of the reasons for the authority under which the national Board made this decision. It appears that the Texas League has misunderstood either League policy or the recent memo. We hope that you will help us with a clarification of either or both sources of our confusion.

Sincerely,

Mrs. Maurice H. Brown
President

ir

Hemmoff - Nolle
Casperson
Pettis

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES

1200 -SEVENTEENTH STREET, N. W., WASHINGTON, D. C. 20036 TEL. 628-3684

Mrs. Robert J. Stuart, President

February 4, 1965

Mrs. Maurice H. Brown, President
League of Women Voters of Texas
[redacted]

Dear Dorothy:

Your letters of January 22 were waiting for me at home when I returned on the 27th from three weeks in the national office and visiting in Georgia and Alabama. They arouse my great concern not on the pros and cons of having an emergency item on re-apportionment (there are varying views on this and the Board has no recommendation to make at this time) but in regard to procedures and the powers of the national Council. You may be sure that all these matters -- procedures, powers of Council and the item itself were given the most serious consideration by the Board at its recent meeting and that we will continue to weigh carefully the opinions expressed by state and local Boards, but particularly state Boards because we count so heavily on our state leaders to help us find solutions when there are League problems.

I am at a loss to understand your reaction to the Board's Memo of January 15 and the authorization for limited action in state legislatures. Rather than being a stricter interpretation of procedures it is a looser interpretation of a long standing rule that we do not act on national matters unless we have the authorization of a national Program item and national position. In the Memo of January 1963, the Board took the unprecedented step of allowing state Leagues with positions in the apportionment field to oppose if they wished the disunion amendment in regard to legislative apportionment which was being proposed in state legislatures. Because of the great concern of so many state Leagues, the Board relaxed the rule to allow this action, making a distinction between state initiated legislation and federally initiated legislation.

The Board believes that authorization of this limited action -- now extended to other similar proposals -- is the most it should give because the federal constitution is involved. To be sure the

proposed amendments do deal with state legislatures and I think this is very confusing, but the measures proposed in the Congress if passed by the Congress and ratified by the states would change the Constitution of the United States. The Board thinks it has done the most it can to allow state League action in state legislatures on resolutions memorializing Congress. These measures are not national legislation though admittedly they may eventually lead to national legislation. There are a few who object to even this limited action being allowed.

The comparison with the poll tax amendment is sound. At that time when permission was requested authorization was not given to state Leagues even if they had an appropriate state Program position to support the ratification of the poll tax amendment for the same reason that none would be given by the Board should any of the reapportionment amendments reach the state for ratification. I feel quite sure that the Texas Board would not allow a local League on the basis of a local Program position to work for an amendment to the Texas consitution which had statewide application even though the action involved might take place at the local level.

A long Memo to state Presidents is just being completed and will be in your hands shortly. Perhaps if this letter fails to answer all your questions the Memo will. I hope so.

Thank you for reminding us once again of the inconsistencies in our national Bylaws. We hope you keep on doing so until we at last make all the corrections needed. The Bylaws Committee is already hard at work and the Board spent some time on a number of wording changes which we hope will make for better language and more consistency.

We see your point about the inconsistency between the definition of CA's and the powers of the Council. The definition of CA's was adopted in 1946 at the time of the complete overhaul of the national Bylaws. Present section 3 of the Council article goes back to 1954. At that time the Convention changed the powers in this way: the Council had been allowed to modify in the event of altered conditions, the amendment of 1954 allowed the Council to change in the event of an emergency. It is perfectly clear in reading the transcript of the proceedings of the 1954 Convention that the intent in amending in this way was to increase the powers of the Council and that the powers were to include the addition of a new item.

In the debate on the amendment the pros spoke of wanting to be able to add a new item or move a CR to CA. The cons spoke against being able to add a new item. The amendment carried. It carried even though at that time the definition of CA's as chosen by the Convention was "on the books". Everybody there must have thought that the Council had after the amendment was passed the power to change, including the power to add a new item. Certainly this was the intent and the powers though unused at the national level have been assumed.

It seems to us relevant to take note of the Council powers which have been used at the state level. The same inconsistency exists in state Standard Bylaws as exists in national Bylaws and has been carried over in to many state Bylaws. In spite of the inconsistency, of which of course they were entirely unaware, both Ohio and

Mrs. Maurice H. Brown, President
LWV of Texas

February 4, 1965

California last spring added new items to their state Program. There are many other occasions on which state Leagues have done this but the two states mentioned are good examples for both Leagues went into the field of civil rights which seemed an emergency to them as the question of malapportionment seems an emergency to some state Leagues now.

We must do something about the Bylaws but the earliest date is 1966. We would be grateful if you would suggest wording changes which might be made to remove the inconsistency. I suppose one would start by assuming that the members will want to continue to give the Council the power they intended to give in 1954. Meanwhile on the basis of the intent of the Convention of 1954, we see no reasonable alternative to assuming that the Council now has that power.

By this time the January Board Report may have reached you with a brief explanation of the situation in regard to the emergency item up to this time. I suppose it might have been easier if the Board had made a recommendation one way or the other now, but they felt they wanted to base their decision on the situation as it has developed by Council time. At least one or two Board members think the emergency will have disappeared by spring. It would make it easier, wouldn't it?

By the way, I was terribly disappointed when I checked my schedule to see if I could come to Texas in the event your Governor could not speak, to find that my commitments conflicted with dates of your Council. My March trip to the office is the last one before our Pre-Council Board meeting and tied to another outside meeting I must attend. I hope you will ask me again with plenty of advance warning because I'd love to visit the Texas League.

That was a fascinating evening we had in San Francisco, wasn't it?

Sincerely,

Julie Stuart

Mrs. Robert J. Stuart
President

Joy - Please include copy of this memo in mailing to LLs - attach with memos from Tenn., National & Washington State.

COPY of national memo received on State Board Supplement - January 18,1965

TO: State League Presidents
FROM: Mrs. Robert J. Stuart
RE: LIMITED suthorization to act in state legislatures only on resolutions memorializing Congress the amend the Constitution

Several states, which have been actively engaged in efforts to obtain fairer legislative apportionment under state Program, have sent urgent requests to the national Board for permission to oppose current legislation affecting apportionment. The national Board on January 12, 1965 authorized:

"the state League working in the field ofreapportionment to act in opposition to legislative proposals memorializing the Congress to amend the Constitution by curtailing the jurisdiction of courts in the field of apportionment."

The Board thus reaffirmed the permission granted by the national Board in January 1963 giving state Leagues working in the field of apportionment, which read:

"the opportunity to oppose, if they wish, this attempt within their state legislatures to remove from all citizens the avanue of relief from malapportionment which the decision of the Supreme Court in the Tennessee case has opened to them. State Leagues on the basis of their state Program work on apportionment, are therefore given permission to undertake such action if they wish."

The Board is, by this action, granting permission to state Leagues working in the apportionment field to act only in state legislatures, only on resolutions memorializing Congress to amend the Constitution relative to the jurisdiction of the courts in the field of apportionment.

This means that state Leagues could oppose

1) the second of the originial "disunion" amendments:
   a. No provision of this constitution or any amendment thereto shall restrict or limit any state in the apportionment of representation in its legislature.
   b. The judicial power of the United States shall not extend to any suit in law or equity, or to any controversy, relating to apportionment of representation in a state legislature.

2) the amendment proposed by the Council of State Governments on December 3, 1964, which states (in substance):
   Section 1 - Nothing in this constitution shall prohibit a state from apportioning one house of a bicameral legislature on factors other than population if submitted to the people; and section 2 -- Nothing in this constitution shall restrict the state legislatures in any way from determining how subordinate units of government shall be apportioned.

3) or any other variant of these proposals to amend the constitution in such a way as to remove the court authority to hear and rule on questions of malapportionment.

The Board is NOT authorizing any action in the Congress or with any League's own U.S. Representative or Senators on proposed amendments or other proposed national legislation which have been or may be introduced in this field.
The Board is NOT authorizing any opposition in state legislatures to measures ratifying any amendments which might be passed by this session of Congress and sent to the states for ratification.
A Memorandum giving full report.....will reach you as soon as possible.....

White 190

LEAGUE OF WOMEN VOTERS OF WASHINGTON JAN 11 1965

7615 SAND POINT WAY N.E.
SEATTLE 15, WASHINGTON

LAKEVIEW 5-6044

MRS. ALLEN L. EDWARDS, PRESIDENT

January 5, 1965

Mrs. Robert J. Stuart, President
League of Women Voters of the United States
[redacted]

Dear Julia:

Thank you for your Memo of November 2, 1964 regarding Procedures for Action and the Reapportionment Issue. It did much to clarify Confusions, relieve Frustrations, and stimulate thinking on Possibilities for Change. We truly appreciate hearing from the national Board on this issue in a way which helps us to respond.

I am delegated by the state Board to convey to you the following comments which are the result of reactions on the part of each member of the Board to the Memo, a discussion in which 10 of the 16 members participated in person, and informal canvassing of some but by no means all local League leadership. We will consider the various issues involved further at our January 13 Board meeting, but in the meantime I want to outline our present thinking.

First, just in case there could be any confusion about the attitude of the LWV of Washington, I want to make clear that we should be counted among the states with a serious concern about the national implications of the apportionment issue and the possible effects of Congressional action on our nine-year struggle to secure compliance with our state Constitution which requires representation in both Houses on the basis of population. We will match our condition of frustration and alarm during last summer's maneuvers in Congress against all comers. We remain concerned and we would like to see the League nationally in a position to be effective.

However, to achieve this objective, we want to be sure that we are not "throwing the baby out with the bath." We think that the present procedures with regard to authorization for action in Congress are pretty basic to the League. Nor can we presently conceive of a procedure or an apparatus which would allow us to achieve a national consensus through state Program work. As you point out, procedural changes of this kind would logically extend to local League action on the state level which we view with alarm, to say the least. In any case, one of the unique and appealing features of the League is its rather rigid but reassuring adherence to the prescribed processes for adoption, study, and action on Program at all levels. Even in the present emergency, if such it is, we would not want to see this changed.

With regard to the possibility of an emergency Current Agenda item to be proposed to national Council, we are quite undecided and open to conviction. Perhaps I can best convey our indecision by citing some of the questions which we discussed with regard to Tennessee's proposal, many of which would apply to any similar "emergency" item.

Ltr. to Mrs. R. J. Stuart,
President LWV of the U. S.

January 5, 1965

1. Is "A study of Apportionment in State Legislatures etc." a real proposal for a Current Agenda item in the sense that it is an issue which we want to examine objectively from all points of view in the League way? In some ways the proposed scope of the study sounds as if a consensus has already been reached. To be sure it is a consensus with which we believe that the LWV of Washington would have little trouble agreeing. After writing and working for two Initiatives, lobbying in innumerable legislative sessions, and being presently a party to a suit in the Federal District Court which has already gone to the Supreme Court and back, all in an effort to effect apportionment on the basis of "one man, one vote," I believe that objectivity and lack of bias would be in very short supply among our members who have been fighting, bleeding, and giving money over a long period of time. Appealing though it might be, is this the frame of mind with which we would want to approach a new national Current Agenda?

2. We now have a firm position in support of enforcement of the provisions of our state Constitution. Could we conceivably emerge from a national study with a national position which would be in conflict with our state position? It would seem that some state Leagues would inevitably be faced with this situation.

3. Is the "emergency" which the Council would presumably have to define before adding a new Current Agenda item to the national Program really something called "Apportionment of State Legislatures etc."? Or is it "The Role of Federal Courts in Apportionment of State Legislatures," or "Powers of Congress Relative to Apportionment of State Legislatures," or, conceivably, "Federal-State Relations: The Role of the Judiciary."

4. Are we too late in any case? There is a lot of sound and fury, but is the battle for the <u>principle</u> essentially over as far as <u>Congressional</u> action is concerned? In quite another context, Mrs. Sharp referred to the "ritualistic dance" that proponents and opponents of a hotly contested issue feel obliged to go through long after the matter has been settled for all practical purposes. It can be argued that with the "new look" in Congress, the push for some kind of Constitutional Amendment is most likely to come from recalcitrant state legislatures rather than being initiated in Congress. Can we not at this stage be just as effective by working in our own state legislatures on our own Program?

5. Would our members eagerly embrace a new national Current Agenda item which would by its very nature require immediate attention? Screams of "Workload!" together with mutterings about violation of established procedures are easily imagined. Actually, would our members see the need for a national item concerned with Apportionment of State Legislatures? All but the most sophisticated think that we (the LWV of Washington) <u>have</u> a position on this. Frankly, so do our Congressmen. So does the public. In this state, it would be mighty confusing to one and all to read in the paper that delegates to the national Council of the League of Women Voters had just decided to study "Apportionment of State Legislatures."

These questions notwithstanding, we are open to conviction by Tennessee, and Maryland, and Missouri and possibly other states yet to be heard from--as well as by our members whose opinions we could not at the moment presume to represent.

Ltr. to Mrs. R. J. Stuart,
President, LWV of the U.S.

January 5, 1965

We would like to suggest that further consideration be given to other possible ways of meeting the present emergency. Reduced to the very simplest terms, as we see it now, the emergency arises because of the threat to state Program work posed by possible Congressional action. Perhaps there is within the present League framework a way in which we can meet this threat without embarking on a new Current Agenda and without doing violence to any member rights.

Just as a starter, how about a statement of policy (or declaration or resolution)--terminology is unimportant-- adopted by national Council? Presumably as a result of your Memo, the national Voter article, the proposals for an emergency Current Agenda, the National Board Report, etc., there will be ample opportunity during the next four months for member discussion. As a result of all this, the national Board will be quite aware of member thinking throughout the country. Conceivably, there might be widespread agreement on some such proposition as the following:

> "In order to protect the advances already made, State Leagues whose Program work in the field of apportionment is threatened by Congressional action should be authorized after clearance with the national Board to oppose with their own Congressmen any Constitutional changes affecting apportionment of state Legislatures."

This is not a firm suggestion--only an attempt on our part to explore existing channels for accomplishing what the membership might want without a great upheaval or procedural hassle. We earnestly suggest that the national Board is in a better position than we to perceive what the members might want to do and to indicate ways in which it might be done. We hope that the national Board will not be hesitant in making proposals or suggestions through fear of influencing our thinking. We want your thinking and your leadership.

And, finally, to the layer cake and the present complexities of government which do seem to indicate that local, state, and national Program can no longer be confined to their neat compartments. The League has had to take note of this in the changes in community organization for local Leagues and the resultant changes in local Program. We think we should be thinking beyond the reapportionment issue and trying to evolve structural or procedural changes which can be made to apply to changing governmental structure. Again, we would welcome your leadership.

Sincerely,

Mrs. Allen L. Edwards
President

EE/iaf
cc: All State Presidents

C O P Y

1700 Lockwood Drive
Knoxville, Tennessee 37918
1 December 1964

TO: ALL STATE LEAGUE PRESIDENTS
FROM: LEAGUE OF WOMEN VOTERS OF TENNESSEE
Mrs. Wendell H. Russell, President

We need your help! We think an emergency situation may well exist and we would hate to have history record "they lost the fight in the final round!" We would also hate to have it said that the "idealists" of the League of Women Voters were defeated by the more accomplished politicians--perhaps those representing selfish interest groups!

We are referring of course to the struggle for truly representative government--equitable apportionment in legislative bodies. Thirty state Leagues have been a part of the effort to protect the individual's rights; to guarantee the individual citizen his voice in government. Much progress has been made. However, as you must realize, a situation has developed which places this progress in great jeopardy.

Consequently, the State Board of the League of Women Voters of Tennessee is recommending an "emergency" addition to national program to be added at the time of National Council in May, 1965. The exact wording appears on the enclosed material.

We hope that you will read this material and discuss it with your Board. If you share our concern in the area of apportionment and if you feel it is paramount to almost any other governmental problem, we urge you to write to the National Board of the League of Women Voters before their January meeting date and ask that this item or a similar one be added to national program at Council. We hope many of you will join us. Thank you.

Add:

We will need to give serious consideration to this proposal so that our delegates to National Council will be informed. There will be quite a bit of "agitation" for this procedure.

What do you recommend we do toward informing the local Leagues of this?

Also see recent (November 2, 1964) Memorandum from National "Procedures for Action and the Reapportionment Issue," sent you from this office.

Dorothy

C O P Y

1 December 1964

TO: Members of National Board, League of Women Voters of the U.S.

FROM: State Board, League of Women Voters of Tennessee

RE: Recommended "emergency" Addition to National Program.

The State Board of the League of Women Voters of Tennessee recommends for your consideration the following item to be added to the National Program of the League at the time of Council, May, 1965, under the emergency provisions of our National By-Laws (Article X, Sec tion 3): A STUDY OF APPORTIONMENT IN STATE LEGISLATURES AND THE U. S. CONGRESS INCLUDING THE PROTECTION OF EACH CITIZEN'S CONSTITUTIONAL RIGHT TO EQUITABLE REPRESENTATION.

The hurried and somewhat frantic efforts by Senator Dirksen and others in the recent Congress to get a reapportionment bill passed immediately -- even to the extent of attaching it to the foreign aid legislation--convinced us that an emergency situation really exists. There can be little doubt that the intention is to either amend the Constitution or pass legislation at an early date to relieve State Legislatures of the necessity of redistricting under the Reynolds vs. Sims ruling (Supreme Court, June 15, 1964). For this strategy to be effective, it must be completed before State legislatures have apportioned themselves. The speed with which the Congress must work to prevent the Supreme Court ruling being effected leaves us no choice but to prepare for immediate action. If, as is stated in our Principles, "The League of Women Voters believes in representative government..." and if "The League of Women Voters believes that responsible government should be responsive to the will of the people....," we must not be negligent--we have a duty and an opportunity to practice our political effectiveness to protect the individual's voice in government.

We realize that there will be objections to expanding National Program due to the fact that we have four items on our Current Agenda as it is. However, with no resource work being planned for on the U. N. and Water Resources item, and with the final consensus on Aid and Trade to be completed by April 1, we feel this reapportionment item can be managed. The fact that much information is already on record in the various states and the fact that thousands of League members are already quite learned on this subject will make our work more manageable. More important, Leagues that have studied and worked on reapportionment for many years see in the immediate future--for the first time--hope for successful culmination to a long, frustrating, and often discouraging struggle for truly "representative government." For the size of our National Program to stifle the use of our total influence as a national organization in the final and critical phase of this struggle is unthinkable.

Enclosed is the scope of the item as we see it.

C O P Y

A STUDY OF APPORTIONMENT IN STATE LEGISLATURES AND THE U. S. CONGRESS INCLUDING THE PROTECTION OF EACH CITIZEN'S CONSTITUTIONAL RIGHT TO EQUITABLE REPRESENTATION

Reapportionment is one of the most urgent issues in government in the United States today. Unless legislative bodies are representative of those governed and are sensitive to the will of those they represent, the very essence of self-government has broken down.

We feel this item breaks down into two major areas of study and action as follows:

A. Apportionment in State Legislatures and the Congress

1. Congressional districting--Malapportionment has existed in the field of Congressional districting for many years--though the inequities, generally, have not been as gross as in State Legislatures. After the decennial Federal Census determines the number of seats in the House of Representatives to which States are entitled, it then becomes the responsibility of a State Legislature to district that State as equally as is possible and practical. Is it really logical to expect a malapportioned State Legislature to provide equitable representation for its voters in the lower house of Congress when it has consistently ignored unfair representation "at home?"

   In the face of continual disregard for this responsibility by State Legislatures, the Supreme Court ruled on February 17, 1964, in a precedent-setting case that the Georgia congressional districting was unfair. The Court ruled that congressional districts must be as nearly equal as possible from a population standpoint to avoid unfair voting apportionment. Now that the Supreme Court has ruled in this area, activity can be anticipated in the various State Legislatures. A national position for the League of Women Voters on congressional districting is necessary so we can work with these State Assemblies that have the power and obligation to afford each citizen his equal voice in government.

2. State legislative districting -- Thirty State Leagues have studied the reapportionment issue as it relates to their State Legislatures and have reached positions in this area. Even so, when members of the recent Congress took it upon themselves to erase the progress made in the apportionment field in very recent years, the League of Women Voters of the United States had no national position so, according to our own policies, could take no action. We must prevent a recurrence of this discouraging situation.

   Positions reached by League members in states having studied reapportionment must be studied in light of the Reynolds vs. Sims case (U. S. Supreme Court, June 15, 1964). Do alternatives exist? Membership concensus must be arrived at rapidly in order that action on a national position can be taken in the Congress and in State Legislatures if constitutional revision concerning apportionment of State legislative seats is further attempted.

B. Protection of Citizen's Constitutional Right to Equitable Representation.

1. The Role of the U. S. Constitution and the Federal Courts in apportionment -- It is our belief that responsible citizens prefer not to have the Federal Courts force State governing bodies to redistrict. Yet bitter experience has taught us that, when rural-dominated legislatures consistently disregard their obligations in this matter, there has been no other recourse than the courts for the under-represented citizens. Usually State courts have blindly refused to rule on reapportionment questions even when State Constitutions have spelled out clearly the guidelines to be used to protect the individual's voice in government. The Federal Courts have afforded the only relief available.

   Mr. Anthony Lewis, writing in the New York Times Magazine for June 17, 1962 suggests that Supreme Court doctrine has "changed dramatically" in the last 25 years. "One constant.....has been the ethical element. In intervening in behalf.....of the citizen disenfranchised by malapportionment, the Supreme Court has been responding to what it deemed to be a moral demand--a demand of the national conscience. Moreover, the national conscience had found no way to express itself except through the Supreme Court. The Court moved in only when the rest of our governmental system was stymied, when there was no other practical way out of the moral dilemma."

   Again, Mr. Fred Rodell of the Yale Law School, in an article in the New York Times Magazine for September 27, 1964, says that "the Warren (Court) majority sees its highest duty in militantly upholding, against legislative or executive encroachment, the individual rights and liberties guarnateed by the Constitution. From freedom of speech to fair trials to equal protection of law and all the others, it is these rights that mainly distinguish our Government from dictatorships, right or left." We dare not let these rights go by default or inaction.

   The Court's role in the protection of the individual's rights must be protected and respected. If this avenue of sympathetic relief (Baker vs. Carr, U.S. Supreme Court, March 26, 1962) is not allowed to continue, what other recourse is there?

2. Disunion Amendment -- One of the three amendments to the Constitution proposed at the December, 1962, meeting of the General Assembly of the Council of State Governments says: "Nothing in the Constitution shall restrict or limit any state in the apportionment of representation in its Legislature." Are members of the League of Women Voters to sit idly by while State Legislatures attempt "to remove from all citizens the avenue of relief from malapportionment which the Supreme Court decision in the Tennessee case had opened to them?" (quotation from Mrs. Phillips' letter to State League presidents, January 21, 1963). We must be prepared for the League of Women Voters to take action on this "silent amendment" in all State Legislatures.

League of Women Voters
of the United States

Cut + send Order for entire Board
12

Memorandum

1026 17th Street, N. W. - Washington, D. C. 20036

NOV 5 1964

This is going on
State Board Supplement

November 2, 1964

TO: State League Presidents
FROM: Mrs. Robert J. Stuart
RE: Procedures for Action and the Reapportionment Issue

DISCUSSION OF PROCEDURES FOR ACTION

At its September meeting the Board spent considerable time discussing major procedural matters. This came about at the request of a few state Leagues that the national Board consider changing procedures so that they, the state Leagues with state positions on the matter, could speak to their own Congressmen on various proposals in the Congress on the subject of state legislative apportionment. Under our present procedures the national Board was unable to authorize such action. Because these procedures are important to all of us and because the state Program work on reapportionment is also important and because it is useful from time to time to look at our procedures in the light of the present governmental situation, the Board agreed at the close of the discussion that we should send to all state Leagues the substance of the discussion.

(We have attached a brief background article on the reapportionment situation prepared for the November-December NATIONAL VOTER -- uncut and unedited -- for those who have not followed the subject closely.)

CONFUSIONS

A number of different factors have contributed to a certain amount of confusion and a substantial amount of frustration in regard to state League action on the Dirksen "rider" and other proposals before the Congress which would attempt in one way or another to slow up the effect of the Supreme Court decisions of this June in regard to state legislative apportionment or, in a greater or less degree, to remove the courts from this area. The confusion probably stemmed from two sources. First the national Board had granted in January of 1963 permission to state Leagues, on the basis of their state Program work on apportionment, to undertake action, if they wished, in their state legislatures in opposition to resolutions memorializing Congress requesting a constitutional change which would remove state legislative apportionment from the jurisdiction of the federal courts. This proposal was the second of three proposals for constitutional change known widely as the "Disunion Amendments," which were being presented in many state legislatures. In granting this permission the Board called attention to the fact that there were at that time 30 state Leagues working in the field of legislative apportionment. The Board felt they should be allowed to take action to retain for themselves and the citizens of their states the opportunity which the decision in the Tennessee case (Baker v. Carr) had opened to them to seek relief from current malapportionment through the federal courts.

The second cause for some confusion stemmed from the telegraphed Time for Action on the foreign aid authorization in opposition to the Dirksen "rider." Just as

the decision in the Tennessee case which found state legislative apportionment judiciable triggered the counter plan to change the Constitution in regard to Court powers, so the group of decisions by the Supreme Court of this June which held that both houses of state legislatures should be substantially apportioned on the basis of one-man-one-vote triggered various proposals in the Congress. All in effect were a rebuke to the Court and proposed curtailment of Court powers. The national Board's request for action on the Dirksen "rider," however, was based on the League's position on foreign aid. The addition of the "rider" to the Aid bill seriously endangered passage of the bill. Because of the former permission in regard to the "Disunion Amendment" and the Time for Action on the "rider" some confusion developed about action on the reapportionment proposals on the basis of their content.

FRUSTRATIONS

The causes for frustration were more far reaching. The Dirksen "rider" was much more to many Leaguers than a hurdle for the foreign aid bill. To members in those states where the League has worked over an incredibly long time for fair representation, the Dirksen "rider" and the other bills in Congress appeared out of the blue just as their hopes for reapportionment were rising. Delay in execution of court orders would perpetuate existing gross inequities. Delay would allow time for opponents of the Court decision to rally support for constitutional change which for some state Leagues would be contrary to their views of fairness. From some state leaders and from some League members came requests to be allowed to act in the name of the state League in regard to their congressional delegation. This action would not be based on the national position on foreign aid but on the state position on reapportionment.

DECISION

The Board thinks there are differences between permission to speak to state legislatures for the purpose of retaining an effective instrument (the federal courts) for achieving fair representation as authorized in March 1963 and speaking to one's own Congressmen even to the same point. There is strong likelihood that speaking to a congressional delegation for members in their state will be misunderstood by the Congress and the public as an expression of the views of the League as a whole. Furthermore, many of the measures before the Congress were concerned not just with taking the court out of the picture but with the issue of basing representation on population, an issue on which the League as a whole has no position.

With regret the national Board responded to all such requests for action in Congress in the negative. The regret stemmed from the realization of the urgent need which these members felt to do something to protect their work on reapportionment in the face of such heavy attack. In reply to the Board's refusal came the request to consider changing our procedures.

PRESENT PROCEDURES

Under our present procedures only national Program work is the authorization for action in the Congress except in those unusual situations where congressional action affects only the area of the League or Leagues requesting such action. Examples of such action authorized by the national Board were giving the local League in each of the atomic energy communities of World War II the opportunity to work in Congress for the establishment of their own local government. This parallels the procedures in states where only state Program authorizes action in the state legislature except in those instances when the legislation affects only

those members in the local League or Leagues requesting permission to act. You are all familiar with the policy as outlined on page 16 of the State Board Handbook. Since state legislatures regularly act upon more special legislation than the Congress such local League action at the state legislative level is more common than the parallel situation in regard to the Congress. We point out this similarity in procedures because any change in League procedures which would allow action by state (or local) Leagues in the Congress on measures affecting the country as a whole but not authorized by a position on national Program would have implications for the procedures for local action at the state level.

We should say parenthetically that permission to act in the Congress on reapportionment would be procedurally the opposite of action authorized by the national Board in regard to water resources legislation at the local and/or state level or in the Congress for measures covering a particular region. The action on water is authorized by a national position. The action authorized for some Leagues must be in agreement with the position reached by all Leagues even though the application of the national position to a regional problem has not been discussed by all Leagues.

REASONS FOR PROCEDURES

The reasons for these procedures are two. First, as part of the League's democratic process it has been assumed that some members should not be allowed to speak in the name of the League on measures which affect all members until all have had the opportunity to voice an opinion. Second, if such action were permitted it is conceivable that the members in one state might be speaking on one side of an issue and the members in another state speaking on the other side. Certainly if one state League were given permission to speak on a measure the Board could not deny that privilege to another which disagreed. In such an event the voice of the League would lose its strength and effectiveness.

POSSIBILITIES FOR CHANGE

These are procedures.

There is nothing in the Bylaws as we read them to say that they could not be changed by the national Board taking the step of authorizing the state League to take action. On the other hand, there is no evidence except from the few states who have written regarding reapportionment of a general desire to change procedures. So wedded to them have we been that the Board feels any change would need to be a matter for thorough discussion and for Convention action.

There is another way procedures might be changed. It might be possible to achieve a national consensus through state Program work. If a majority of the members in the League in a majority of representative states had studied and were in agreement might this constitute a national position? Existence of a position could not be determined by the Board intuitively. Some kind of apparatus would be needed to determine when such a position existed. What might it be?

If this were an accepted procedure and there were such an apparatus would it appear that there is now a national position on that part of the present controversy which is the most controversial, the Court's yardstick for constitutionally apportioned legislatures, as "nearly equal in population as practicable"? A majority of the members in the League in a majority of representative states are indeed involved in working for a goal of fair representation. The Conference of state Leagues in the field at Chicago in 1963 made it quite clear, however, that there was no agreement among the Leagues on the proper basis of representation.

This does not mean such an agreement is impossible, only that at that time, at least, it did not exist.

All of you are familiar with the figure of speech concerning government and layer cakes! Three levels of government no longer, we are told, constitute a layer cake but more nearly resemble a marble cake. In considering the appeal for action on reapportionment the national Board tried to consider the problem not in light of this particular issue alone but in light of present complexities of government. Has the time come when the League can no longer satisfactorily operate neatly compartmentalized into three levels (or four where Leagues have added county or regional work)? Aside from legislative apportionment what other subjects might lead to the need for a more flexible method of operation so that solutions to problems could be sought at more than one level of government if that is where solutions lie? In addition to metropolitan problems, particularly in areas which extend across state boundaries, it was suggested that election laws might be a subject lending itself to solutions at more than one governmental level. There may be others.

LOOKING AHEAD TO COUNCIL

These were the ideas the Board discussed without attempting to come to any conclusions. The ideas may suggest to you more possibilities for change or more reasons for not changing. If enough of you would be interested in having such a discussion at Council we may be able to schedule one. Certainly if there is to be any discussion of our procedures at Convention, preparation should begin at Council.

Between now and Convention under our present procedures the only step open to prepare for action on the various congressional proposals in regard to the apportionment controversy, is the adoption of an emergency item at the Council meeting in April.

The Board brings you this reminder not because it favors or opposes such a step but because it seems fair to point out the legal procedures of which you may avail yourselves if you wish. When you read Council Article X, Section 3, you will see that any such proposal for change would need to be sent <u>to all the Leagues</u> two months before Council, i.e., by March 3. If you want your proposal to be considered by the national Board it will need to be in the office prior to January 11, the day the Board begins its January meeting. The national Board has in the past routinely sent out to all the Leagues -- local as well as state -- any proposal whether or not the Board recommends it. Any proposal must reach the office not later than March 1 in order to meet the March 3 deadline. It goes without saying that a state Board would only make such a proposal after consultation with the local Leagues in the state who after all are the ones who will do the work.

League of Women Voters of the U.S.
1026 - 17th Street, N.W.
Washington, D.C. 20036

November 2, 1964

CONTINUED STORY*

1964 has been a big year in the history of state legislative reapportionment. 1965 may be bigger whether or not the opponents of the June decisions of the Supreme Court have their way. It is even conceivable that 1965 may be the deciding year.

In March of 1962 the Court in Baker vs. Carr decided that voters could, under the fourteenth amendment, seek protection in the federal courts against "invidious discrimination." In June of 1964 in a series of opinions the Court took the next step of establishing standards whereby federal courts might judge whether apportionment of a state legislature did or did not afford "equal protection of the law." The standard set was districts "as nearly of equal population as is practicable." It applies to both houses of a bicameral legislature. At least one house in almost all states fails to meet this standard. Rare indeed was the state in which no incumbent awoke to the possibility of unemployment. The Supreme Court neither required nor counseled haste, and expected that in providing relief from malapportionment a court would take into account such things as nearness of elections and follow "well known principles of equity." This moderation did not forestall what Anthony Lewis in the New York Times has called the "politicians rebellion."

As was to be expected there was an increase in the amount of judicial action taken across the country, cases brought, opinions given. In some instances there was state legislative activity. There was also a great outburst of action in a legislative body not hitherto concerned with these matters -- the Congress. What had been back page reading became front page headlines from coast to coast.

One measure assaulted not only the standard set but the Court itself. Rep. Tuck of Virginia proposed and the house passed a bill which would by statute remove the federal courts from any jurisdiction over state legislative apportionment. If you put yourself in the shoes of urban voters in Tennessee where in spite of a state constitution stipulating regular reapportionment of both houses on the basis of population there was no reapportionment (until court action) for over 60 years, the import of such a statute becomes clear. The constitutionality of this proposal is extremely doubtful to say the least. Not since just after the Civil War has the Congress succeeded in setting limitations (subsequently rescinded) on the Court. The text of the Tuck bill was brought to the Senate floor as a substitute for the Dirksen amendment and was defeated 21-56.

The second measure came as an amendment made by Senator Dirksen to the foreign aid bill. The avowed purpose of this rider was to slow down the judicial process long enough to allow passage of a constitutional amendment which would overrule the Court and allow one house of a two-house legislature to be apportioned on other than population. Senator Kuchel likens this to putting the judicial process in "statutory refrigeration." By attaching this to a piece of "must" legislation the Senator hoped for the favorable vote unlikely in the Senate if the vote were strictly on the merits. It would also circumvent the likelihood of a presidential veto. Important as the aid legislation was, a substantial body of Senators felt the issue involved in the rider was of such grave importance that they set out to carry on an extended debate to defeat it. Opponents cried "filibuster."

Accommodation was sought not only in order to arrange for foreign aid but to allow the Congress to go home to campaign. As an alternate to the rider a sense of the

* See THE NATIONAL VOTER "The Other Shoe" April 1964 and "Equal Protection of Laws" July-August 1962

Senate resolution was proposed, not binding on the Court but suggesting a slowdown of Court action in apportionment cases. This went through a number of wordings each progressively weaker and in the end when possed by the Senate amounted more to an affirmation of the Court's decision than a slap. It died in the conference on the foreign aid bill.

Opponents of the Court and the Court's standards for fair apportionment having failed so far to affect the decision by statutory means have been trying and can be expected to continue to try to push through Congress a joint resolution calling for a constitutional amendment to attain that end. Proposals for constitutional amendments have been made in different wordings but the one given most publicity and most chance to succeed has been filed by Rep. McCulloch of Ohio. His amendment by 3/4 of the state legislatures, says "Nothing in the Constitution of the U.S. shall prohibit a State, having a bicameral legislature, from apportioning the membership of one house of the legislature on factors other than population, if the citizens of the State shall have the opportunity to vote upon the apportionment." Any constitutional change is serious business. Even advocates of some such proposal advise against rushing it through Congress without hearings and legal advice on wording. Questions about the McCulloch wording center around who would propose the "different" apportionment, could it be changed after ten or twenty years if the people chose, and should there be any limitations at all on the factors other than population which may be taken into account? Might this involve a serious civil rights question? What does Rep. McCulloch mean when he says in explanation of his proposal, "the citizens of the state shall have, or shall have had, the opportunity to vote upon such apportionment." Does the future perfect mean that he intends that provisions now in existence which have been voted on by the people will automatically meet the requirements?

In addition to these questions are just as serious ones raised in regard to the proposed method of ratification. Is it reasonable and proper to place the power of ratification in the hands of the people directly affected by the amendment? Were such an amendment to go quickly to the states many malapportioned legislatures would have the say. There is another way for ratification the Congress might propose -- by the peoples in the states through Conventions. Such a manner of ratification was stipulated for the repeal of the prohibition amendment. People were allowed to vote for a slate in favor of ratification or a slate opposed. If there is to be such an amendment who should ratify?

Joint Resolutions proposing constitutional amendments require a 2/3 vote. In the last Congress the Tuck Bill was passed by 218 votes to 175, by no means 2/3, but the McCullock proposal is much less sweeping than the Tuck Bill. Leagues in states like Tennessee and Washington which have fought the long fight to have their legislatures apportioned on population in conformity with their state constitutions and Leagues like Iowa which have successfully fought against attempts to put one house on area only, feel alike insecure in such victories as they have had.

Will the new Congress present a different face? What might it propose? Watch these pages for another chapter in our Continued Story.

# # # #

League of Women Voters of the United States
1200 - 17th Street, N.W.
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December 28, 1964

APPORTIONMENT FACTS

Answers given to some frequently asked questions raised by Supreme Court's apportionment rulings.

By WILLIAM J. D. BOYD*
National Civic Review Nov. 1964

Since the United States Supreme Court ruled on the apportionment case of Baker v. Carr in March 1962, the National Municipal League has been the national clearing-house of information on this subject, assisted by a Ford Foundation grant. League materials have been utilized by both the states' attorneys general defending apportionment practices and by plaintiffs' lawyers attacking the status quo. Various special studies have been undertaken for one or both sides in specific states. The League also has served the news media and citizens' groups seeking background data and asking such questions as:

How did all this come about: What was the apportionment status in 1962? What were the court's basic rulings? Has the court unconstitutionally extended its power?

Here, to offset some of the emotional and at times inaccurate statements made by both sides, are some answers to commonly asked questions.

1. How did the Supreme Court become involved in a state problem?

State legislatures brought it upon themselves. While most controversy today centers around the Supreme Court decisions of June 15, 1964, in which the court held for a "one man, one vote" formula for both houses of legislatures, the whole problem had become a matter for judicial inquiry two years earlier in the case of Baker v. Carr (March 26, 1962). If state legislatures had obeyed their own constitutions, the federal judiciary might never have entered the apportionment picture. At the time of the Baker case the legislatures of twenty states were openly violating their own state constitutions; four others in the previous decade had been forced by state courts or constitutional initiatives to obey the law after years of ignoring it; and in several states "token" apportionments had barely conformed to the letter, but clearly not the spirit, of the law. In 37 states there was no way the public could initiate reform, and in only three had state courts intervened. The Supreme Court in the Baker case (which was brought because Tennessee had failed to reapportion for 61 years) stated that a fundamental right was being denied, that Tennessee's legislature was violating that state's own constitution and that protection of individual rights to representation was subject to federal judicial scrutiny.

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*Mr. Boyd is senior staff associate of the National Municipal League and for the last three years has been in charge of its activities on apportionment. He is author of the League publication, Patterns of Apportionment, and is editor of the Representation department of the National Civic Review.

(over)

2. Had the high court ever ruled previously on this question?

Yes. The most famous pre-Baker case was Colegrove v. Green, in 1946, which dealt with disparity of population between congressional districts. The court's ruling (in a four-three decision) that this was a "political thicket" into which the judiciary ought not to enter remained the precedent until the Baker case. In the Colegrove case, three justices followed the "political thicket" concept. Three disagreed and voted for federal judicial relief. The seventh and deciding vote was cast by Justice Rutledge, who agreed with the majority because of a lack of "compelling circumstances" in the specific case but held as general judicial theory that reapportionment and redistricting problems were subject to review by the Federal courts. In a legalistic sense, therefore, the Baker case actually did not overrule Colegrove. A majority of the court had not held apportionment a non-justiciable issue.

3. Did the Baker case precipitate other court action?

As already noted, more than twenty states had in some way violated or circumvented their own constitutional provisions. Soon after announcement of the Baker decision, cases were started all across the country challenging a status quo which was frequently acknowledged to be based on deliberate breeches of constitutional provisions.

Several cases, however, were instituted where the legislature had obeyed the state constitution. These were based on the argument that constitutional provisions were weighted against more heavily populated areas and thus violated federal constitutional protections.

4. When was the first time the Supreme Court enunciated a "one man, one vote" doctrine?

In 1963, in the case of Gray v. Sanders. As a direct result of the Baker case, suit was brought against Georgia, which utilized a unit system in the Democratic primaries for election of governor, United States senators and other statewide officials. Units assigned to counties were far out of line with actual population. The eight largest counties had six unit votes each; the next 30 had four units each; and the remaining 121 counties each received two. Population disparity was about 100 to one. A governor was elected not by popular vote but by a majority of unit votes. On accasion a man receiving a majority of the popular vote would lose the election.

In reviewing this case one year after the Baker opinion, the court held that such a system within a single constituency -- that is, in a statewide election -- was unconstitutional. The majority opinion stated: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing -- one person, one vote."

5. Did the concept of "one man, one vote" come up in any other situation?

Yes, in congressional districting. Eighteen states had gone for decades without adjusting congressional district boundaries, some for as long as 70 years. In eighteen states (not always the same ones that had gone so long without redrawing boundaries) districts had population disparities of greater than two to one and in a half dozen the differences were greater than three to one. About 30 states had one or more districts half again as populous as the smallest district.

Again, it was from the state of Georgia that the most extreme example came, and it was Georgia that provided the next "representation" case. In Wesberry v. Sanders

(decided in February 1964) the Supreme Court noted that the United States House of Representatives had been established as the chamber that was to represent the people. Yet, it observed, the Atlanta metropolitan area was assigned to one congressional district that had a total population of 823,680, while immediately adjoining it was a district with only 272,154 people -- a disparity of more than three to one. The court stated: "We hold that, construed in its historical context, the command of Article I, section 2, that representatives be chosen 'by the people of the several states' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

6. What were the Supreme Court's rulings in the Reynolds and accompanying opinions of June 15, 1964, in regard to "one man, one vote?"

The court said the constitution requires that "a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

On the so-called federal analogy, in which state apportionments are arranged with one house based on population and the other giving equal treatment to each political subdivision, the court said: "We ... find the federal analogy inapposite and irrelevant to state legislative schemes." Few states entered the Union with such systems, and the court declared their use in later years was "little more than an after-the-fact rationalization offered in defense of maladjusted state apportionment arrangements."

Concerning arguments for area or economic representation, the court declared: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."

The Colorado case brought judicial rejection of one final argument -- that citizens of a state should be able to adopt any type of apportionment they want. "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so."

7. Did the court provide any indication of the degree of variety that might be obtained in a bicameral legislature in which both houses were based on population?

The court intimated that the states may want to use other than a total population basis for apportionment and that the districts need not be exactly equal. "We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens or voters." The court also stated:

> Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographic size of the districts from which legislators are elected could also be made to differ. Apportionment of one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house.

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8. Was any credence given to the idea of the autonomy of local government units within a state?

The concept of sovereignty of local government units was rejected. "Political subdivisions of states -- counties, cities or whatever -- never were and never have been sovereign entities." Citing a 1907 precedent, the court quoted from the case of Hunter v. City of Pittsburgh that such governmental units are "created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them." The Hunter precedent was further quoted to the effect that the "number, nature and duration of the powers conferred upon /them/ ... and the territory over which they shall be exercised rests in the absolute discretion of the state." The Supreme Court concluded: "The relationship of the states to the federal government could hardly be less analogous."

9. Did the court rule out all use of political subdivisions in the districting process?

Not entirely. The court held that local government boundaries could be useful in the districting process and that one house could grant recognition to such subdivisions. It stipulated, however, that this could not be carried to the point of granting each county or town an individual representative if doing so would violate the principle of equal representation. The court's exact wording was:

> A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions ..., and a state may legitimately desire to construct districts along political subdivision lines to deter the possibility of gerrymandering. However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many states, in a total subversion of the equal-population principle in that legislative body.

10. Did the court's "one man, one vote" ruling nullify 175 years of history?

For some states it did. For the majority it did not. Examination of the original constitutions shows that 36 states required that representation be based predominantly upon population, and 27 of these stipulated that it should be the sole basis.

From the time Vermont was admitted in 1791 until Montana became a state in 1889, no state entered the Union without stressing population as the basis of apportionment.

The Northwest Ordinance of 1787 guaranteed the inhabitants of that vast territory equal representation on the basis of population in their territorial and state legislatures.

11. Did any states change their constitutions away from the concept of "one man, one vote?"

Yes, several did. After the Civil War some southern states altered their apportionment formulas. For example, South Carolina set up a Senate in which each county received one and only one senator.

Georgia expanded its guarantee to each county (there are 159) of at least one representative and stipulated that the eight largest counties could have a maximum of three representatives and the next 30 only two.

Pennsylvania was the first major northeastern state to change. The city and county of Philadelphia were merged in the 1850s to create a metropolis of more than 500,000 population. In 1878 a constitutional convention changed the apportionment formula to place severe restrictions on the acquisition of additional representatives by populous areas and to put a limit on the number that could be elected by any one county.

With growth of the urban centers, development of the "big city political machines" and influx of immigrants into metropolitan areas, there were more changes. In 1894 New York required that apportionment be geared to citizen population and created a Senate formula that required an ever larger ratio for the acquisition of additional senators and placed a limit on the number of legislators from any one county or any two adjoining counties.

Delaware established permanent districts for both houses in 1897.

Some changes also were made in the Midwest. As a general rule, however, midwestern and southern states stopped reapportioning after the census of 1900 or 1910. Ohio did insert into its formula guarantee of one representative to each of its 88 counties.

In 1920 Los Angeles became the largest city in California and a few years later the state adopted a "little federal plan" for the Senate which limited that county to a single seat.

In the 1950s some state legislatures -- for example, Illinois and New Mexico -- proposed compromise apportionments. Reapportionment in conformance with the state constitution had been ignored for several decades. In response to public and state judicial pressure, the legislatures submitted to the voters plans in which the lower houses were based on population but area became the dominant apportionment factor in the senates.

12. Is there any precedent for the Supreme Court to strike down a state law or, more important, part of a state constitution?

Yes. The United States Constitution makes no distinction between state laws and state constitutional provisions. Article VI, section 2, of the federal constitution established the supremacy of the national constitution, laws and treaties, "anything in the constitution or laws of any state to the contrary notwithstanding."

The first assertion of federal judicial review of state action came in 1810 under Chief Justice John Marshall. Instances of this power's usage include such famous Supreme Court decisions as the Darmouth College Case, McCullough v. Maryland, Gibbons v. Ogden and others. The federal constitution has been interpreted, in Guinn v. United States and Lane v. Wilson, to strike down state constitutional provisions on "grandfather clauses" (a device to deprive Negroes of the right to vote). Other decisions overruled limitation of voting rights to "male" inhabitants or "white" males, restrictions on the rights of aliens of oriental extraction to own property and, in 1954, state constitutional provisions regarding segregation of the races in public schools.

In the early 1900s Justice Oliver Wendell Holmes said: "The United States would not come to an end if we lost our power to declare an act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states."

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While the right of the Supreme Court to take such action is well established, this power remains a matter of frequent controversy. Disagreement arises most often when the subject upon which the court has ruled is not specifically mentioned in the constitution and thus rests on interpretation. As the court itself has frequently demonstrated, not everyone interprets the constitution in the same way. In the apportionment debate the issue is not whether the Supreme Court has the power to make such a decision but whether its interpretation of the equal protection clause of the Fourteenth Amendment is accurate and wise.

# # # # # # # # # # #

Redistricting

Tuesday, July 21, 1964

JUL 23 1964

TO: Nolle, Ballard, Prashner, Casperson, Brown
FROM: Murphree
RE: Redistricting Hearing in Houston, Friday, July 17, 1964

This was an all day affair at which I stayed only half a day. I went for information purposes only since we expect (?) to do an article on reapportionment for the November VOTER. But a second, more importnat reason for my going was that Sen. Kazen is on this committee and I thought that I might get a chance to ask him about poll tax repeal. Now several interesting things happened at this meeting, and so that I might keep you all glued to this page, I shall tell them in approximately chronlogical order...and I am not sure that this letter should be kept very long in your files.

This Committee is the Texas Legislative Council Committee appointed by the Governor (?) to study the problem of Congressional redistricting - only. This was the 3rd such public hearing (Austin and Dallas). Another is to be held in San Antonion for sure and they have been asked by Rep. Bill Davis of Midland (a Republican) to hold one out there and they probably will. Sen. Moffett is Chairman. Other members are Sen. Kazen, Rep. Murray, Floyd, Gibbons, Shannon, Mutscher. Mr. Johnson, new Executive Director of TLC and former Representative from Dallas, was also present at the Committee table.

This meeting began at 9:00 and I walked in and sat down in the back about 9:01. Each person was standing and telling who they were and what they were doing there. The Harris County Republicans were out in force, especially those running for the legislature. When all had told why they were there, Sen. Moffett then said: " Is there anyone else here from organizations like the League of Women Voters?" WELL! and From Sen. Moffett! Imagine him remembering the LWV! So I got up and siad who I was. Sen. Kazen beamed.

After all this they had a 10 minute break and I went to talk to Sen. Kazen. He was glad to see me, but seemed a little startled when I mentioned poll tax repeal and his first reaction was that he didn't know if he would introduce the amendment or get someone else to do this this time. He was blunt in saying that we certainly don't ever want it in an off year, and that it should be held in a Presidential Election Year, and that of course is 1968 which is about what we figured. I concurred in all this, but mentioned that from the League's point of view even though we know it won't go anyplace the mere introduction means that it is still before the people and the educational process can go on. He agreed and said that we should talk about this more after the election and I said OK.

It was during this break that Sen. Schwartz was helping a newspaper reporter get a story on all the Galveston 9th Congressional District - people that were there. When the reporter came to ask me my exact name and organization, we were overheard ...AHhhh, the magic name of the League of Women Voters! The man in front of me turned around and said: "Ithought I recognized you, I am Sen. Harrington. I remember you from one of the Hearings in Austin." Well of course he didn't remember ME, but the LWV, for he was speaking of the Election Law Hearing. We discussed this awhile and we agreed that neither of us liked what happened to those recommendations. And then we talked poll tax repeal and his sentiments were the same as Kazen's and ours. Well we knew he was on our side all along, but it is nice to have one of those fellows take the initiative in striking up a conversation with you. I was never brave enuf to go up and talk to Sen. Moffett - well, the time was never right. I sat behind Sen. Colson and spoke briefly to her about nothing.

Now some thoughts on redistricting: They led off with Congressman Thompson from the 9th (that's little ole me). This district is over 500,000 and the magic number is 416,000 with, they hope a 15% tolerance. Mr. Thompson's point to the Committee was that while his district may be over now, that with the population projection, in 1970 it ought to be right on the button. In other words he liked all the people he worked for and hoped that the Committee would leave his district be. Then we heard from several of the

border counties of the 9th district that may be lopped off - Chambers, Waller ....and Fort Bend. I couldn't for the life of me place that woman until Sen. Moffett called her name and she made a few utterly silly and simpering remarks to the Committee -- former Rep. Myra Banfield of Fort Bend. She was coy and feminine and eyelid fluttering about how they had such a hard job and she just knew that they were going to do a very godd job and that she hoped Fort Bend got to stay in Congressman Thompson's district, ad nauseam.....

Rep. Don Garrison of Houston had a very good proposal for dividing Harris County into 3 districts, the lines runing across the county from east to west. The Republicans want the lines to run north and south. When they recessed for lunch, a Republican lawyer named Bill Kassin (sp?) was testifying and they were giving him a very hard time, but he was holding his own. I was very impressed with him. I wish I could have stayed for the PM session for Bob Eckhardt presented his statewide plan and his pitch is that this Committee should recommend and the legislature should enact a plan that would be good for about 20 -25 years, meaning that you put fellows out of office only once in this period. This idea has a lot of appeal. His pxkx plan also crosses county lines. I suspect we will see county lines crossed in the Fort Worth Dallas area so that the Democratic Legislature can do its part about Alger if he isn't beaten by Mr. Cabell in November. Sen. Moffett made the point that representing 416,00 people in a city was quite a different proposition from representing the same number in a 15 county area which is a good point in Texas and one which Lt. Gov. Smith is hammering hard in his pitch that thxix there be a U. S. Constitutional amendment on apportionment so that rocks, rills, cows and trees can continue to have representation.

If rural areas are attached to big city sections across county lines, then the control of the Congress will still be somewhat rural, at least that is what the Texas picture will be like. But I think it is pretty well agreed that Houston (Harris County) will have 3, Dallas 2½, Fort Worth 2 and San Antonio 2. Rep. Ronald Roberts was down from Hillsboro because he didn't make the Dallas hearing. It looks like his area will be atta ched to somebody other than what they are now, and he prefers to go with Poage in McClennan County rather than with Dallas County. Interesting???

TO: Nolle, Casperson, Brown
RE: Apportionment story for NOVEMBER VOTER

I really do think there is a great deal of interest and concern about this among League members and they need to have some kind of objective story that they have not read in their own paper which would tend to slant it to fit the home town's problems. Only the League could offer them an overall picture. They need first to understand it is a two-fold problem, Congressional and legislative, and that it will have repercussions on County redistricting. Hasn't a suit been filed on this? Also they need to understand the Texas Constitutional provisions for legislative apportionment and why Congressional does not take place. They also need to understand how the courts have enterd the picture and what and how they may do more. Since this, along with education will be the major issue of the 59th I desperately want League members, the pxkx plain ordinary ones who never serve on Boards, go to state meetings or even read newspapers too well, to know something correct about this problem. I say let's do it and Peggy write it.

I do agree that perhaps we would need another article of general interest concerning other issues before the 59th, but I do not want thxmx combined with the apportionment story. The Education issue is a story unto itself also, but I do think it can be treated along with whatever else the 59th will have to do.

NATIONAL
MUNICIPAL
LEAGUE
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REAPPORTIONMENT AND THE FEDERAL ANALOGY

ROBERT B. McKAY

REAPPORTIONMENT AND THE FEDERAL ANALOGY

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National Municipal League

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Foreword

During the months since the United States Supreme Court decision in the Tennessee case this question has been raised again and again: If one branch of the Congress can be based on area rather than on population, why cannot this pattern be followed in state legislatures?

As part of its information service to those involved in attempting to solve apportionment problems, the National Municipal League invited Professor Robert B. McKay of the New York University School of Law to write this analytical discussion of the federal analogy.

Professor McKay, who taught at Emory University before joining the New York University law faculty in 1952, was editor of *An American Constitutional Law Reader,* published in 1958, and won the Ross Essay Award of the American Bar Association in 1961 for *An Administrative Code of Ethics: Principles and Implementation.*

For current information on reapportionment developments, see the "Representation" section of the League's official periodical, the NATIONAL CIVIC REVIEW, published monthly except August.

ALFRED WILLOUGHBY

Executive Director

August 1962

Reapportionment And The Federal Analogy

On March 26, 1962, the United States Supreme Court, in an historic opinion by Mr. Justice Brennan, held justiciable under the equal protection clause of the Fourteenth Amendment claims that state apportionment laws arbitrarily impair voting rights. Although the Supreme Court did not decide the ultimate question as to whether the appellants in that case had suffered a legally cognizable injury, the court observed that "A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution."

The vital significance of that ruling in *Baker* v. *Carr*, 369 U.S. 186, lies in the fact that a federal judicial avenue has now been opened to explore the extent to which state legislative malapportionment, admittedly severe in many states, is subject to constitutional challenge. The inference is unmistakable that the federal courts are empowered to act when they find "arbitrary and capricious" state action resulting in voter discrimination (page 226), or action that results in "invidious discrimination" (Mr. Justice Clark, concurring, at page 253), or action that is "without any possible justification in rationality" (Mr. Justice Stewart, concurring, at page 265).

Since the case was remanded for decision to the three-judge district court in which it had originally been heard, the Supreme Court had no occasion to discuss appropriate remedies other than to note that "we have no cause at this stage to doubt the district court will be able to fashion relief if violations of the Constitution are found." Page 198.

Although "arbitrary and capricious," "invidious discrimination" and

"lack of rationality" are scarcely self-defining—no more is the Fourteenth Amendment itself—we are not altogether without guidance as to meaning. It is clear that a state apportionment scheme, to be "rational," must demonstrate some relationship to population. The complainants in *Baker* did not challenge the provisions in the Tennessee Constitution, in which the standard for allocating legislative representation was closely geared to population. The complaint rather was based on legislative violation of this standard, particularly in the failure to reapportion every ten years since 1901, sometimes described as "silent gerrymandering." In short, there would have been no equal protection complaint if both houses of the Tennessee legislature had satisfied the state constitutional mandate of close relationship between population and representation districts.

Equally obvious is the corollary proposition that the members of at least one house in a bicameral legislature must be chosen on a population base. The remaining question, whether both houses must reflect population in their manner of selection, is not answered in *Baker* v. *Carr;* and there have been conflicting views on this matter in other courts that have since passed on the question. The Michigan Supreme Court, in *Scholle* v. *Hare,* ruled on July 18, 1962, that Michigan senatorial districts, as well as those of the house, must satisfy standards of reasonable equality in terms of population. To the same effect, a three-judge federal district court held just three days later, in *Sims* v. *Frink,* that population must be used to some extent as a guide for reapportioning both houses in the Alabama legislature.

On the other hand, the Maryland Court of Appeals, in *Maryland Committee for Fair Representation* v. *Tawes,* held on July 23, 1962, that constitutional requirements are satisfied when one house has a population-related base. Similarly, a three-judge federal district court sitting in Georgia has held that at least one house must be elected by the people apportioned to population but declined to decide whether the other house must take population into account. *Toombs* v. *Fortson,* N.D. Ga., May 25, 1962. (See Appendix A for excerpts from these cases.)

The issue, now sharply drawn, may be stated as follows: Since the United States Senate provides equal representation for all states regardless of population, while the House of Representatives provides representation according to population, is not a similar arrangement permissible by analogy in state legislatures? The contention is that, since the national governmental structure has proved reasonably satisfactory, and since the system was approved by the framers of the Constitution, a similar formula should be acceptable in state legislatures.

The argument has a surface appeal that has led to uncritical acceptance of the analogy without noting the reasons for which application of

that scheme might be inappropriate in the state legislative forum. Typical of the unreasoned acceptance of this too-easy argument is the statement of Mr. Justice Harlan in his dissent in *Baker:*

> It is surely beyond argument that those who have the responsibility for devising a system of representation may permissibly consider that factors other than bare numbers should be taken into account. The existence of the United States Senate is proof enough of that. 369 U.S. at 333.

But the answer is not as delusively simple as Mr. Justice Harlan suggests. Indeed, careful analysis of the issue suggests an exactly opposite conclusion, namely, that the federal analogy is not relevant in determining whether a state apportionment plan is or is not consistent with the equal protection clause of the Fourteenth Amendment. Uncritical application of that standard may well lead into constitutional error.

Before examining that question more fully, it may be appropriate to note something of the dimension of the problem, that is, the extent to which state legislatures as presently constituted adhere to or depart from the federal analogy. Then it will be possible to examine the historical setting in which the congressional scheme was adopted and finally to observe the constitutional differences between a union of sovereign states and the internal political subdivisions of the several states themselves.

FEDERALISM IN STATE LEGISLATURES

In devising plans for legislative representation, states have frequently taken into account factors other than population, including geography, political subdivisions, urban-rural conflicts, other economic interests, the extent of political participation, and even (in New Hampshire) the amount of direct taxes. There is no intention here to criticize or even to comment on the propriety of these or any other formulas that take into account various factors unrelated to population. Mr. Justice Clark is probably right in stating in his concurring opinion in *Baker* that "No one . . . contends that mathematical equality among voters is required by the equal protection clause." 369 U.S. at 258. The concern here, then, is rather to examine the justifications advanced, based on the federal analogy, for abandoning altogether reliance on population in fixing election districts in one house of a state legislature.

The issue is important in view of the substantial number of states in which the congressional scheme has apparently served as a model for state legislatures. In eight of the fifty states the members of one house represent political subdivisions regardless of population; *i.e.*, in Arizona, Idaho, Montana, Nevada, New Jersey, New Mexico and South Carolina the Senate is composed of an equal number of senators (usually

one) from each county, while in Vermont the House of Representatives is made up of one member from each town. In a few states, such as Delaware and Mississippi, by constitution or statute the districts from which both senators and representatives are chosen are fixed without regard to subsequent changes in population. In a number of other states one house (or sometimes both houses) must include at least one member from each county, after which some adjustment is made to accommodate the more populous counties.

The arguments favoring the application of the federal system to the states were summarized by Judge O. Bowie Duckett of the Circuit Court for Anne Arundel County, Maryland, in his opinion in *Maryland Committee for Fair Representation* v. *Tawes* (May 24, 1962):

> Such an arrangement protects the minorities. It prevents hasty, although popular, legislation at the time. It is based upon history and reason and helps to protect the republican form of government guaranteed by Article IV, § 4, of the United States Constitution. It preserves the checks and balances of the state government which has worked so well under the federal. Moreover, there would be little advantage in having a bicameral legislature if the composition and qualifications of the members were similar.

The arguments above stated are essentially three: (1) The federal experience, as developed through history, is sufficient precedent. (2) Two houses, differently constituted, operate to restrain hasty and ill-considered legislation. (3) If not differently constituted, the two houses would not serve the separate functions for which established. Each argument deserves examination and, it is believed, rejection.

CONSTITUTIONAL CONVENTION AND THE "GREAT COMPROMISE"

The egalitarian ideal of fairness in political representation was emphatically stated in the Declaration of Independence and frequently thereafter during the late eighteenth and early nineteenth centuries. Thomas Jefferson, writing in 1819, was characteristically eloquent:

> Equal representation is so fundamental a principle in a true republic that no prejudices can justify its violation because the prejudices themselves cannot be justified.

Yet during those early years not even the most ardent exponents of political equality contemplated the wide diffusion of the franchise which we take for granted today. There was no thought that women should be entitled to vote and few doubted that ownership of property, or even religious tests, might be proper qualifications for voting eligibility. Certainly few thought it odd that the Constitution provided for the election

of senators by state legislators without any direct participation by the people and that the president should also be chosen indirectly through the medium of electors to be "appointed" in each state "in such Manner as the Legislature thereof may direct." Yet over the years all these concepts have been challenged as fundamentally inconsistent with the democratic ideal. Surely no state would today justify limitations on the franchise based on these eighteenth century notions, now long rejected.

In this eighteenth century context of limited recognition of a popular base for the exercise of the franchise, it would not have seemed strange if the framers of the proposed Constitution had all been agreed upon a plan for nonequal representation in both houses. Yet the exact opposite was the proposal which most of the delegates originally favored and would ultimately have adopted but for the intransigent opposition of the small states. The Virginia Plan proposed by Edmund Randolph, based on what he called the "Republican principle," provided for a popularly elected "first branch" of the Congress which was then to choose the "second" from nominees proposed by the state legislatures. Significantly, a favorable vote was actually cast at one time for representation in both houses to be proportional to population (except that five slaves were to be counted as three freemen).

Nevertheless, the opposition of the smaller states, although less than a majority, demonstrated that a viable instrument of government could be achieved only by partial relinquishment of the principle of equality. In this lay the genesis of what has come to be called the "Great Compromise" or, as it is sometimes described, the "reluctant" compromise. Max Farrand has said:

> The important feature of the compromise was that in the upper house of the legislature each state should have an equal vote. The principle of proportional representation in the lower house was not a part of the compromise, although the details for carrying out that principle were involved. *The Framing of the Constitution of the United States*, page 105 (Yale Paperbound 1962).

Some proponents of the federal analogy as a justification for representational imbalance in state legislatures have sought support in *The Federalist*. But such reliance is largely misplaced. It must be remembered that those papers were conceived and published as political tracts designed to persuade New York voters to ratify the Constitution in the form agreed upon at the convention. Even without discounting for that special pleading, it is interesting to observe the almost apologetic support given to the abandonment of the principle of equality of representation. Thus in Number 62 (probably Madison):

> A government founded on principle, more consonant to the wishes of the larger states is not likely to be obtained from the smaller states. The only option, then, for the former lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

History subsequent to the Constitutional Convention further supports the proposition that the federal analogy should not be extended to state legislative bodies. As already indicated, indirect election of senators and the president had been incorporated into the original Constitution. Madison, in *The Federalist*, Number 45, specifically endorsed such indirect election as a proper way of reducing the influence of the people as a whole in choice of the leaders of the national government. But these and other nondemocratic restrictions upon voting rights were not destined to survive. No portions of the Constitution were more altered by amendment or in practice in the eighteenth and nineteenth centuries than those provisions relating to franchise, a clear reflection of the inconsistency of some of the original provisions with the growing demand for more truly representative government.

Section 1 of the Fourteenth Amendment, calling upon the states to provide equal protection of the laws and due process, reflected sentiment for limitation of state action that was unfair or unequal. That its potential impact upon the composition of state legislatures was not specifically contemplated in 1868 does not, under familiar principles of constitutional doctrine, foreclose its application to such cases where the inequality or unfairness is later demonstrated. The point is that the Fourteenth Amendment does require equality as to all kinds of state action. The fact that inequality, as a matter of political necessity, was built into the national Congress is thus no longer relevant in explaining similar inequalities adopted by states that are forbidden to create invidious discriminations.

The little-noticed Section 2 of the Fourteenth Amendment expressed further the increasing demand for direct election and, indeed, the idea of equality of representation, in replacing those portions of Section 2 of Article I relating to the method of apportionment. The original provision, a minor part of the Great Compromise, had specified that representatives (and direct taxes) should be apportioned among the states "according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." The Fourteenth Amendment changed this to provide that apportionment shall be exclusively in accordance with population, "count-

ing the whole number of Persons in each State, excluding Indians not taxed."

The Fifteenth Amendment, in the same spirit, was enacted to ensure that no restriction of voting rights could be based on grounds of race or color. The trend continued with the adoption in 1913 of the Seventeenth Amendment providing for the direct election of senators and in 1920 with the enfranchisement of women by the Nineteenth Amendment. Recent expression of the same sentiment is found in the Civil Rights Acts of 1957 and 1960.

Even without formal amendment to the Constitution, changes effected by Congress have also worked toward equality of representation. Before 1842 Congress had limited the exercise of its apportionment power under Section 4 of Article I to prescribing the number of representatives to be allotted to each state. But in the apportionment act of 1842 Congress provided that representatives under the current apportionment should "be elected by districts composed of contiguous territory equal in number to the number of representatives to which said state may be entitled, no one district electing more than one representative." Although that provision was not included in all subsequent apportionment acts, and in none after 1929, there is no longer any real doubt that Congress has general supervisory power over the election of representatives, including the division of a state into congressional districts. Nor does any state deny that these districts should be approximately equal in population.

With this history in mind it seems at best anachronistic to argue the ready transferability of the congressional scheme of representation into the state legislatures. The nonrepresentative character of the Senate did not reflect majority sentiment even when adopted, but was instead reluctantly accepted as the required price for establishing an acceptable, if not the best possible, government. The consistent course of events since that time has been toward enlarged reliance upon direct and full participation by all citizens. With this has come increased recognition of the appropriateness in a representative government such as the United States of representation generally in close relation to population. In this light, the nonrepresentative character of the United States Senate is seen to be an historical anomaly and not at all a model for state emulation.

FEDERAL ANALOGY AND MAJORITY RULE

Proponents of the federal analogy claim as an advantage of two houses, one of which is less responsive to popular will, a healthy restraint upon excessive majoritarianism. This formulation of the argument leaves unstated two underlying premises, neither of which can withstand close analysis.

First, there is a suggestion that majority rule is not altogether desirable, or at least that minority groups are likely to be unreasonably disadvantaged if the majority has its way. But is this true? Minorities are accorded constitutional protection in bills of rights and elsewhere to assure adequate hearing for their views and to protect against oppression by the majority. Once minority rights have been assured in these important respects, no sound reason appears for denying the majority its will in ordinary legislation. Indeed, if the two houses of a legislature are chosen in ways that will ensure representation of radically different interests, an opposite and perhaps greater danger is threatened, the legislative stalemate. Even in Congress this has sometimes occurred, but the risk there is minimized by the greater physical expanse and cultural diversity represented in Congress as compared with the more parochial interests within any single state. The interest groups that operate in the United States Senate and House of Representatives are so numerous and diverse that ordinarily there is little risk that the two houses can be separately controlled by opposing interest groups. In short, there are few issues that would pit the area-based Senate against the population-based House.

In the states the problem is very different, as illustrated most dramatically in the urban-rural conflict that is the pattern today in nearly all the states that have departed significantly from the principle of equal population in one or both houses. Sufficient evidence of this legislative impasse on urban-rural issues is found in the repeated refusal of many state legislatures to follow their own constitutional mandate of periodic reapportionment. It becomes almost axiomatic that the more severe the malapportionment the less is the opportunity for legislative correction. All too often the "federal" system in state legislatures has worked not to protect the minorities but to frustrate all sense of legislative responsibility. When legislatures become incapable of any action on important matters and when they flout the constitutional imperative of periodic reapportionment, state government falls into disrepute. Only through reassertion of state legislative responsibility can the decline of respect for the state governmental process be reversed.

A second major postulate underlying the check-and-balance arguments advanced in support of the federal analogy is the common belief that the organization of state governments is not essentially different from that of the national government. The assumption could scarcely be more false. The short answer is that the United States, as the very name implies, is a union composed of the sovereign states, consenting to centralized responsibility as to certain enumerated powers but reserving to them-

selves the balance. The constituent states, on the other hand, have uniformly adopted a unitary structure of government in which no subordinate political subdivision retains any sovereignty but exercises only such functions as are conferred upon it for the convenience of, and at the pleasure of, the state government.

While Congress may not alter the territorial boundaries of the states or take from them the powers over local affairs reserved to them, it has always been clear that the relationship between a state and its political subdivisions is very different. "The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state." *Hunter* v. *Pittsburgh,* 207 U.S. 161, 178 (1907). At least this freedom to rearrange political subdivisions is absolute so long as action by the state does not impinge on a specific prohibition such as that in the Fifteenth Amendment against depriving a citizen of his vote because of race. *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1961).

FEDERAL ANALOGY AND BICAMERAL LEGISLATURE

A final argument advanced by advocates of the federal analogy is that there must be differentiation of representation between the two houses not only to serve the check-and-balance function already discussed but as well to justify the existence of a bicameral legislature. As with many plausible-sounding arguments, the difficulty is that the logic has been pressed beyond defensible limits. The proponents of this argument must necessarily defend *completely* different representation formulas in the two houses, that is, one house related to population and the other totally unrelated.

In fact, however, there are a number of less drastic ways in which the two houses may be made to represent quite different interests. Most important is the fact that under any system no member of one house has the same constituency as any member of the other house. When the lower house is several times larger than the upper, as is ordinarily the case, the members of the more numerous house typically represent persons whose interests are often closely identified with each other in terms of geography, economics and ethnic grouping. Members of the less numerous house, on the other hand, represent larger, more diverse segments of the state, whose problems and interests may be quite different in total impact from those of the smaller group represented by their opposite numbers.

Moreover, terms can be, and usually are, different between the two

houses, thus automatically injecting somewhat different political considerations.

Finally, there is no reason to believe that "rational," that is, reasonable, variations may not continue, as always, to be based on historical, political, economic or other nonpopulation factors. As Solicitor General Cox stated before the Tennessee Bar Association in June 1962:

> [I]t would not surprise me greatly if the Supreme Court were ultimately to hold that if seats in one branch of the legislature are apportioned in direct ratio to population, the allocation of seats in the upper branch may recognize historical, political and geographical subdivisions provided that the departure from equal representation in proportion to the population is not too extreme.

CONCLUSION

In matters of franchise at the national level the uniform trend since 1787 has been toward more extended exercise of the right to vote, both as to classes of electors and as to removal of restrictions upon the free exercise of the right. Only in the choice of state legislatures, largely through rejection of the principle of representation in proportion to population, has the ideal of equality of the right to vote been limited in significant ways. To the extent that the federal analogy is allowed to survive as a justification for these practices, present imbalances in representation can be expected to worsen with the passage of time and the inevitable further concentration of population in urban areas. Not until the idea of representation with some reference to population becomes standard throughout state legislatures can there be confidence in their responsiveness to popular needs and demands.

How better to conclude than by invoking once more James Madison in *The Federalist,* Number 39: "It is *essential* to [a republic] that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it."

Appendix A

Excerpts from State Supreme Court and U.S. District Court decisions in which the comparison between the national and state legislative structure is discussed.

On May 25, 1962, the U.S. District Court, Northern District of Georgia, Atlanta Division, in *Toombs* v. *Fortson*, said:

It is urged by the plaintiffs here that in its decision in the case of *Scholle* v. *Hare*, supra, the court in effect decided that constitutional standards required that not only one house but both houses of a bicameral legislature be related to population. This argument is based upon the following premise: That in the state of Michigan the House of Representatives has long been based on population and only the Senate is apportioned by districts; when an attack was made by Michigan citizens to cause the court to find a deprivation of the plaintiffs' constitutional rights by reason of the disparity in voting strength in the senatorial districts, the Michigan Supreme Court dismissed the suit; thereafter a reversal by the United States Supreme Court, it was claimed, amounted to a determination by the Supreme Court that a cause of action was stated in the state court which required a reversal of the action of the state court.

There is some basis for plaintiffs' argument in this direction, especially when we consider that in Mr. Justice Douglas' dissenting opinion in the United States Supreme Court's decision in *MacDougall* v. *Green*, he and his colleagues, Justices Black and Murphy, seem to have said that the mere fact that the federal constitution itself sanctions inequalities because of the structure of the United States Senate, is no justification for a state also to create inequalities by having similar differences. See dissenting opinion, Mr. Justice Douglas, *MacDougall* v. *Green*, 335 U.S. 281, at page 287, 289. However that may be, we do not find any authoritative decision by the Supreme Court that causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two houses, both of which are elected according to population.

We are here dealing with minimal standards only but a state, so long as it maintains the republican form of government that is guaranteed by the constitution, may greatly exceed these minimal standards.

As indicated in the discussion below touching on the relief to be granted, it is not necessary for us at this time to make a final determination on the question whether, if one house of the General Assembly of Georgia is elected according to population, the other house may remain as completely unrelated to population ratios as it is today. Some guidance as to our views on this matter may be furnished by other courts which now have before them somewhat similar problems. For instance, there is now pending in the United States Court for the Middle District of Alabama a suit by residents of Jefferson County (Birmingham) seeking to cause the legislature of Alabama to be reapportioned in both houses according to population. This is the case of *M. O. Sims, et al,* v. *Bettye Frink, Secretary of State, et al,* Civil Action No. 1744-N. We recognize that the state of Alabama has a constitutional requirement which provides that both houses of its legislature are to be "based upon population." Nevertheless the Federal Court will not require the state of Alabama to adopt any higher standard to guarantee equal protection of the laws than is required by the Fourteenth Amendment. In other words, we do not understand that the District Court in that case will require compliance with the Alabama constitution as to both houses unless this is found by that Court to be required also by the federal constitution.

In the case of *Sims* v. *Frink,* referred to above, the U.S. District Court for the Middle District of Alabama, Northern Division, said on July 21, 1962:

That portion of the proposed constitutional amendment providing a senator for each of the 67 counties of the state if approved by the voters would serve to make the discrimination in the Senate even more invidious than at present. Under the proposed amendment, senators elected by 20 per cent of the state population could effectively block any proposed legislation and senators elected by 14 per cent of the population could prevent the submission of any future proposal to amend the Constitution of the state of Alabama. The present control of the Senate by members representing 25.1 per cent of the people of Alabama would be reduced to control by members representing 19.4 per cent of the people of the state. The 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate. The only conceivable rationalization of this provision is that it is based on political units of the state and is analogous to the requirement of the Constitution of the United States that the Senate "shall be composed of two senators from each state." Article I, Section 3, Clause 1, superseded by Amendment 17.

The analogy cannot survive the most superficial examination into the history of the requirement of the federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. It has been held repeatedly in Alabama that a county derives its power from the state; that a county is but a governmental agency, possessing no power and subject to no duty not originating from the law by which it is created and in which its functions are defined. The Alabama courts have said that a county is nothing more than an involuntary political or civil division of the state, created by statute to aid in the administration

of government; that whatever power the county possesses, or whatever duty it is required to perform, originates solely in the statutes creating it, or in the statutes declaring its power and duty. *Askew* v. *Hale County,* 54 Ala. 639; *State* v. *Butler,* 225 Ala. 191, 142 So. 531; *Tuscaloosa County* v. *Alabama Great Southern R.R. Co.,* 227 Ala. 428, 150 So. 328; *Montgomery* v. *State,* 228 Ala. 296, 153 So. 394; *Moore* v. *Walker County,* 236 Ala. 688, 185 So. 175.

Three days earlier (July 18, 1962) Justice Black of the Supreme Court of the state of Michigan had stated in a concurring opinion in *Scholle* v. *Hare:*

We are, I repeat, directed to consider and decide the merits of a federal question the United States Supreme Court has sent back to us in the clothing of jurisdiction and justiciability. Is it not, then, exclusively due that we should look for judicial guidance to current federal authority, and to such of our own cases as may accord therewith, rather than to the relevantly superseded scroll of the Federalists and other writings of the Colonial era? The *Federalist Papers,* ably conceived for times when all west of the Alleghenies was trackless and savage, were written more than 175 years ago by men who could not possibly have foreseen the Fourteenth Amendment, the seeds from which the amendment grew and its final mandate of equal protection.

The equality clause of the Fourteenth Amendment is an order directed to each state. It has nothing to do with the political structure of the national government and, in the context of our current problem, is an understandable contradiction of that structure. The clause pointedly prohibits each state from denying "to any person within its jurisdiction the equal protection of the laws." It does, under direction of our superior, put upon us a new task, that of inquiring into the merits of plaintiff's claim of denial by Michigan of Fourteenth Amendment equality of voting rights; an inquiry three of us resolved affirmatively in *Scholle* v. *Secretary of State,* 360 Mich. 1.

Two years before (June 6, 1960) the same Justice Black of the Michigan Supreme Court had written in the case of *Scholle* v. *Secretary of State,* referred to above:

Every school boy knows the historic reason for the "built-in" right of each state to two senators. The Federalists reluctantly consented to such feature of the national legislative structure for recorded reasons of fully debated compromise. The Constitution has ordained accordingly since ratification was concluded in 1790. But this provision became a part—and an exclusive part—of the national edifice only. The Fourteenth Amendment, on the other hand, did not become a part of the Constitution until 78 years later. Section 1 of that amendment, far from complementing or inferentially approving for each state the national plan of senatorial representation, was and now is a "built-in" *order directed to each state;* an order that no state shall deny "to any person" within that state the equal protection of the laws. So the Constitution by Article 1 "built into" its permanent national framework that which the Fourteenth Amendment has prohibited each state—relevantly and reasonably—from doing within its borders. Article 1 (supported later by amendatory Article 17) guarantees *inequality* of the representative value of a man's vote so far as concerns

the national Senate; whereas the Fourteenth Amendment guarantees a *substantial approximation of the very opposite* within the framework of the government of each state. This is the way—factually—the great instrument stands at present.

On July 24, 1962, Justice Powers, writing the opinion of the Supreme Court of the State of Rhode Island in *Sweeney* v. *Notte*, said:

> Nor do we derive any aid from the historical fact that Article V of our Constitution originally ordained the formula which, except for changes not affecting the problem at hand, purportedly continues to be the organic law of this state. That article was adopted in 1842 prior to Article XIV of amendments to the federal Constitution. When the latter article was approved it became the supreme law of the land and conflicting state constitutional provisions ceased to have any standing even though such conflict did not become the subject of adjudication for years thereafter.
>
> We are constrained to conclude therefore that the limitation of one hundred members and the securing of representation to each municipality, taken together, is an apportionment formula which when followed results in a denial of equal protection within the meaning of Article XIV of amendments as laid down by the United States Supreme Court.

Appendix B

Comments on the alleged analogy between the representation of the states in the United States Senate and the representation of county areas in state legislatures.

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We know of no extensive general discussion of the historical and constitutional basis, or lack of basis, for the analogy sometimes drawn between the equal representation of the states in the United States Senate and the representation of areas, usually counties or towns, in the state legislatures. The supposed analogy is frequently cited in defense of particular arrangements as, for example, the equal representation of the counties in the New Jersey Senate.

We have found no acceptance, however, of the validity of this analogy in standard works on government nor in objective studies of particular

legislatures by recognized authorities. Even in New Jersey, which is one of only seven states that provide for equal representation of all counties regardless of size in one house (and has done so since adoption of its first constitution in 1776), the "federal analogy," though used from time to time as a debating point, has never been given authoritative endorsement as possessing inherent or technical validity. For example, Chief Justice Joseph C. Hornblower, speaking in the New Jersey Constitutional Convention of 1844, observed:

> Each of the states is sovereign and might or might not assent to the Constitution and come into the federation. But our counties have not that privilege. Our state is but one territory, one people, one municipality. We are, in fact, only making a municipal law to govern the state. There is, therefore, no similarity between the Constitution of the Federal Union, of an empire, and that of a sovereign state. Proceedings of the New Jersey Constitutional Convention of 1844, page 58.

The following excerpts are typical of the treatment of this subject in the literature.

Walker, Harvey, *The Legislative Process*. The Ronald Press Company, New York, 1948, page 172:

> The representation of areas rather than, or even in addition to, population in a legislative body has small place in a democracy; actually, one cannot represent an area. He must represent the people who live in it. If they are fewer in number than those represented in the same body by another legislator, there is an undemocratic imbalance. The use of artificially created boundary lines on a map to determine representation is as outworn as feudalism. Except in a few states, there is an effort to secure equal representation of population in both houses of the legislature. So while bicameralism makes possible the representation of areas, it is not always used for that purpose. Counties are created by the legislature in most states and may be abolished or consolidated by the same authority. Reform in county government, including considerable reduction in the number of counties, particularly in the South and East, is long overdue. Such reform would do much to show the absurdity of "area representation."

Legislative Apportionment in Oklahoma, Bureau of Government Research, University of Oklahoma, May 1956, pages 3-4:

> General misunderstanding concerning the legal position of the county constitutes the chief obstacle to a fair distribution of the membership of state legislative bodies. The county does not occupy the same constitutional position in the state that the state holds in the Union.
>
> Its boundaries may be altered under procedures prescribed by the state, and the form of government under which it operates is set up by, and may be altered by, the state legislature. Unlike the state, the county can lay no claim to inherent powers; it enjoys only those which are specifically delegated by the parent government.

> In territorial days, the Supreme Court declared that counties "are but subdivisions of the territory created for governmental purposes" . . . and that they "derive their authority to hold elections and elect officers from the legislature." Immediately after statehood a series of contests occurred over the constitutional position of counties, in which the Supreme Court had no difficulty in reaching the conclusion that "a county is one of the territorial divisions of the state created for public and political purposes connected with the administration of state government."
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> This view of the legal status of the county is uniformly held among the states, and has long been accepted by the courts of the United States. There is no constitutional basis for the notion that a county is a unit in which the right of representation is inherent.

Bosworth, Karl, "Law Making in State Governments," page 85 in *The Forty-eight States: Their Tasks as Policymakers and Administrators* (final edition, background papers), Eighth American Assembly, Graduate School of Business, Columbia University, 1955:

> First, perhaps it needs to be said that there is no reason why, in a system that gives allegiance to democratic ideals, any members of either house should have significantly different numbers of constituents—total populations, citizens or voters. Many of the constitutions reflect other theories: that small town and country people and perhaps middle-sized city people are more deserving of representation than others, or that counties or towns are, like the states in the federal system, independent political entities to be represented regardless of their population. There is no basic right in the constitutional theory of any state for counties or towns to have separate representation. Unlike the national government vis-a-vis the states of the union, the states can abolish, change the boundaries of, or transform the governments of counties, towns and cities. The local governments' legal position is one of complete dependence upon the states. Any "sovereignty" of counties or towns is based on entrenched political power, not on constitutional or democratic theory.

There are, of course, numerous statements on the undesirable effects of the failure of many state legislatures to be sufficiently representative of the people. See, for example, the findings of the participants in the Eighth American Assembly, *supra*, page 138, and the discussion of the state legislature at pages 38 to 40 of the *Report of the Commission on Intergovernmental Relations* (Kestnbaum Commission), Washington, D. C., 1955.